

Mindanao (Philippines). The Zamboanga Siege of 2013, Ten Years Hence: Continuing Questions of Justice and Peace [updated version]

Wednesday 11 September 2024, by [SANTOS Soliman, Jr](#) (Date first published: 9 September 2024).

Ten years hence the September 9 to 28, 2013 Zamboanga Siege, the questions of justice and peace arising from and around it continue without both aspirations being fully or even satisfactorily achieved. On top of this, history of the Mindanao conflict seems to keep repeating itself, as if the key lessons haven't been learned. It is a good time, if not overdue, for all concerned to take stock.

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It will be recalled that the Zamboanga Siege featured armed hostilities between the Moro National Liberation Front (MNLF) main group of Chairman Nurulaji "Nur" P. Misuari, that was referred to in that Siege as the "Misuari Faction Rebel (MFR)," on one hand, and the Philippine government security forces consisting mainly of the Armed Forces of the Philippines (AFP) supported by the Philippine National Police (PNP), on the other hand. MNLF contingents from Sulu and Basilan entered Zamboanga City seaborne onto several coastal barangays where other contingents from Zamboanga Sibugay and in the City itself where already earlier in place. The MNLF purportedly intended to march to the City Hall, raise the MNLF flag there and declare the independence of the "Bangsamoro Republik."

According to one detailed chronology of events, on the eve of that intended march, Zamboanga police arrested six MNLF armed elements positioned in one coastal barangay Rio Hondo. In the early morning of the day itself September 9 of the intended march, the first exchange of gunfire between the MNLF and government troops took place in another coastal barangay Sta. Catalina, after entering through coastal barangay Mariki, resulting in the death of two soldiers and an undetermined number of rebels. The MNLF launched their attack, firing on civilians and taking on civilian hostages to use as human shields as they moved towards Sta. Catalina and still another coastal barangay Sta. Barbara where they established a stronghold. They took over tall buildings in the area where their snipers had vantage points. Within a few hours, the sounds of mortar shelling, rapid gunfire from different firearm types, explosions from various types of explosives, wailing sirens of ambulances and fire trucks woke up the City. The Siege was on and would go on for nearly three weeks until the military defeat and retreat of the MNLF in the face of superior surrounding and constricting government security forces on land, sea and air.

The MNLF taking of civilian hostages and using them as human shields was one main pattern or feature of the Zamboanga Siege. Another was the repeated burning of houses in the five affected coastal barangays collectively dubbed as “Ground Zero.” The house burnings, on top of the armed hostilities, aggravated the internal displacement of resident Zamboanguenos. By various accounts, 138 rebels, 19 soldiers and 9 civilians were killed, 167 soldiers and 57 civilians were wounded, 200 hostages either escaped or were rescued, and 278 rebels were detained. There were 22,196 families with 118,819 persons internally displaced who had to be temporarily sheltered in the City’s sports complex and 36 other evacuation centers and an unknown number of homes of relatives and friends. An estimated 9,709 residential and commercial establishments were burned or destroyed, affecting 20,094 families. Total damages to vital sectors of the City were estimated at around Php 3.2 billion and total losses at Php 2.9 billion. On top of all these, “the negative psychological effects of the Siege linger among Zamboanguenos, changing their lives forever.” What started as the Zamboanga Siege had well become a “Zamboanga Crisis,” one that carried the “broader scope and deeper consequences of the event” impacting on local Muslim-Christian community relations, in that “wedges have been driven deeper” with the danger of “a future of mutual inter-religious aversion.” At the same time, this crisis, if handled and addressed well, could be an opportunity for *Levanta Zamboanga* (Arise Zamboanga), not only for its infrastructure and economy but also for its peace and social cohesion.

Criminal Justice and Accountability

At the height of the Zamboanga Siege, Zamboanguenos, especially of the Christian majority, were calling for justice and accountability, including an “all-out prosecution,” of the MNLF for having initiated it. “There was a massive cry for the blood of the MNLF.” This understandable sentiment of social pressure was a definite factor in tipping the balance in favor of the military option for resolving the Siege. Muslim-Christian animosity was such that local Muslims who were not MNLF tended to be suspected as such by the government security forces and even the local Christian populace. And so, at the end of the Siege, the Zamboanga City Prosecution Office filed three criminal cases for Rebellion and two counts of War Crimes against Chairman Misuari, his Zamboanga Siege ground commander Ustadz Habier (also known as Khabir) Malik, and more than 200 other accused MNLF elements before the Regional Trial Court (RTC) of Zamboanga City.

The Rebellion charge under Article 134 of the Revised Penal Code (RPC) alleged at its core that the accused Chairman Misuari et al. have “risen publicly and taken arms against the Republic of the Philippines... by then and there attempting to hoist the MNLF flag in front of the Zamboanga City Hall to signify their declaration of independence from, and for the purpose of removing from the allegiance to, the Philippine government or its laws part of its national territory the City of Zamboanga, specifically the barangays of Mariki, Rio Hondo, Sta. Barbara, Sta. Catalina, Kasanyangan, Talon-Talon and Mampang...and in connection therewith and in furtherance thereof, have then and there committed acts of murder, pillage, disorder, looting, arson and destruction of private and public properties.”

The first War Crime charge under Section 4(b) (1) and (3) of Republic Act No. 9851 (*Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity*) alleged that the same accused, among others, “took non-combatant civilians as hostages, in particular, by rounding up more or less 300 persons, who were then held together as hostages and detained randomly in buildings and houses in said barangays... the same resulted in more or less twelve (12) total number of deaths and more or less seventy five (75) total number of serious injuries to innocent civilians.”

The second War Crime charge under Sec. 4(c)(1)(7) & (20) of the same R.A. 9851 alleged that the same accused, among others, “utilized their [the hostages] presence to render certain areas immune from military operations, that is, and more particularly by employing the same as human shields at the forefronts of Lustre Drive, Sta. Barbara and Martha Drive, Sta. Catalina... and further, accused in attacking dwellings or buildings which are undefended and which are not military objectives deliberately burned said structures which resulted in a conflagration of more or less 9,732 houses and buildings, public and private, causing damage in the estimated costs of Php 201,023,000.00.”

The MNLF was said to have deliberately burned houses during the Zamboanga Siege to cover (including from aerial surveillance) their withdrawals from the encounter sites and to effectively delay the offensive operations of government forces. Some interviewed evacuees however said that it was the Army who burned the houses or caused it by their mortar fire against the MNLF. This is also plausible in terms of deliberately flushing out the MNLF from strongholds, aside from the likely incendiary effect of various ground, naval and aerial explosive weapons superiorly employed by government forces against MNLF positions, even in what appear to be populated areas.

By 2014, the so-called Misuari Cases before the RTC of Zamboanga City were transferred to the RTC of Pasig City for security purposes and also for the convenience of a designated Department of Justice (DOJ) Panel of Special Prosecutors as well as the more than 200 accused detainees likewise transferred to Camp Bagong Diwa in Taguig City. The three cases were docketed as Crim. Cases Nos. 152737 (war crime of hostage taking), 152738 (war crime of human shields use), and 152739 (rebellion), and lodged with RTC Pasig Branch 158 then under Judge Maria Rowena Modesto-San Pedro (who is now a Justice in the Court of Tax Appeals). By 2017, there were these several significant developments in the Misuari Cases under Judge San Pedro per documents she provided the author:

1. Her Resolution of 27 October 2016 suspending proceedings and enforcement of the warrants of arrest against accused Chairman Misuari, despite his presumable command responsibility, to allow him to attend peace talk sessions with the government due to his crucial role therein as top MNLF representative towards “the convergence of the MNLF and MILF [Moro Islamic Liberation Front] peace tracks... consolidating all agreements with all Moro groups to finally achieve peace in Southern Philippines.”

2. Her Resolution of 29 May 2017 approving plea bargaining in the Rebellion case to the lesser offense of Sedition under Art. 139 of the RPC for 133 accused agreeable, leaving 93 to face trial for Rebellion. As for the two War Crimes charges, giving the Prosecution 15 days to amend them to Sedition for the same 133 accused, leaving 93 to face trial for War Crimes. The cases were then set for re-arraignment of the 133 accused covered by the Plea Bargaining Agreement and the Amended Informations for Sedition, as well as for Pre-Trial Conference for the 93 other accused.

The author has no certainty of what actually played out thereafter, other than that the Misuari Cases have been transferred to Branch 159, thus under a new Judge, but still of RTC Pasig. By now in 2023, more than 6 years later, it is reasonable to presume that Judgements of conviction for Sedition in all three Misuari Cases were rendered against the above-said 133 accused who no longer appealed, served out their given sentences of not more than 6 years and thus were thereupon released. The trial for all three original charges of War Crimes and Rebellion against the above-said 93 other accused has presumably proceeded but the author has no information on whatever further developments of this trial. He is however reliably informed that the proceedings in the same three original cases against accused Chairman Misuari himself only have continued to be suspended by extension after extension in the afore-said interest of the Mindanao peace process.

The convictions, if indeed, for Sedition in all three Misuari Cases against the above-said 133

accused, presumably low-ranking MNLF fighters or foot-soldiers, may be seen as a partial, even small, measure of justice. Judge San Pedro in her 27 October 2017 Resolution explained well the rationale for plea-bargaining from Rebellion to the lesser offense of Sedition and for the amendments of the Informations (charges) of War Crimes to Sedition. In her explanation, she cited, among others, the increasing use of Plea Bargaining Agreements in several international criminal tribunals in cases “even in the most serious of crimes” like genocide. Such arrangements tend to be more acceptable when the accused are “small fry” not so much when they are “big fish.” It is not yet clear to the author whether any of the above-said 93 other accused who were supposed to go to for all three original charges of War Crimes and Rebellion are “big fish.”

The Informations (charges) in all three Misuari Cases indicate only the first four named accused – Chairman Misuari, Ustadz Malik, Assamin Hussin, and Bas Arki — among the more than 200 accused to be the “leaders” but who are “at large,” i.e. not yet arrested nor surrendered, thus not yet in the custody of the law. But Chairman Misuari, with the filing of his Motion to Suspend Proceedings and Enforcements of Warrants of Arrest starting October 2016, is deemed to have voluntarily submitted himself to the jurisdiction of the Court. In fact, he undertook to surrender his person to the Court’s jurisdiction following termination of the peace talks or at any time that the suspension is lifted. Judge San Pedro was clear: “At the same time, the relief being granted being an exceptional measure, safeguards must be put in place to ensure the eventual prosecution of Misuari in the instant cases.”

But will this ever come to pass? At the rate things are going, Misuari has become practically “Untouchable” as long as he is deemed by the peace policy-decision makers as indispensable to the Mindanao peace process with a unified MNLF-MILF for the Bangsamoro. When might peace give way to justice here? — even as Judge San Pedro adopted the view that “It is no longer a question of whether to pursue justice or peace, but instead a challenge of when and how to pursue both.” What happens if instead it is the 84-year old Misuari who comes to pass? (or is this the government’s game plan?) Would that not be justice not only delayed and denied but also cheated by the MNLF leader with command responsibility? And how about when it comes to the second leader accused, the MNLF ground commander Ustadz Malik who, by all indications, was killed in the later days of the Zamboanga Siege? To many Zamboanguenos, that was justice served. But is that the desired norm or preferred mode for serving justice in matters of this sort? Ought we not be better than his?

Even if accused Chairman Misuari is eventually (in the remote event) somehow convicted for Rebellion and War Crimes, this measure of criminal justice may not be enough in rendering commensurate justice to the Zamboangueno victims of the Zamboanga Siege. And how about, per reports of the Commission on Human Rights Region 9 Quick Reaction Team (CHR9-QRT), government security forces who apparently also committed war crimes aside from human rights abuses in the maltreatment of detainees and even evacuees during that Siege? Was it really only the MNLF who were responsible for the burning of the houses in “Ground Zero”? Was it really only the MNLF who fired at civilians? Some hostages when later interviewed said that military snipers fired at them without distinction whether they were hostages or MNLF fighters, resulting in several hostage deaths. Looting was also witnessed to have been committed both by MNLF fighters and by Army troopers. Why were only the MNLF but not the government security forces charged with War Crimes cases? Has the law R.A. 9851 been selectively applied or weaponized only against rebels, never soldiers (incidentally, a continuing trend)?

Transitional Justice and Peace

Considering the Mindanao peace process context of the Zamboanga Siege and the Misuari Cases,

rightly recognized in Judge San Pedro's 27 October 2016 Resolution, a broader concept of justice tied to that peace process may provide better or fuller justice than criminal justice. We refer to transitional justice, such as that provided for in the 2014 *Comprehensive Agreement of the Bangsamoro* (CAB) forged between the Philippine government and the MILF only about six months after the Zamboanga Siege. Its Annex on Normalization provision spoke of transitional justice to address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations." This was broadened in the 2019 *Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao* (BARMM) as the very first Basic Right under R.A. 11054's Article IX, Sec. 1 "to address the legitimate grievances of the Bangsamoro people and the indigenous peoples, such as historical injustices, human rights violations, and marginalization through land dispossession of territorial and proprietary rights and customary land tenure."

Transitional justice, as a concept, mainly involves "dealing with the past" of an armed conflict but also with a "future-oriented approach." Its four key elements are the "right to know," "right to justice," "guarantee of non-recurrence," and "right to reparation." These four elements can all be applied, best in co-relation to each other, to the Zamboanga Siege, ideally starting with knowing the whole truth about the Siege. This truth may be brought out both inside and outside the judicial process, which is currently the ongoing unfinished Misuari Cases. Outside the judicial process, there could also have been at least a competent, impartial and credible fact-finding mission to get to the truth surrounding the armed violence by both the MNLF and by the AFP-PNP. The CHR9-QRT reports in September 2013, based on the courageous "Ground Zero" direct monitoring and observation led by CHR Commissioner Atty. Jose Manuel S. Mamauag, would have been a good starting point for a deeper investigative report. One wonders whether something like a truth commission for the Zamboanga Siege is viable, but more on this further below.

What was clear and comprehensive was the *Post-Conflict Needs Assessment Final Report* of December 2013 by the Office of Civil Defense (OCD), Regional Disaster Risk Reduction and Management Council (RDRRMC), Region IX. This abundantly showed the magnitude of the reparation that was due the victim Zamboanguenos and their beloved City. Even in the remote judicial conviction of Chairman Misuari for instigating the Zamboanga Siege, though not necessarily responsible for all the deaths and damages therein, it is highly unlikely that whatever court award for damages will be commensurate to the actual total damages incurred, including the sum of about Php 2.5 billion needed in aid of reconstruction and recovery. Where does the indemnification of all the civilians victims, if at all, figure in all this? In any case, it behooves all those who love Zamboanga City to go back to the well-grounded recommendations in that said Final Report and in turn assess what has been done accordingly, and what is still to be done. Is there a need for something like the R.A. 11696 *Marawi Siege Victims Compensation Act of 2022*?

Speaking of that much more deadly, destructive and prolonged Marawi Siege of 2017, that seems somewhat like a recurrence of the Zamboanga Siege of only four years earlier, even though the circumstances, particularly the Moro rebel actors, were quite different. In the longer view of the Moro armed conflict, we can go back to the Jolo Siege/ Burning of 1974 involving the MNLF, the Ipil Siege/ Raid of 1995 in Zamboanga Sibugay, and the Cabaatagan Siege/ Hostage Taking of 2001 in Zamboanga City involving the MNLF. And so, as for a guarantee of non-recurrence of the Zamboanga Siege, is there a guarantee? Can something like that be guaranteed not to recur?

So far, there has been no recurrence of a MNLF siege ten years hence. This is likely due to a combination of factors. One is that the MNLF has become a spent military force, losing perhaps its best field commander Ustadz Malik, among its significant battlefield losses of fighters and arms, in the Zamboanga Siege. Second is the ongoing prolonged criminal prosecution with convictions even if only by plea bargain agreements of a big number of MNLF elements in the Misuari Cases. In other words, there has been a measure of punishment rather than the usual impunity that is precisely

what encourages recurrence. And third is certain progress in addressing and accommodating MNLF grievances about the Mindanao peace process that occasioned its Zamboanga Siege.

The last factor above-mentioned does not however justify the MNLF resort to arms while already having come to its 1996 *Final Peace Agreement* (FPA) with the Philippine government under President Ramos, and having already been at the helm, with Chairman Misuari being Governor, of the old Autonomous Region in Muslim Mindanao (ARMM) under the second old Organic Act R.A. 9054 of 2001. The 2001 Catabangan Siege and the 2013 Zamboanga Siege have been fairly characterized to be like the tantrums of a spoiled brat a.k.a. Chairman/Governor Misuari when things did not go his MNLF way. Among these things were Misuari's ARMM election losses, even in his home province of Sulu, and his perceived shifting of the government's primary Mindanao peace track from the MNLF to the MILF starting with the 2001 *Tripoli Agreement on Peace* under President Arroyo and clinched with the 2012 *Framework Agreement on the Bangsamoro* (FAB) under President Aquino III.

Worse, the 2001 Catabangan Siege repeated history in the 2013 Zamboanga Siege not only as a Misuari/MNLF tantrum but also in the particular war crimes of taking hostages and using them as human shields. This has become a very bad habit of the MNLF that sullies its military track record and image as a Bangsa Moro Army (BMA). And it was precisely that human shields reprise in the Zamboanga Siege that fueled the fiery public sentiment there against the peaceful negotiation option and in favor of the military option to end the siege, but at great human, social and development costs. Such high costs made the military victory over the MNLF a "Pyrrhic victory," then said a leading Zamboanga civil society peace advocate Western Mindanao State University (WMSU) Professor and former President Grace Jimeno-Rebollos. We shall go back to that missed or lost negotiation option further below. But still speaking of reprises, another one in the Zamboanga Siege was the burning of houses by the MNLF in the 1974 Jolo Siege, although in both Sieges there was also blame to be shared with the AFP.

By the most reliable accounts, the Misuari/MNLF grievances behind the Zamboanga Siege were his loss (he claimed to have been cheated) in the May 2013 ARMM elections, the usual corruption issues against the incumbent ARMM regional government no longer under the MNLF helm, and perceived closing by the Philippine government of the MNLF track in favor of the MILF track in the Mindanao peace process. The latter had to do with the government proposing to the mediator Organization of Islamic Cooperation (OIC) to already close the extended Tripartite Review of the 1996 FPA. The Review had been the grievance mechanism for the MNLF on its issues of government non-implementation of specific provisions of the FPA. This however was being overtaken by the 2012 FAB and finally the 2014 CAB with the MILF.

Fast forward to 2022, whatever Zamboanga Siege-causing grievances of Misuari and the MNLF appear to have also been overtaken, addressed and resolved with the negotiated composition of the second or extended Bangsamoro Transition Authority (BTA) of the BARMM based in its Regional Government Complex in Cotabato City. Although the MILF is still at the mandated majority helm of the BTA, there is now a significant MNLF presence highlighted by no less than two children of Misuari and also his long-time MNLF legal counsel from Davao City. The inclusion of the MNLF in the MILF-led BTA has become the current expression of MNLF-MILF unity, considered crucial for the whole Bangsamoro cause and the Mindanao peace process. As they say, "unity is better seen in actions." At the same time, there is also the action of the MILF and MNLF forming separate political parties in preparation for the 2025 first regular elections of the BARMM. So, will their current unity hold? And will the shift from armed struggle to parliamentary struggle hold? Is it really a strategic shift or just a tactical shift?

What is somewhat ironic though about the unity of the two Moro liberation fronts in the BTA is that

it has had to take the new Philippine head of state President Marcos Jr. to achieve that unity. It is the Office of the Presidential Adviser on Peace, Reconciliation and Unity (OPAPRU) that is the one managing the balancing act between the MILF and the MNLF, and even between two factions of the MNLF. As if left to themselves, they would not be able to get their Moro liberation act together. If ever, getting their act together should not just be a matter of power-sharing in whatever transitional or regular authority but something more substantive in terms of the Bangsamoro agenda. They would do better to reconcile and harmonize the 1996 FPA and the 2014 CAB for peace and unity rather than go separately about their respective peace agreements with the government. The jury is still out, as they say, on this current implementation stage of the Mindanao peace process.

Is Chairman Misuari himself still indispensable at this stage of the peace process such that the suspension of proceedings against him in the three Misuari Cases would continue to keep being extended? After a suspension of about seven years already, is it not about time that this be lifted so that the trial against the principal accused Chairman Misuari can proceed in the normal course of justice while he might be out on bail to attend to whatever need for him in the peace process? Would this not be more in line with the afore-quoted view adopted by Judge San Pedro that "It is no longer a question of whether to pursue justice or peace, but instead a challenge of when and how to pursue both"?

If we do not want a recurrence of the Zamboanga Siege of 2013, we must also go back to the question of whether the high human, social and development costs entailed by the finally chosen military option to end it could have been avoided by the negotiation option. In his published detailed and engaging Personal Notes on the Siege, Fr. Albert E. Alejo, SJ then of Ateneo de Zamboanga University (ADZU), wrote "And the final question for me was - How much of this pain and this damage could have been avoided if we had seriously considered opting for negotiation?" Peace Advocates of Zamboanga (PAZ) such as Prof. Rebollos and NGO worker Jules Benitez believed that diplomacy could have averted those high costs. PAZ, led by Fr. Angel C. Calvo, CMF of the Claret School of Zamboanga City, then issued a call "Silence the Guns and Save Lives!!!" appealing to the Philippine government and the MNLF to immediately effect a humanitarian ceasefire to allow the release of civilian hostages and the hurrying of the dead, for the MNLF to leave all the hostages in one safe place for them to be immediately fetched and their needs attended to, and for the MNLF to be allowed safe conduct pass and for such pass to be guaranteed by President Aquino and witnessed by Indonesia.

Unfortunately, this call, especially for the MNLF to be allowed safe conduct in exchange for their release of civilian hostages whose lives were at stake, was defeated by a prevailing understandable sentiment against a reprise of the MNLF safe conduct pass scenario in the 2001 Cabatangan hostage taking as human shields. The buck stopped with President Aquino who himself came to Zamboanga City on Day 5 (September 13) of the Siege and who, after to his credit hearing from most concerned sectors, eventually made his judgment call in favor of a "calibrated military action" which was of course what prevailed. But it is also clear that the negotiation option, despite certain gains in this direction, was not exhausted.

There was no lack of local mediators between the key actors of government and the MNLF during the Siege. On Day 3 (September 11), cell phone talks were arranged by local mediators for Zamboanga City Mayor Isabel "Beng" Climaco with Ustadz Malik and then with Chairman Misuari. Among others, the release of Fr. Michael Ufana and several women and children who were MNLF hostages and the delivery of food packs to the MNLF for their remaining hostages (and for the MNLF themselves) was successfully negotiated with Ustadz Malik. At first dawn on Day 5, it was mission accomplished inside MNLF lines of their Sta. Barbara stronghold. "No gunshots! We were still alive! A full cycle of negotiation proved to be possible!," wrote Fr. Alejo, "Unfortunately, we failed to maximize the line of communication opened up by that modest effort at negotiation." Later

that same Day 5, a cell phone talk was arranged by local mediators between Interior and Local Government Secretary Manual “Mar” Roxas and Ustadz Malik. A two-hour “confidence-building ceasefire” was agreed between them but this soon enough collapsed due to some ground troop movement, both sides then blamed each other, as is usual enough. From thereon, things went downhill the military option road. And this would take at least 15 more days to the Day 20 (September 28) official end of the Siege.

From the perspective of the Zamboanga civil society peace advocates, there was insufficient national and local government political will for the negotiation option, no clear commitment to engage in negotiation at all, as if there was no place for peace. These advocates, who had much to offer in terms of proposals and of mediators and intermediaries, aside from their being non-aligned with both the government and the MNLF, were however crucially sidelined by the government officials managing the crisis. Because there was no will, there was no real negotiation strategy at all, not official designated negotiator and no duly constituted negotiation team. In a 2014 Senate hearing months after the Zamboanga Siege that he chaired, then Senator Antonio Trillanes spoke these words of wisdom: “So that is what we are trying to establish here to make sure that should this thing happen, next week in another city, after the security forces have done their job of containing the situation, there should be a series of activities first before resorting to the final military option which, while effective, would be costly socially and economically.”

We end for now this long yet admittedly incomplete revisitation of the Zamboanga Siege of 2013 with the hope and best thoughts that the beautiful City of Zamboanga (and more recently Marawi), and other cities or towns for that matter, not suffer from another siege (never again, *nunca mas*), where the worst consequences might be avoided by exhausting the ways of peace. May the peace be with you/ *Assalamu aleikum/ La paz sea contigo*, Zamboanga and Marawi, even as you continue to attend to rehabilitation, healing, recovery, reconciliation and social cohesion.

Soliman M. Santos, Jr.

Naga City, 8 September 2023

Postscript on RTC Order of Dismissal

9/9/24<

On the occasion this time of the 11th anniversary of the Zamboanga Siege of September 9-28, 2013, we discuss the most significant legal developments since the last tenth anniversary with our foregoing article on “Continuing Questions of Justice and Peace.” The most significant development is the **Order of Dismissal on December 20, 2023** of the three Chairman Nur Misuari Crim. Cases Nos. 152737-39 by the **RTC Pasig City Branch 159** Judge Elma M. Rafallo-Lingan “for insufficiency of evidence.” Earlier that year, in an Order of March 16, 2023, she directed the Department of Justice (DOJ) “to conduct a reinvestigation of the complaints in view of the legal ramifications brought about by the termination of the cases against a majority of the accused because of the plea bargaining agreement they entered into by them [sic] with the prosecution and with the concomitant disregard/abandonment of evidence corresponding to them and to afford accused Misuari the full measure of his right to due process.” (underscoring supplied)

Unfortunately, we do not have a copy of the reinvestigation Order for a fuller appreciation of its rationale, as even a copy of the most important Order of dismissal was hard to secure from the RTC, with the simple request for the same even having to go all the way up to the Supreme Court, despite the constitutional “right of the people to information on matters of public concern” under Art. III, Sec. 7, and jurisprudence upholding public access to a court decision in particular.

The DOJ reinvestigation resulted in a Resolution dated 25 October 2023 recommending the dismissal of the complaints against respondent Misuari, one for rebellion and two for war crimes of the taking of hostages and of using them as human shields, “due to insufficiency of evidence.” In the main, the RTC went along with the DOJ Resolution. The RTC, in dismissing the charges, was “convinced that the prosecution can no longer establish the guilt of accused Misuari.” Of course, as in fact the prosecution was no longer seeking even to present evidence, as it was itself asking for the dismissal of the complaints. Stated otherwise, the court could not be holier, or be seen to be holier, than the prosecution.

As for the court’s reinvestigation Order concern “to afford accused Misuari the full measure of his right to due process,” this may be misplaced because he had all the opportunity to be heard by himself and counsel but, as noted by the DOJ Resolution, he “never participated in the court proceedings.” He had filed a Motion to Suspend Proceedings and Enforcement of Warrants of Arrest on 14 October 2016 for Peace Talks purposes, and this was granted by the Resolution dated 27 October 2016 of then RTC Pasig City Branch 158 Judge Maria Rowena Modesto-San Pedro. While this deference to the high cause of peace was understandable, it has tended to render him “untouchable,” esp. with the intercession of high officials of the Duterte administration. The trend will likely continue with the incumbent Marcos Jr. administration, with the irony of the late President Marcos Sr. being the first of no less than eight Presidents whom the now 85-year old Misuari has reckoned with.

The RTC Order of Dismissal of the Misuari Cases tacked first the two war crimes cases of the taking of hostages and of using them as human shields. Its key finding for their dismissal was this:

Moreover, the record fails to show that Misuari can be considered as “superior” who has “effective command and control” over the perpetrators of the siege. As clearly defined in R.A. No. 9851, a “superior” refers to a military commander or a person effectively acting as a military commander; or any other superior, in as much as the crimes arose from activities within the effective authority and control of that superior. Also, a person can be said to have “effective command and control” or “effective authority and control” when he has the material ability to prevent and punish the commission of offenses by subordinates.

The RTC Order does not elaborate much on the factual basis for this key finding, other than recalling one particular isolated affidavit-documented gun-firing incident committed by an MNLF member “on [his] own volition and did not act under a command of a superior.” The more relevant factual circumstances and legal reasoning for the finding of no command responsibility of Misuari for undoubtedly MNLF-perpetrated hostage-taking and human-shield use are found in the DOJ Resolution which the RTC Order acted on favorably. Since the DOJ used similar factual appreciation and legal reasoning for the rebellion case, we shall go its Resolution’s discussion of the specific evidentiary matters shortly below.

We go back first to the RTC Order of Dismissal of the Misuari rebellion case. Its key finding for its dismissal was this: (underscorings supplied of lines exactly or predominantly lifted from the DOJ Resolution)

Clearly, accused Misuari is being charged for his alleged participation or execution of commands of

others in the rebellion. However, as correctly observed by the prosecution during its reinvestigation, no one claims to have seen him during the attacks. While complainant Maria Isabelle Climaco, the then Zamboanga City's Mayor, narrated that she had a telephone conversation with accused Misuari giving his commanders and leaders "a free hand," this is insufficient to establish that he promoted, maintained and headed the rebellion. Prior to the alleged telephone conversation, she has no personal knowledge that the mobile number provided by accused Malik is owned by accused Misuari. Ditto with the affidavit of Father Michael F. Ufana, whose statements reveal that he supposedly knew Misuari's leadership over the rebellion because accused Malik merely told him so. In fact, Father Ufana stated that the leader of the MNLF rebels that held him captive was accused Ustadz Malik Kabir, @Dhadz, and Ustadz Khabir Panagas....

The DOJ Resolution dealt with the Misuari rebellion case first before the two war crimes cases. It stated that "It is a matter of judicial record that MNLF members, in specific capacities, beyond reasonable doubt, committed Rebellion. Accordingly, they have been penalized for their crimes. Unlike them, respondent [Misuari] who was their alleged leader, never participated in the court proceedings, much less convicted of any crime for the same incident... It begs, therefore, the evidentiary question... if he headed the Zamboanga Siege."

Per the DOJ Resolution, complainant Climaco's narration that she had a telephone conversation with "*Chairman Misuari [who] however informed me that he is giving his commanders and leaders a **free hand**,*" is "vague. It hardly proves that respondent promoted, maintained or headed the rebellion." This Misuari "utterance in question" was made, according to Climaco, after she over the phone "asked for his help concerning the ongoing violence and hostage taking in Zamboanga City." The DOJ Resolution states that "complainant Climaco's recollections are not doubted" but then a few sentences later states "It is possible that the person on the other end of the line is not respondent [Misuari]." It similarly dismissed the similar narration of prosecution witness Father Ufana this way:

Much like that of complainant Climaco's, Father Ufana's recollections are not doubted. However, his narration does not tend to establish that respondent [Misuari] promoted, maintained or headed the rebellion. A plain reading of his statement reveals that he supposedly knew respondent's leadership over the rebellion because Malik told him so. He narrated that he overheard Malik giving updates to respondent on the situation in Zamboanga City. Further, he claimed to have had a telephone conversation with respondent using Malik's phone. That it was respondent whom he overheard Malik was talking to, is also at best, a personal impression, not evidence. The same is true with the claim that respondent was on the other end of his phone conversation.

Even if we assume otherwise, their supposed conversation hardly suggests that respondent commanded the rebellion. Based from Father Ufana's recollection, respondent aired to him his various sentiments against the government. He did not recall any claim from respondent that he commanded the rebellion. In fact, Father Ufana categorically stated that the leader of the MNLF rebels that held him captive was Ustadz Malik Kabir @Dhadz, Ustadz Khabir Panagas.

It is a bit disconcerting to see here how the DOJ impugns - or at least does not give sufficient credence to - these two key witnesses (against principal accused Misuari) of the prosecution which it represents. On the other hand, it says nothing at all about Misuari's "denies having talked to complainant Climaco over the phone" in his Counter-Affidavit. But who really between MNLF Chairman Misuari, on one hand, and Zamboanga City Mayor Climaco and Fr. Ufana, on the other hand, is to be believed about their narrated phone talks with Misuari? Note that the DOJ Resolution at least had findings that both Climaco's and Fr. Ufana's separate "recollections are not doubted." Misuari's denial-lying about his phone talk with Climaco should have already raised red flags about his other denials.

That MNLF ground commander Malik provided Climaco with the cell phone number of Misuari so that she had better talk to him for the release of the hostages that Malik and his group of armed followers were then holding in Barangay Sta. Barbara shows that Malik was operating under the higher authority of the publicly known MNLF Chairman. Also publicly known is that Malik was a longtime field commander of the MNLF Misuari faction based in Sulu. That Misuari gave his commander and leaders “a free hand” while the Zamboanga Siege was already raging shows that he had “effective command/ authority and control” over them but chose not to exercise it when the going got rough.

Misuari’s higher authority over Malik was also shown when the hostaged Fr. Ufana stated that “in several occasions I heard over the phone the conversation of Nur Misuari and Ustadz Malik in giving updates on the situation in Zamboanga City based on the reports that Ustadz Malik receives from his field commanders in the area.” And that “**Malik informed me personally** that all the decision he made was coming from Nur Misuari and I [was] able to talk to him (Nur Misuari) **on the phone** yesterday, using the phone of Malik at around 6:00 o’clock in the morning.... Nur Misuari told me during our conversation thru mobile phone of Commander Malik that he was in Sulu...”

The DOJ Resolution to its credit recapitulated the essential points in ex-Mayor Climaco’s Reply-Affidavit and we now fully quote this 12-point recapitulation, as it is instructive:

1. She was urged to file a Reply-Affidavit, considering her personal knowledge of the facts and incidents that transpired during the Zamboanga Siege;
2. Respondent [Chairman Misuari] admitted that he is the head of the faction of the MNLF forces that laid siege to the City of Zamboanga. This admission acknowledges that he is the superior of the MNLF forces. Hence, these men would not attack Zamboanga City without his orders or without him acquiescing to it;
3. In accord with universal experience, it is obvious that had respondent not agree [sic] or commanded his forces to attack Zamboanga City, the atrocities that transpired would not have happened.
4. There were approximately five hundred (500) men from the MNLF-Nur Misuari faction that participated in the attack of Zamboanga City and committed atrocities against its citizens and properties. By this alone, it is obvious that the Zamboanga Siege was planned not by just some rogue commanders of the MNLF-Nur Misuari faction, but with the participation of respondent himself;
5. The Zamboanga Siege was pursued to accomplish the gargantuan objective of rebelling against the government, and this is aptly shown by respondent’s “rants” against the government on the peace process, which she patiently listened to when she spoke to him over the phone at that time.
6. Respondent’s admission of giving his commanders a “free hand” already articulated his involvement and participation in their commission. This statement constitutes a clear blanket authority, for his commanders to do whatever it takes to achieve the objective of taking away Zamboanga City from the government;
7. Father Ufana, in his Sworn Statement dated 21 September 2013, corroborated the admission of Commander Habier Malik/ Ustadz Malik that respondent is directly involved in the siege of Zamboanga City.
8. It is never a requirement for one to have participation in a crime that he be in the vicinity where a crime was committed.

9. Respondent masterminded the Zamboanga Siege and he revealed it by telling about his issues against the national government whom he accused of setting aside the Tripoli Agreement between the MNLF and the Philippine Republic;
10. It is too much of a coincidence that her testimony and that of Fr. Ufana regarding respondent's disclosures have converged,
11. Respondent has clear motive to commit the crime charged; and
12. Respondent's protestations that he is for peace is just plain deceit. The City of Zamboanga did not even hear a condemnation from him of the atrocities committed against its people and properties that resulted to grave financial ruins.

The foregoing points of ex-Mayor Climaco are quite sensible, reasonable, and grounded both by facts and by context. They are borne out by public and scholarly knowledge, even judicial notice, of contemporary history regarding Misuari, the MNLF and the Mindanao peace process. But the DOJ Resolution does not give those points due credit and weight. Instead, it unduly resorts to such evidentiary rules as proof of guilt beyond reasonable doubt and the hearsay rule, even going to the extent of volunteering a doubt that "It is possible that the person on the other end of the line [with then Mayor Climaco and hostaged Father Ufana] is not respondent [Misuari]." The DOJ could have done better in terms of better appreciating the positive testimonies of Climaco and Ufana over Misuari's blanket denials (inc. lying about the phone talks), and in terms of reasonable inferences that may be drawn from even circumstantial evidence, not to mention public knowledge and judicial notice. And unfortunately, the RTC just went along with the DOJ, without even referring to its above-quoted 12-point recapitulation of the Climaco Reply-Affidavit, in what seems to be characteristic kid-gloves treatment of Misuari, even if understandable in deference to the continuing Mindanao peace process. Judgment call, as they say. But the prosecution Resolution through the DOJ recommending that the complaints against Misuari be dismissed in effect decided the matter for the RTC.

The rebellion and war crimes cases against Misuari the top MNLF leader are dismissed while, as the DOJ Resolution put it, "the State has successfully prosecuted a majority of the perpetrators" of the Zamboanga Siege who are his loyal MNLF followers, the proverbial "small fry." The RTC Order of Dismissal does archive - for possible future prosecution - the cases against the identified and still at-large MNLF field commanders there, namely Ustadz Habier Malik, Assamin Hussin, Bas Arki and Ustadz Ismael Dasta. But siege accounts say that Malik for one had already long died from wounds incurred during that 2013 siege. For all intents and purposes, these cases have been terminated with the dismissal of those against Misuari.

The beautiful city and people of Zamboanga deserve better justice, even as they also deserve sustainable peace. *Insha'llah*. — #

Soliman M. Santos, Jr.

Naga City, 9 September 2024

P.S.

- SOLIMAN M. SANTOS, JR.. is a recently retired Judge of the Regional Trial Court (RTC) of Naga City, Camarines Sur. He is a long-time human rights and humanitarian lawyer, and peace advocate,

researcher and writer on both the Moro and Communist fronts of war and peace. He is the author of several books on the Mindanao peace process, most notably *The Moro Islamic Challenge: Constitutional Rethinking for the Mindanao Peace Process* (UP Press, 2001, 2009).