

Mindanao (Philippines): Dissenting on Sulu's exclusion from BARMM

Wednesday 18 September 2024, by [SANTOS Soliman, Jr](#) (Date first published: 16 September 2024).

With due respect, the September 9, 2024 Supreme Court (SC) unanimous Decision in *Province of Sulu, et al. vs. Executive Secretary Salvador Medialdia, et al.* takes away, with one hand, Sulu from the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) what it gives with the other hand, otherwise upholding the constitutionality of the rest of the Bangsamoro Organic Law (BOL), Republic Act No. 11054. This given constitutional imprimatur by the SC is of course quite important. But what is taken away may ultimately be more than what is given.

The exclusion of Sulu from the BARMM may be likened to the exclusion of Muslim Mindanao (or the West Philippine Sea) from the Philippines. Precisely, **the 1987 Philippine Constitution's key Article X, Section 15** "created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographic areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

The late eminent Bikolano constitutionalist and 1987 Constitution framer Joaquin G. Bernas, S.J. has written that such "distinctive regional commonality... is found in Muslim Mindanao and in the Cordilleras. As to the areas between these two, they are not characterized by distinctive characteristics but are practically a homogenous culture.... Another purpose of the creation of autonomous regions is to furnish a possible solution to the regional conflicts that have arisen partly from cultural diversity."

Bernas explained the meaning of "**Muslim Mindanao**" as "a shorthand expression to designate those areas of Mindanao which are predominantly Muslim." For the longest time, Sulu has been the Philippine province with the highest Muslim population percentage above 95%, higher in most censuses than Lanao del Sur, Tawi-Tawi, Basilan and the old Maguindanao province. Sulu is also the homeland of the Tausug tribe, one of the three major (out of 13) Muslim ethnolinguistic tribes. The founders of the Moro National Liberation Front (MNLF), who came from the three major tribes (Tausug, Maguindanao, and Maranaw), are credited with imagining (and realizing) the Moro nation (*Bangsa Moro*) out of these 13 tribes.

Sulu is not just a Province that is a territorial and political subdivision of the Republic of the Philippines. It was also the homeland of the once sovereign state-like Sultanate of Sulu, one of the two great historical Muslim Sultanates in Mindanao, Sulu and Palawan, the other being the Sultanate of Maguindanao. The Sulu Sultanate predated in the 15th Century the Spanish conquest and colonization in the 16th Century of what was then the non-state entity of the scattered *Las Islas Filipinas*. It took another three-and-a-half centuries before the Philippine Revolution of 1896 against Spain led to the Philippine independence proclamation and the state formation that was the First

Philippine Republic in 1898, alongside the then still subsisting two Muslim Sultanates. The ensuing Philippine Republic has in fact invoked the Sulu Sultanate for the Philippine claim to Sabah/ North Borneo.

Sulu is a major integral part of Muslim Mindanao just as the latter is an integral part of the Philippines under the current Constitution. In fact, Sulu has more distinctive commonality with the rest of Muslim Mindanao than the latter has with the rest of the Philippines. But imagine the national furor of the mainstream Filipino Christian majority if Muslim Mindanao were separated, or would separate, from the Philippines. You do not hear that national furor about the SC Decision ruling that **“The Province of Sulu shall not be part of the Bangsamoro Autonomous Region.”** There are only some Filipino Muslim and BARMM leaders’ dissenting and critical voices in the wilderness reflected in the national media.

Former BARMM Interior Minister Naguib Sinarimbo said, “The consequence of this will be the death of the Bangsamoro idea where a single identity unites all the 13 ethnolinguistic groups of Muslims who have stood against all forms of colonialism over the centuries.”

House Deputy Minority Leader Rep. Mujiv Hataman said: “Even if we revisit our history countless times, it will show that Sulu is the cradle of the struggle for an independent Bangsamoro. Then as now, it will remain the symbol of the Moro’s fight against repression. The story of the valiant warriors of Sulu is part of the Bangsamoro narrative. Many of the MNLF’s heroes and *mujahideen* come from this province.” Of course, led by MNLF Founding Chairman Nur Misuari.

Interim Bangsamoro Parliament Deputy Speaker Omar Yasser Sema said: “It appears that the court decided on the basis of their limited notions of democracy. They failed to consider that what the people of BARMM consented to was the abandoning of the armed struggle and placing their hopes and aspirations for genuine self-governance in peaceful democratic processes and the preservation of the gains of the peace process.”

In a total of 103 pages (the 98-page Decision penned by Senior Associate Justice Marvic M.V.F. Leonen and the 5-page Concurring Opinion of sole Muslim Associate Justice Japar B. Dimaampao) and 15 strokes of the signature pen, the SC, said to be “the weakest” of the three great constitutional departments of government, appears to have been able to do what the Armed Forces of the Philippines (AFP) has been unable to do in more than four decades: “divide and rule” over (or overrule) the Bangsamoro people. The sword that Lady Justice wielded here to cut off Sulu from the BARMM was none other **the Constitution. In particular, Art. X, Sec. 18, second sentence proviso** (underscored here): “The creation of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.”

On the basis mainly of that constitutional provision, the SC cut down as unconstitutional **the BOL’s Art. XV, Sec. 3(a) proviso** (underscored): “The Bangsamoro Autonomous Region shall be established and all provinces and cities of the Autonomous Region in Muslim Mindanao created under Republic Act No. 6734, as amended by Republic Act No. 9054, shall form part of the Bangsamoro Autonomous Region if the majority of the votes cast in the Autonomous Region in Muslim Mindanao shall be in favor of the approval of this Organic Law: *Provided*, That the provinces and cities of the present Autonomous Region in Muslim Mindanao shall vote as one geographical area.”

This BOL proviso on the Results of the Plebiscite does appear on its face to be contrary to and violative of the earlier quoted and underscored applicable constitutional proviso. The SC Decision’s

legal reasoning on this sounds logical enough, and we quote its crucial key passage in p. 89: (bold italics in the original)

In considering the ARMM as one geographical area, the Bangsamoro Organic Law transgressed the Constitution and disregarded the autonomy of each constituent unit of what used to comprise the ARMM. ***The Province of Sulu, as a political subdivision under the ARMM, did not lose its character as such and as a unit granted local autonomy. The Constitution and the Local Government Code provide for how political entities may be abolished. The Province of Sulu cannot be deemed abolished upon its rejection of the Bangsamoro Organic Law.*** Thus, it was illegally included in the autonomous region, and the Organic Law explicitly violated the constitutional provision that “only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.”

There are other passages of relevant legal reasoning in the SC Decision but this above-quoted one is the most crucial and key, and we thus focus on it here, without prejudice to subsequent fuller discussions of the Decision, as there certainly will be, not necessarily by this author.

It must perhaps be first pointed out that the BOL and its creation of BARMM by plebiscite does not at all contemplate or imply the abolition of the Province of Sulu “upon its rejection of the BOL.” It was still very much existing as a province that was a part of the post-plebiscite establishment of the BARMM until the “immediately executory” SC Decision ruling that it “shall not be part of the Bangsamoro Autonomous Region.” It is the SC Decision that has done the “abolishing” — of one integral provincial part of BARMM.

In proffering an alternative constitutional interpretation to that of the SC Decision, we can be inspired by the spirit and wisdom of its *ponente* SAJ Leonen when he was the Chair of the Government of the Philippines (GPH) peace panel that successfully negotiated with the Moro Islamic Liberation Front (MILF) for a Framework Agreement on the Bangsamoro (2012) and had repeatedly said that the “asymmetric relationship” that the MILF had put forward for the future Bangsamoro “new autonomous political entity... to replace the ARMM” can be worked out **“within the flexibility of the 1987 Constitution.”** That **and certain established rules of constitutional and statutory construction** or interpretation.

The very spirit, intent and purpose of the Constitution’s **key Art. X, Sec. 15** that “created autonomous regions in Muslim Mindanao...” (earlier fully quoted above) **should tip the balance against the strict letter** of its ensuing Sec. 18, second sentence proviso “that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.” Since this proviso mentions “geographic areas,” the BOL’s own corresponding Art. XV, Sec. 3(a) proviso “That the provinces and cities of the present Autonomous Region in Muslim Mindanao shall vote as one geographical area” should be upheld pursuant to the higher spirit, intent and purpose of the creation or enhancement of an autonomous region in Muslim Mindanao.

Ratio legis. **“The spirit or intention of the law prevails over the letter thereof.”** (*U.S. vs. Yee Ngee How*, D.C. Cal. 105, F. Supp. 577) **“The statute may be extended to cases which are not included within the literal meaning of the words if such cases are within the reason for the statute.”** (*U.S. vs. Freeman*, 11 L. ed., p. 724) **“When the interpretation of the statute according to the exact words would lead to absurdity, it should be construed according to the spirit and reason, disregarding if necessary, the letter of the law.”** (*Lopez vs. Court of Tax Appeals*, 100 Phil. 850)

We respectfully submit that the exclusion of Sulu from BARMM is an **absurdity** not only in itself in terms of separation from and detracting of Muslim Mindanao but also other further likely adverse

consequences. Lanao del Sur Rep. Zia Alonto Adiong said the loss of Jolo leaves a deep void in the Bangsamoro homeland. These are political tremors that endanger the very foundation of a unified Bangsamoro. With the departure of Sulu, the remaining provinces must now ask themselves whether the door has been opened for their own departure. The cracks in this collective struggle for autonomy may undo the decades of effort that brought us to this point. We all find ourselves back [to] square one.” Former BARMM Interior Minister Sinarimbo adds, “In the end, we will be left with no provinces and cities.”

To uphold the Organic Law proviso implementing the Constitutional proviso would also be pursuant to upholding the **hierarchy of local autonomy** between autonomous regions (higher) and regular local government units like provinces (lower). This was importantly clarified in the SC likewise unanimous Decision in ***Cordillera Broad Coalition vs. Commission on Audit***, 181 SCRA 495 (1990), penned by the late Bikolana Justice Irene R. Cortes: (underscorings supplied)

It must be clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, sec. 2] refers to the *administrative* autonomy of local government units or, cast in more technical language, the decentralization of government authority [Villegas v. Subido, G.R. No. L-31004, January 8, 1971, 37 SCRA 1]. Local autonomy is not unique to the 1987 Constitution, it being guaranteed also under the 1973 Constitution [Art. II, sec. 10]. And while there was no express guarantee under the 1935 Constitution, the Congress enacted the Local Autonomy Act (R.A. No. 2264) and the Decentralization Act (R.A. No. 5185), which ushered the irreversible march towards further enlargement of local autonomy in the country [Villegas v. Subido, *supra*.]

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution contemplates the grant of *political* autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18].

We respectfully submit that in the concept and spirit of the higher political autonomy of or “decentralization of power” to autonomous regions, the lower administrative autonomy of or “decentralization of administration” to the regular LGUs may be made to yield to the former, especially on so crucial a matter as the creation of an organically whole autonomous region, as may be necessary, even if this “deprives the constituent units of their local autonomy” and “the right of suffrage of [a province’s] constituents.” This is of course a judgment call in favor of the maintaining no less than the established integrity of the autonomous region. A judgment call based on “**The greatest good for the greatest number,**” to take a maxim of Utilitarianism, a tradition of ethical philosophy that is associated with Jeremy Bentham and [John Stuart Mill](#), two British philosophers, economists, and political thinkers, who have also been referred to in legal philosophy.

Interim Bangsamoro Parliament Deputy Speaker Sema said: “Autonomy was already established in 1989 hence, the ARMM (Autonomous Region in Muslim Mindanao) was already a government unit when the 2019 plebiscite was conducted, in fact, [it] was classified by the Supreme Court as a local government unit in many of its decisions. Therefore, the determination of consent to change from ARMM to BARMM should be based on the entirety of the ARMM as a whole and not per component province. That was the intent of the Bangsamoro Transition Commission during the deliberations in Congress.” Sema said that even as the ruling was shared by all magistrates of the Supreme Court, an appeal should be lodged to argue on the wisdom of reckoning the majority vote for the BOL in the 2019 plebiscite at the regional level “and for the sake of Sulu, even if that is a longshot [effort].”

But more so, given that “The Decision is immediately executory,” thus not even giving room for

reconsideration before execution. And the most affected entity BARMM cannot even lodge a Motion for Reconsideration (MR) because it was not a party to the case. **But the MILF is a party respondent. It should soonest file a timely best effort MR.** Fortunately, it and the Bangsamoro cause have a new younger generation of legal eagles, including some notable women lawyers this time, and now is the time for all good Bangsamoro lawyers to come to the aid of that cause before the SC. May they be inspired by the preceding generation of Bangsamoro lawyers who fought the good fights of the past like Michael Mastura, Musib Buat, Lanang Ali, and the brothers Macapanton and Firdausi Abbas. — #

By **Soliman M. Santos, Jr.**

Naga City, 16 September 2024

P.S.

SOLIMAN M. SANTOS, JR. is retired RTC Judge of Naga City; a long-time human rights and international humanitarian lawyer; legislative consultant and legal scholar; peace advocate, researcher and writer on both the Communist and Moro fronts of war and peace; author of a number of books, including: *The Moro Islamic Challenge: Constitutional Rethinking for the Mindanao Peace Process* (UP Press, 2001, 2nd printing 2009); *Dynamics and Directions of the GRP-MILF Peace Negotiations* (Alternate Forum for Research in Mindanao 2005); *Referendum on Political Options: Study Papers on the Legal and Historical Basis* (Mindanao Peoples' Peace Movement, 2010); *In Defense of and Thinking Beyond the GRP-MILF MOA-AD: A Peace Advocate's Essays on the Controversial Memorandum of Agreement on Ancestral Domain* (AFRIM, 2011); and *Federalism and Cha-Cha for Peace: Critical Papers on Federalism and Charter Change for the Mindanao Peace Process* (Institute of Autonomy and Governance, 2016).