

FILIPINO MUSLIM SOCIETY'S ADMINISTRATION OF JUSTICE

Mama S. Sinsuat

To understand fully the Filipino Muslim society's administration of justice, a familiarity with the historical background of the Filipino Muslim society is essential. Knowledge of how the Muslim society in the Philippines came about — including its structure, composition and native culture — is indispensable.

The difference and conflicts arising between the traditional practices of the Muslim Filipinos and the basically Christian-oriented statutes of the land should be recognized and studied. In areas where there are conflicts, points of reconciliation should be established. The ground for reconciliations is now provided by the fundamental law of our country under Article XV, Section 11. To this end, the New Society under President Ferdinand E. Marcos is taking definite steps in codifying our Filipino Muslim Laws. Soon we shall be able to finally reconcile and break down the catalysts of misunderstanding, social and regional prejudices between the Filipino Muslims and their Christian brothers, to the end of building stronger unity, understanding, and a sense of brotherhood.

One of the factors which have brought about the problems now threatening to alienate the Muslim population of Mindanao and Sulu is deeply related to marked religious differences, system of laws, political and social organization and, in totality, culture.

The traditional people of Mindanao and Sulu have never been subjugated completely by people of a different culture. They have largely remained to this day very much unaffected by the many generations of contact experienced by their northern neighbors with people of different cultures religious beliefs, practices, laws, customs, etc. from Western lands.

Among the Filipino Muslims, however, the strongest influence

The Hon. Datu Mama Sinsuat was Commissioner of the Commission of National Integration.

has been the Islamic religion emanating from the Middle East brought into the country in the early 12th century. For this reason, the traditional Filipino Muslims have Arabic names. The social organization and practices which, before, had the native tribal set-up has been reshaped along the lines of the Islamic faith.

The delegates to the 1971 Constitutional Convention recognized the need for the preservation of our cultural traditions, the development of a deep-seated sense of national identity and unity among our people, and the promotion of stability. For this reason they formulated and wrote the following provisions in our New Constitution (Article XV, Section 11) which reads: "The State shall consider the customs, traditions, beliefs and interest of the National Cultural Communities in the formulation and implementation of state policies." This was largely the result of Filipino Muslims (now numbering close to 4 million) agitating for recognition of their culture.

Although the Arab teachers and adventurers reaching our shores in the 13th century had, in some way, influenced the natives of Mindanao with their superior religion and culture, it was not until the arrival in 1380 of the Arab missionary Sharif Makhdum, and followed by Sharif Kabungsuwan in 1475, when there was a purposeful drive to spread Islam and the Arab culture. By the time the Spaniards reached our shores, a system of law and government has been established already; Arabic literature and the Madrasah schools have also been introduced.

Some time in 1500, Sharif Kabungsuwan succeeded in establishing the Sultanate of Maguindanao based on the feudal system, comprising of the whole Cotabato Valley and Southern Mindanao. Much earlier, however, the Muslim State of Sulu was established by Sayed Al Sashim Abubakar, following the arrival of Rajah Baguinda to the area in 1390.

* This Muslim formal system of political organization is very much interwoven in the fabric of the composition of the Muslim society. The social strata had three levels or classes: at the top is the hereditary aristocracy of Sultans, Datus and their immediate families; in the middle are the small peasants or farmers and artisans, and at the bottom are the servants and slaves.

The legal systems and administration of justice was exercised by the uppermost stratum of society and followed the inverted pyramidal structure of the society. The system operates along the concept of trial-by-jury exercised by a council of elders or wise men

and a *Kali* (judge) and presided by the Sultan of the Datu, hence, a collegiate body.

The "adat" law is composed of customs, tradition, practices, usage and precepts based on the Quran. In many cases, they are actual direct passages of the Quran which takes the nature of statutory law. The Quran which is the basis of Islam, much like the Bible is of Christianity, is the fundamental source of law governing the Muslim's daily life. It contains the civil and criminal laws on marriages, divorce, adultery and all kinds of social relationships. The origin of the law of the Muslims, therefore, is divine and takes the form of commands and Divine guidance premised on the truth.

A capable Datu is usually well-versed in all these laws and the general assumption is that he has expertise in the dispensation of justice. The Datu selects his council of elders from among the wise men of the community who are knowledgeable of the customs, tradition, practices and religion of the people. The *Kali* or jurist is the expert on the common law of the locality or situs of the case.

Thus Shariah or Islamic Law developed. Shariah, translated literally, means "path to the watering place," which constitutes the total way of life as laid out by Allah or God. The Shariah, however, has taken the various forms of doctrine or belief and practice and has taken on the nature of law. Subsequently, native traditions and peculiar culture of the peoples interplayed in the application of these general Muslim laws. In the Philippines, therefore, Muslim law as applied could differ with foreign Muslim communities. As a matter of fact even groups of Muslims living in different localities have their differences and peculiarities.

As an example we shall give the Maguindanao community practices.

The Sultan or Datu rules, so to speak, by the "books" and in promulgating laws he is assisted by a jurist known as the *Kali*, who uses the Holy Quran and codes such as the *Luwaran* Code, which are all based on the Quran and the customs, traditions and local practices known as the *Sunna* (sacred tradition) and the *Ijma* (precedent) or the "thought of the locality." Law-making is not personal to the Sultan or Datu and in this sense he is not an absolute monarch who dispenses justice at his personal whim or caprice. He and his council of elders or wise men rely much on the *Kali*, who is an expert on religious and civil laws.

This legal system has a very strong and direct connections with

religious practices based on the nature of the divinity from which stems its effectiveness. The force of obeisance emanates from the inner moral religious self of the individual to conform and submit to what God has ordained or commanded. This is the essence of the Muslim conduct of justice and its smooth administration.