
THE MINDANAO AUTONOMY LAW: FEATURES AND ISSUES

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On August 1, 1989, President Corazon Aquino signed into law an organic act seeking to establish autonomy in Muslim Mindanao in accordance with the constitutional provision to create autonomous regions in certain areas of the Philippines. This law (Republic Act No. 6734) is the latest of a number of legal documents dealing with the grant of autonomy to a portion of the island of Mindanao.

The long struggle of the Bangsa Moro for some form of self-determination, characterized by a movement from secession to autonomy, first bore fruit with the signing of the Tripoli Agreement of December 23, 1976. This document, which provided for the grant of autonomy to thirteen provinces, including the cities therein, was supposed to be the basis for further talks between the two protagonists as regards the details of the autonomous arrangements to be established. However, such talks did not materialize, and the Philippine government decided to implement it unilaterally, based on its own interpretation of the substance of the accord. Despite the angry protestations by the MNLF, Proclamation No. 1628, dated March 28, 1977, was issued by then President Ferdinand Marcos, which declared autonomy for the thirteen Mindanao provinces and created a Provisional Regional Government in the said area. Following a referendum held on April 11, 1977, whereby ten of the thirteen provinces voted for inclusion in the autonomous region, President Marcos issued Presidential Decree No. 1618, dated July 25, 1979 which implemented the organization of two regional autonomous governments in southern Philippines.

The new Philippine leadership that took over in 1986 took the initiative in discussing the continuing question of Muslim

autonomy. This led to the Jeddah Accord of January 1987 wherein the Philippine government and the MNLF agreed "to continue discussion of the proposal for the grant of full autonomy to Mindanao, Basilan, Sulu, Tawi-Tawi, and Palawan subject to democratic processes."¹ Talks were held from February to May 1987 in Manila, but these proved to be inconsequential.² Meanwhile, a new Philippine constitution was approved, Article 10, Sections 15-21 of which provided for the creation of autonomous regions in Muslim Mindanao and in the Cordilleras. In line with the constitutional provisions, Republic Act No. 6649 was passed creating the Regional Consultative Commission (RCC) to assist in the enactment by Congress of the Organic Act for the autonomous region in Muslim Mindanao. The RCC was formed and came up with a draft proposal which was submitted to Congress. On June 8, 1989, Congress passed Republic Act No. 6734, known as the Organic Act for the Autonomous Region in Muslim Mindanao, which was subsequently signed by President Aquino into law.

Both the Marcos- and Aquino-sponsored autonomy plans for Muslim Mindanao did not gain the acceptance of both the MNLF and the Organization of Islamic Conference (OIC). The reasons for this non-acceptance appear to be (a) the non-conformity of these arrangements with the provisions of the Tripoli Accord, and (b) the failure of these arrangements to grant real autonomy to the 'autonomous' governments created.

Expectedly, the Marcos and Aquino governments maintain that the Tripoli Agreement was the basis of such autonomous arrangements, and that such arrangements constitute grants of real autonomy. Inasmuch as the Marcos-created autonomy law is already a thing of the past, this paper will examine the present autonomy law for Muslim Mindanao and see how close it relates to the Tripoli Accord and to what extent it grants autonomy to, and reflects the aspirations of, the Muslim Filipinos. But first, let us take a look at the features of this newly-approved autonomy law for Muslim Mindanao.

Salient Features of the Autonomy Law

Due to space limitations, only the most important features of the law will be presented here.

The law provides for the establishment of an autonomous regional government in Muslim Mindanao within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines (Article 1, Sections 1 and 2). Such autonomous region shall be composed of provinces and cities voting favorably in the plebiscite called for the purpose. The plebiscite shall be held in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga (Article 2, sections 1 and 2).³

The governmental structure as provided for in the law is made up of a Regional Assembly, serving as legislature, which shall be composed of members elected by popular vote, with three members elected from each of the congressional districts, and a Regional Governor, as executive head, who shall be elected at large by direct vote of the people of the autonomous region. The Regional Governor is assisted by a Regional Vice-Governor, who is also directly elected, and by a cabinet of nine members, at least four of whom shall preferably come from indigenous cultural communities, provided that the members shall, as far as practicable, come from various provinces and cities within the autonomous region (Article 7, Sections 1,4; Article 8, Sections 1,2).⁴

The law also establishes a Shariah Appellate Court which, together with other Shariah and tribal courts, shall have jurisdiction over cases involving persons, family and property relations. While the decisions of the Shariah Appellate Court are final and executory, the law however provides that nothing therein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided for in the constitution. The provisions of the Muslim Code and the Tribal

Code shall be applicable only to Muslims and other members of indigenous cultural communities respectively, and nothing in the law shall be construed to operate to the prejudice of non-Muslims and non-members of indigenous cultural communities. The law, however, goes on to say that in case of conflict between the Muslim Code and the Tribal Code, the national law shall apply, while in case of conflict between the Muslim Code or the Tribal code, on one hand, and the national law on the other, the latter shall prevail. (Article 9, Sections 1-18).

The law lists down the powers that may be exercised by the regional autonomous government (Article 5, Sections 1-3). These are: administrative organization; creation of sources of revenues; ancestral domain and natural resources; personal, family and property relations; regional urban and rural planning development; economic, social, and tourism development; educational policies; preservation and development of the cultural heritage; powers, functions, and responsibilities now being exercised by the departments of the national government, except foreign affairs; national defense and security; postal service; coinage, and fiscal and monetary policies; administration of justice; quarantine; customs and tariff; citizenship; naturalization, immigration and deportation; general auditing, civil service and elections; foreign trade; maritime, land and air transportation and communications that affect areas outside the Autonomous Region; patents, trademarks, tradenames and copyrights; and finally, such other matters as may be authorized by law for the promotion of the general welfare of the people of the Region. The regional government may exercise the power of eminent domain. Pursuant to Article 10, Section 17 of the Philippine Constitution, all powers, functions and responsibilities not granted by the constitution or by law to the Autonomous Region shall be vested in the national government.

The President of the country exercises supervision over the Regional Government. In addition, he shall continue to exercise the power of general supervision over local governments, directly or through the Regional Governor, to ensure that national and regional laws are faithfully executed (Article 6, Section 1). The law also states that highly urbanized cities within the

Autonomous Region shall continue to be governed by their charters (Article 3, Section 4), and that nothing in the Act shall be construed as to diminish the powers and functions already enjoyed by these cities (Article 5, Section 1). The law further provides that upon the organization of the autonomous region, the line agencies and offices of the national government dealing with local government, social services, science and technology, labor, natural resources and tourism shall be immediately placed under the control and supervision of the regional government (Article 19, Section 4). It also provides for the organization of an Oversight Committee for the purpose of supervising the transfer to the Autonomous Region of such powers and functions vested in it by the Act, and of identifying the other line agencies and government-owned or controlled corporations that may be absorbed by the Regional Government (Article 19, Section 3).

Under the law, the autonomous region shall have the power to create its own sources of revenues and to levy taxes and charges, subject, however, to such guidelines and limitations as the Constitution and the law may provide, consistent with the basic policy of local autonomy (Article 10, Section 1). The total collections of a province or city from national internal revenue taxes, fees and charges and taxes imposed on natural resources shall be distributed as follows: 30% to the province or city, 30% to the Regional Government, and 40% to the national government (Article 10, Sections 1,5). As a form of financial aid, the national government shall, in addition to its regular annual allotment to the Autonomous Region, provide the Regional Government 2 billion pesos as annual assistance for 5 years, to fund infrastructure projects in the region (Article 19, Section 10).

The law also deals with the question of ancestral domains. It says that, subject to the Constitution and national policies, the regional government shall undertake measures to protect the ancestral domain and the ancestral lands of indigenous cultural communities. All lands and natural resources in the Autonomous Region that have been possessed or occupied by indigenous cultural communities since time immemorial, except when prevented by war, force majeure, or other forms of forcible usurpation, shall form part of the ancestral domain. Such

ancestral domain shall include pasture lands, worship areas, burial grounds, forest and fields, mineral resources except strategic minerals such as uranium, coal, petroleum, and other fossil fuels, mineral oils, and all sources of potential energy, lakes, rivers and lagoons, and national reserves and marine parks, as well as forest and watershed reservations. Lands in the actual, open and uninterrupted possession and occupation by an indigenous cultural community for at least thirty years are to be considered ancestral lands (Article 11, Section 1).

The autonomy act also provides that, consistent with the Constitution and national policies, the regional government may enact regional laws pertaining to the national economy and patrimony applicable and responsive to the needs of the Region. However, nothing therein shall be construed as to authorize the Regional Government to require lesser standards respecting the protection, conservation and enhancement of the natural resources than those required by the national government. Except for strategic minerals such as 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, the control and supervision over the exploration, utilization and development of the natural resources of the Autonomous Region is delegated to the Regional government in accordance with the Constitution and national laws. The exploration, development and utilization of natural resources, except those enumerated above, shall be allowed to all Filipinos and to private enterprises, including corporations, associations, cooperatives, and such other similar collective organizations with at least 60% of their capital investment or capital stocks directly controlled or owned by Filipinos who are preferably residents of the Region. The Regional Assembly shall enact laws for the just compensation, rehabilitation, relocation, and other similar measures of inhabitants adversely affected by said harnessing of natural and mineral resources in the Region (Article 13, Sections 1,2,3,7).

Finally, in the area of regional security, the law provides for the creation, by regional law, of a regional police force under the administration and control of the National Police commission. It

shall be headed by a police commissioner with two deputies who shall all be inhabitants of the autonomous region, to be appointed by the President upon recommendation by the regional governor. The regional police shall be under the supervision of the regional governor, provided that city or municipal mayors, who are constituted as representatives of the National Police Commission, shall have operational control and supervision of the police force within their constituent units. The law recognizes that defense and security of the autonomous region shall be the responsibility of the national government. Toward this end, there is also created a regional command of the Armed Forces of the Philippines for the Autonomous Region, which shall be organized, maintained and utilized in accordance with national laws (Article 14, Sections 2,3,4).

The Law and the Tripoli Accord

To what extent is the present autonomy law in line with the provisions of the Tripoli Agreement? An examination of the Tripoli document⁵ would show that it was not followed, both in terms of the substance of the autonomy to be granted and, particularly, on the procedure by which the autonomous government is to be established.

Under the Tripoli Accord, much of the substantial aspects of the grant of autonomy was supposed to be "discussed later" and agreed upon by the two contending parties. These substantive areas include the following:

- 1) arrangements for the joining of the forces of the MNLF with the Philippine armed forces;
- 2) matters pertaining to the relationship between educational and scientific organs to be set up by the autonomous government and the general education system in the state;
- 3) relationship between the administrative system to be established in the autonomous region and the central administrative system;

- 4) relationship between the region's economic and financial system and the central economic and financial system;
- 5) the number of representatives and ways of participation by the autonomous region in the central government;
- 6) relationship between the Special Regional Security Forces to be set up in the region of autonomy and the central security forces; and
- 7) the number of members of the regional Legislative Assembly and the Executive Council.

These matters were supposed to be discussed by a mixed committee composed of representatives of the Philippine government and the MNLF. This committee was to be charged with the task, in the Agreement's words, "to study in detail the points left for discussion in order to reach a solution thereof in conformity with the provisions of this agreement." A meeting was supposed to be held afterwards in Jeddah "to initial what has been concluded" by this committee, with the final agreement to be signed in Manila. It is only after the signing of this final agreement that a Provisional Government shall be established in the areas of the autonomy. This Provisional Government shall be appointed by the President of the Philippines, and charged with the task of preparing for the elections of the Legislative Assembly and for administering the areas of autonomy in accordance with the provisions of the agreement until a government is formed by the elected Legislative Assembly.

No discussions and no agreements were ever reached between the Philippine government and the MNLF on the above-mentioned points during the Marcos regime. And the procedure laid out above for the formation of the autonomous government was never followed. The regional autonomous governments set up by the former Philippine president were done unilaterally. The same can be said of the present autonomy setup. Talks were indeed held between the MNLF and the Aquino government, but

there were no agreements reached. And once more, the Philippine government proceeded with its unilateral process of setting up an autonomous government in Southern Philippines by passing the present autonomy law, this time hiding behind what it considers as Constitutional grounds.⁶

Autonomy: How Meaningful?

How meaningful is the "autonomy" granted by the present autonomy law to the people of Muslim Mindanao? To what extent is it "truly reflective of their ideals and aspirations?"

Based on an examination of the salient features of the approved autonomy act, one could easily conclude that the law has fallen short of its goal of granting meaningful autonomy to the Muslims of the Philippines. A few instances would highlight this observation.

For one, the relationship established between the 'autonomous' and the national governments continue to be a centralized one, despite the so-called 'devolution of powers' from the national to the regional level. The law lists down what the regional government can do, but it does not give residual powers to the region. In addition, whatever powers are granted to the region are 'subject to' the Constitution, national laws and/or policies. In the area of regional economy and patrimony, the region has practically no control over the region's natural resources. The law does state that the autonomous government shall have some say in the exploitation and use of the region's resources, but this is subject to a long list of exceptions, leading one observer to point out that after the enumeration of exceptions, there is practically nothing left to be exploited by the autonomous region (Madale, 1989). In addition, while the regional government is given the power to create its own sources of revenues, this is made subject to "such guidelines and limitations as the constitution and the law may provide."

Already hampered from exercising powers granted to it due to constitutional limitations, the regional government's powers are further curtailed in the area of control and

supervision over local governments. The law specifically states that the President of the Philippines shall continue "to exercise the power of general supervision over local governments, directly or through the regional governor"(underscoring supplied) - indicating the possibility of the regional governor being bypassed by the President in dealing with local governmental units. Furthermore, the powers of the regional government is limited by the provision that highly-urbanized cities within the region shall continue to be governed by their charters, and that nothing in the law shall be construed as to diminish the powers and functions already enjoyed by these cities. This emasculation of the regional autonomous government is further compounded by the rather intriguing provision that while the regional governor exercises supervisory powers over the regional police force, operational control over these forces are given to city and municipal mayors.

But perhaps what is more galling is the failure of the law to consider and meet the sensitivities of the native populace (Moros and Lumads) of the region. Two cases illustrate this point. First is the provision that in case of conflict between the Muslim or Tribal Codes, on the one hand, and the national law, on the other, the latter would prevail. This certainly goes against the grain of Muslim thought and practice, since among Muslims, Shariah law (which is based on the Holy Koran and other religious sources) is deemed as God's law and, hence, must be considered superior than national (which are man-made) laws. Second, the present autonomy law does not provide for the representation of the Lumads or Highlanders in the regional legislature. Given their paucity in numbers, these people could not expect to win legislative seats through the process of elections where numbers count, and hence, should have been given reserved seats in the regional assembly. While the law does provide that at least four members of the nine-member regional cabinet shall come from indigenous cultural communities (to include Moros and Lumads), the participation of the Lumads in the legislature - which is the lawmaking body for the region - would have been a more meaningful form of empowerment for these marginalized groups.

Other Related Questions and Issues

Aside from its non-conformance with the provisions set by the Tripoli Agreement, and its failure to grant meaningful autonomy to the people of the region, the present autonomy law for Muslim Mindanao has also engendered other questions which tend to cast a shadow on its integrity. These questions relate to: the minimal participation by the RCC in the Congressional deliberations and the resultant mangling by Congress of the RCC draft; the deletion of the phrase "other geographic areas" from the Organic Act; and the question of the majority needed for the formation of the autonomous region.

The Constitution explicitly provides for the "assistance and participation" of the members of the Regional Consultative Commission in the Congressional deliberations leading to the adoption of the organic act (Article 10, Section 18 of the Philippine Constitution). Interestingly, however, when the law creating the RCC was passed, the phrase was cut down to a word - "assist." And in the actual deliberations, the RCC members' assistance was further limited by various constraints, financial and otherwise (Basman, Lalanto and Madale, 1989). It is not surprising then that the Congressional version that came out was very different from the RCC draft. It is to be noted here that the RCC draft, though itself limited, can be considered a better alternative to the final act made by Congress in terms of a substantial grant of autonomy.⁷ This inability by the RCC members to actively participate in and influence the course of Congressional deliberations on the autonomy act provided another source of complaint for government critics. By not allowing the people directly involved to determine the form and substance of a legislation that would affect their very own lives and future, the government is seen as being not serious at all, and its promise of 'real and meaningful autonomy' as mere "sweet nothings."

The deletion of the phrase "geographic areas" from the text of the approved Organic Act (Article 2, Section 1) is another case in question. The original constitutional provision (Article 10, Section 18, para.2) states:

The creation of the autonomous region shall be effective when approved by 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.(underscoring supplied)

Although the approved autonomy law states that the creation of the autonomous region shall be "in accordance with Section 18, Article 10 of the Constitution" (quoted above), the same law provides that such a region shall be composed only of provinces and cities voting favorably in the plebiscite (Article 2, Section 1 and Article 19, Section 13). Given the fact that there are predominantly Muslim municipalities and barangays which are located in predominantly Christian provinces,⁸ this unconstitutional amendment would definitely deprive such (and other) municipalities and barangays from opting for autonomy, and is thus tantamount to a disempowerment of the people.

A third question relates to the majority needed for the formation of the autonomous region, which is vaguely provided for not only in the law but in the Constitution itself (see quotation above). Is it majority of the *total* votes cast in the thirteen provinces, including the cities therein, or is it majority in *each* of the constituent units (as defined by the law) voting in the plebiscite? This is crucial in determining whether the autonomous region could actually come into being or not, given the results of the recent plebiscite where the total vote of rejection was more than the total vote of acceptance.⁹ If the first interpretation were followed, then no autonomous region could come into being on the basis of the results of the plebiscite; based on the second, however, (which is also the interpretation of the Philippine Supreme Court) such a region could be formed since four provinces opted to join it. There are indications, though, that people misinterpreted that provision of the law -- they rejected the law not because they are against the idea of autonomy but because they did not want an autonomous region to be formed on the basis of what they considered as a 'bad' law. They had hoped that if no favorable majority could be obtained from the total votes cast, then the autonomous region would not

come into being, and this would necessitate a reexamination and a revamp of the law and the passage of a new and more acceptable one. The decision of the government to go ahead with the formation of an autonomous region even if only four provinces opted to join is again seen as proof of its desire to "show off" its "commitment" to autonomy, regardless of whether the envisaged autonomous region is viable or not.

Concluding Observations

Based on the foregoing, it could be said that the present autonomy law for Muslim Mindanao leaves much to be desired. In the first place, it does not conform to the provisions of the Tripoli Agreement which was supposed to be the sheet anchor of any autonomous arrangements that could be created in Muslim Mindanao. Secondly, it still does not give the kind of autonomy being sought by the people of the area. Already hampered by Constitutional limitations, the law is further weakened by additional non-constitutional constraints. Indeed, the approved Organic Act is truly "an act of emasculation."

In a sense, the present autonomy arrangement mirrors the continued centralization of the Philippine government and the national leadership's unwillingness to devolve power to the regions. Definitely, it reflects the continued failure by the Manila government to understand the plight, the needs and the aspirations of the Muslim minority in the Philippines.

NOTES:

- 1 It is interesting to note that while the Tripoli Agreement identified thirteen provinces to encompass the area of

- autonomy, the Jeddah Accord has broadened the area to include all the twenty-three provinces in the Minsupala region. As a result, the MNLF demanded during the 1987 talks that all twenty-three provinces be included in the area of autonomy, with a plebiscite to be held in the ten additional provinces but not in the thirteen provinces earlier identified. The Philippine government stuck to the original number provided for in the Tripoli Agreement.
- 2 For a transcript of the talks and the positions of the two sides, see Aide Memoire on the Mindanao Peace Talks (Peace and Development Panel for Mindanao and the Cordilleras, Manila, May 1987).
 - 3 Results of the plebiscite held on November 19, 1989 showed that only four provinces - Maguindanao, Lanao del Sur, Sulu and Tawi-Tawi - all with Muslim majorities, opted to join the autonomous region. Not a single city in the region decided to be part of the same.
 - 4 Elections for the various elective positions in the regional autonomous government were held in March 1990. As of this writing, no winners in the gubernatorial and legislative races have been proclaimed by the Commission on Elections in view of still undecided electoral protests.
 - 5 For the texts of the Tripoli Agreement and other related documents, see From Secession to Autonomy: Self-Government in Southern Philippines (Ministry of Foreign Affairs, Manila, 1980).
 - 6 In the second paragraph of the Jeddah Accord, the MNLF asked President Aquino to exclude the provisions on regional autonomy of the then draft Philippine Constitution from submission to the people for ratification, but the President refused. With the ratification of the Constitution, the Philippine government claims that it is constitutionally bound to implement the autonomy provisions, and that it cannot be

a party to any move that would circumvent the Constitution.

- 7 The constraints faced by the Regional Consultative Commission is amply recorded in Basman, Lalanto and Madale, Autonomy for Muslim Mindanao: The RCC Untold Story (B-Lal Publishers, Manila, 1989). For the text of the RCC draft, see ibid., Appendix B. A provision-by-provision comparison of the Tripoli Agreement, the RCC Draft, and the approved Autonomy Law can be found in "3 Drafts on Autonomy (or the Act of Emasculation)," Moro Kurier, IV, No.3 July-September 1989), pp. 14-17.
- 8 Municipalities with Muslim majorities (based on the 1970 census) could be found in such Christian-dominated provinces as Lanao del Norte (Munai, Nunungan, Tangcal, Balo-i, Pantao-Ragat, Matungao and Tagoloan), North Cotabato (Pikit), Palawan (Balabac), and Zamboanga del Norte (Sibuco and Siraway). In addition, barrios and barangays with Muslim majorities can be found in most, if not all, of the thirteen provinces covered by the plebiscite.
- 9 The results of the plebiscite are as follows:

Provinces and Cities	Registered Voters	Yes Voters	No Voters
Basilan	103,272	20,924	36,286
Cotabato	280,624	26,734	114,568
Davao del Sur	246,979	12,986	122,851
Lanao Norte	175,751	46,892	76,682
Lanao Sur	237,076	125,338	43,855
Maguindanao	267,824	76,717	45,670
Palawan	164,789	8,162	81,617
S. Cotabato	316,043	26,198	138,841
Sultan Kudarat	153,589	5,601	70,827
Sulu	233,181	99,911	35,245
Tawi-Tawi	99,039	40,596	15,125

Zamboanga N.	226,191	5,872	136,766
Zamboanga Sur	405,392	14,543	211,782
Cotabato	58,184	3,356	8,449
Dapitan	28,392	462	19,307
Dipolog	39,532	845	24,009
General Santos	103,549	8,223	33,577
Iligan	108,432	2,044	61,983
Marawi	40,269	10,399	12,204
Pagadian	49,188	4,774	20,149
Puerto Princesa	45,155	3,283	19,796
Zamboanga	177,533	5,299	90,152
Total	3,559,984	549,159	1,419,741
		(15.0%)	(40.0%)

Source: Philippine Muslim Times, December 1-7, 1989, Manila.

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