

The Bangsamoro Basic Law: Issues and Challenges

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Context

- Conflict in Mindanao, from 1974 onwards
- Long history of negotiations from the Tripoli Agreement
- Aftermath of MOA-AD declared unconstitutional in 2008
- Comprehensive Agreement on the Bangsamoro (CAB) – FAB and four annexes
- Bangsamoro Transition Commission

Summary of BBL

- Preamble + 18 articles
- Article 1 - Name and Purpose,
- Article 2 - Bangsamoro Identity
- Article 3 - Territory
- Article 4 - General Principles and Policies,
- Article 5 - Powers of Government

BBL Articles

- Article 6 - Intergovernmental Relations
- Article 7 - The Bangsamoro Government,
- Article 8 - *Wali*
- Article 9 - Basic Rights
- Article 10 - Bangsamoro Justice System
- Article 11 - Public Order and Safety,

BBL Articles

- Article 12 - Fiscal Autonomy
- Article 13 - Economy and Patrimony
- Article 14 - Rehabilitation and Development
- Article 15 - Plebiscite,
- Article 16 - Bangsamoro Transition Authority,
- Article 17 - Amendments and Revisions
- Article 18 - Final Provisions.

Issues and challenges

- Legal – scope of my talk today
- Political – opposition by politicians and influential groups, referendum
- Practical – money and capacity

Legal justification of Bangsamoro

- Article 10 of the 1987 Constitution allows the creation of two autonomous regions – Muslim Mindanao and Cordilleras
- Congress to enact organic act or Basic Law
- Article X describes generally the powers that can be granted to the autonomous regional government but allows for variation, elaboration
- Draft BBL recognizes the 1987 Constitution in preamble and various sections

Core issue: Is Bangsamoro a separate state?

- It is not a separate state, not even a sub-state, but it is an autonomous region under the Constitution
- Relationship is “assymetrical”, in contrast to other regions being symmetrical (it has more powers than other regions but it is not a sub-state, not even a federal state, certainly not independence)

Supreme Court: “Assymetrical relationship”

“Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. They are, thus, in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation. The Constitution grants them legislative powers over some matters, e.g. natural resources, personal, family and property relations, economic and tourism development, educational policies, that are usually under the control of the national government. However, they are still subject to the supervision of the President. Their establishment is still subject to the framework of the Constitution, particularly, sections 15 to 21 of Article X, national sovereignty and territorial integrity of the Republic of the Philippines. ”

Leonen, J., Concurring Opinion, League of Provinces of the Philippines v. DENR, G.R. No. 175368, 11 April 2013.

Solutions to challenge

- Define “asymmetric relationship” refers to the relationship between the Central Government and the Bangsamoro Government as an autonomous region, as provided under Section 15, Article X of the 1987 Constitution, which is distinct from other regions and other local governments.
- Define Bangsamoro as the political and juridical entity created by the Bangsamoro Basic Law which is an autonomous region as provided in Section 15, Article X of the 1987 Constitution,

Classification of powers

- Reserved – can be exercised solely by the central government
- Shared – by central government and the Bangsamoro
- Exclusive – exercised only by the Bangsamoro but under the general supervision of the President

Reserved Powers

- *Defense and external security
- *Foreign policy
- *Coinage and monetary policy
- * Postal service;
- *Citizenship and naturalization
- *Immigration;
- *Customs and tariff
- *Common market and global trade (except as granted to ARMM)
- *Intellectual property rights.

Shared Powers

- *Social security and pensions
- *Land Registration
- *Human rights and humanitarian protection and promotion
- *Penology and penitentiary
- *Civil Service
- * Quarantine
- *Pollution control
- *Auditing

Exclusive Powers

- Examples (not complete enumeration in following slides)
- Categorized as
 - Economic policy
 - Public sector
 - Socio-cultural, including religious
 - Natural resources and environment

Exclusive Powers – Economic

- Agriculture
- Trade, industry, investment, enterprises and regulation of businesses
- Economic zones and industrial centers; Free ports;
- Tourism
- Creation of sources of revenue;

Exclusive Powers – Public sector

- Regulation of power generation, transmission, and distribution
- Public utilities operations
- Public works and highways
- Local governments;
- Public administration and bureaucracy
- Health and social services

Exclusive Powers – Socio-cultural, religious

- Education and skills training; Science and technology; Research councils and scholarships;
- Culture and language; Sports and recreation;
- Libraries, museums, historical, cultural and archaeological sites
- Hajj and Umra
- Declaration of Bangsamoro holidays;

Exclusive Powers – Natural resources and environment

- Ancestral domain and natural resources; Protection of the rights of the indigenous people
- Land management, distribution, and land use reclassification
- Waste Management;
- Housing and human settlements; Development planning; Urban and rural development
- Water supplies and services, flood control and irrigation systems

Territory issues

- Political issues
 1. Cotabato and Isabela voted no last ARMM referendum; will they vote yes this time
 2. Process of joining Bangsamoro
- Core territory include municipalities and barangays that voted yes in last ARMM plebiscite but their mother units (province) vote no.
 1. Will the mother unit vote? If not, is it valid to exclude them?
 2. If mother unit votes, but municipality and barangay vote yes, will they join?

Waters

- **New concept: Bangsamoro waters** (22.224 kilometers - 12 nautical miles - from the low-water mark of the coasts that are part of the Bangsamoro territory)
- Analogous to municipal waters
- Important thing – still Philippine, national territory

Natural resources

- Traditional interpretation of Regalian doctrine, state owns natural resources
- IPRA already changes that
- BBL likewise changes that
- My view: ownership in the Regalian doctrine is different from ownership in IPRA and draft BBL
- Related to this is the rights of indigenous peoples

Form of government

- Risk with ministerial, parliamentary form of government
- My view: Constitution does not prohibit it, as long as executive and legislative are voted on by the people, its OK
- “Wali” is also a novel concept

Other issues

- Lump sum appropriation for the Bangsamoro, automatic appropriation
- Police – “one national police”
- Shariah system of justice
- Appointments

Overall conclusion

- No big red flags of unconstitutionality
- New terms and concepts need to be clarified, perhaps through the legislative record and a definition of terms that peg every concept to a constitutional provision
- Public stakeholder process must aim for universal acceptance so no credible legal petition will be filed against it

Conclusion

- Mohagher Iqbal: "The Bangsamoro is the sum of our hope and dreams. It may mean nothing to you, but is the whole world to us."
- My answer as a Mindanawon, as a Filipino, and human being: Empathy and solidarity