



*The ARMM Roundtable Series brings together academics and leaders in the Autonomous Region in Muslim Mindanao to a discussion and analysis of critical issues in the autonomous region. This paper builds on the output of the discussions. Views expressed in this paper do not necessarily reflect those of Notre Dame University and the Konrad Adenauer-Stiftung.*

*Resource persons are Atty. Jose Lorena, Attorney-General, ARMM and Atty. Soliman Santos, Author of "The Moro Islamic Challenge: Constitutional Rethinking for the Mindanao Peace Process". This paper was written Dean Benedicto R. Bacani, Executive Director of the Center for Autonomy and Governance. Lay-out by Grace S. delos Reyes*

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*Benedicto R. Bacani*

# FEDERALISM VS. AUTONOMY: ROADMAPS TO PEACE

## INTRODUCTION

Federalism has been one of the proposed solutions to the rebellion in Mindanao. Leaders of the MNLF and the MILF have time and again been quoted as expressing openness to federalism as a probable option. Proponents of a shift to a Federal system for the whole country particularly the Kilusang Pederal Pambansa (National Movement for Federal Philippines) and the Lihuk Pederal Mindanao (Mindanao Movement for Federalism) have consistently made a case for the federal system of government as a means to respond to the root causes of the Mindanao conflict particularly the Bangsamoro's aspiration to exercise their right to self-determination. But even advocates of the federal system warn that federalism should not be considered a panacea to the nation's ills and an "instant solution" to the Moro rebellion in southern Philippines. While federalism as a general framework may indeed promote effective and efficient self-rule, there is a great need to subject the details of this form of government to public scrutiny and debate to insure that the kind of federalism the country will adopt will indeed be responsive to the aspirations of the Bangsamoro and the nation as a whole.

The roundtable discussions held at the College of Law, Notre Dame University on December 10, 2003, respond to the need to take a hard look at federalism as a proposed solution to the Bangsamoro rebellion. Specifically, the roundtable looked at federalism vis-a-vis the existing autonomy in Southern Philippines. While it is true that federalism and autonomy are not mutually exclusive since autonomy in its broadest sense may include federalism as Atty. Soliman Santos correctly pointed out, the proposition is relevant in so far as it considers the brand of federalism espoused by the National Movement for Federal Philippines in comparison with the existing autonomy in the Autonomous Region in Muslim Mindanao (ARMM). The comparison is necessary because implicit in the thesis that federalism is the effective solution to the Mindanao conflict is the assertion that the present autonomy is a failure in terms of addressing the root causes of the conflict. The following questions were thus posed to the participants of the roundtable discussions: Is Federalism the solution to the Bangsamoro problem? What are the implications of the adoption of a national federal system to the ARMM? How do we compare the powers and limitations of the proposed Bangsamoro state under a federal system to the powers and authority of the present ARMM? To what extent will a federal system bring about peace and development in Southern Philippines?

## FEDERALISM AND THE BANGSAMORO

Since a federal system allocates powers to the federal government and the states, the state has sovereignty within its own sphere of responsibilities. These powers are allocated not merely devolved or derived from the central government as in the case of the present ARMM. According to Atty. Jose Lorena, the Attorney-General of the ARMM, this feature of the federal system makes it more responsive to addressing the root causes of the Mindanao conflict. Under a federal set-up, the Bangsamoro state will be sovereign whereas in the present autonomy, the ARMM is considered only an extension of the national government which decides the powers that it may devolve or withhold from the autonomous region. As chief legal counsel for the autonomous region, the following assertions from Atty. Lorena are authoritative:

*The present autonomy treats the ARMM as a mere local government unit still under the supervision of the national government while in a federal system, the Bangsamoro state will be accountable to the people - not to the federal state.*

- The present autonomy treats the ARMM as a mere local government unit still under the supervision of the national government while in a federal system, the Bangsamoro state will be accountable to the people - not to the federal state.
- A Bangsamoro state in a federal system, like the Sultanates existing before the subjugation of Moroland, will be considered a sovereign nation-state. This kinship of a Bangsamoro state with the Sultanates can respond to the historical dimension of the Mindanao conflict.
- The federal system is perhaps the best constitutional alternative as it responds to the “two-nation, one state dilemma”. While the Bangsamoro state remains part of the Philippines, it can assert its nationhood more under a federal system than in the present unitary, highly centralized system of government.
- A federal system affords the Moro full implementation of the Shariah Law. It will also imbibe “Moro responsibility and accountability” as governance is direct and near even as it removes a culture of “dependency” in their mind-set.

Atty. Ishak Mastura, ARMM Regional Secretary of the Department of Trade and Industry, believes that federalism will break up the unitary system that breeds colonialism in the country’s political structure. The break-up of this neo-colonialist policy centered on the national government is a positive step forward for the Bangsamoro that has consistently resisted subjugation by the colonial powers. A federal system will also put the Bangsamoro on equal footing with the rest of country when federalism is adopted in the national scale. The right to secede by states may be recognized in a federal system which is not available in a unitary system where the territorial integrity and sovereignty of the state are paramount.

*Both autonomy and federalism are only tools or frameworks in resolving the Mindanao problem. It is therefore possible that shades and variations of either or characteristics of both or either may play out in finding the formula for lasting peace and development in Mindanao.*

## FEDERALISM VS. AUTONOMY

Both autonomy and federalism are only tools or frameworks in resolving the Mindanao problem. It is therefore possible that shades and variations of either or characteristics of both or either may play out in finding the formula for lasting peace and development in Mindanao. For Atty. Soliman Santos, federalism may be a derivative of autonomy in its broadest sense. A more apt comparison is between autonomy and independence or federalism and independence. In any case, there is a need to go into the details of the general frameworks such as autonomy and federalism. Indeed, federalism is not a panacea that necessarily and automatically offers a higher level of self-determination than autonomy.

A survey of the legislative powers of the Regional Legislative Assembly of the ARMM and the proposed state assemblies (Batasang Estados) of the Federal Philippines reveals interesting insights on whether the federal system offers a higher level of self-determination than the present autonomy in the ARMM.

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<p><b>Proposed Draft Constitution of the Federal Philippines</b></p> <p>Sec. 2, Art. VI. Exclusive Jurisdiction of the Estados (States) and Batasang Estados (State Assemblies).</p> <p>The Estados, through the Batasang Estados, shall have exclusive jurisdiction over the following:</p> <ol style="list-style-type: none"> <li>1. State/local elections</li> <li>2. State Civil Service</li> <li>3. State Justice             <ol style="list-style-type: none"> <li>a. State Court of Appeals</li> <li>b. Regional Trial Courts</li> <li>c. Metropolitan Trial Courts</li> <li>d. City Circuit Trial Courts</li> <li>e. Municipal Circuit Trial Courts</li> <li>f. Shariah Circuit Trial Courts</li> </ol> </li> <li>4. Establishment and operation of public transportation</li> <li>5. Licensure of public utilities</li> <li>6. State socio-economic planning</li> <li>7. State Finance             <ol style="list-style-type: none"> <li>a. taxation</li> <li>b. customs</li> <li>c. budget</li> <li>d. audit</li> </ol> </li> <li>8. Grants-in-aid to Local Governments</li> <li>9. Agriculture</li> <li>10. Forestry</li> <li>11. Fisheries</li> <li>12. Industrial development</li> <li>13. Mining</li> <li>14. Waterworks</li> <li>15. Administration and enforcement of state laws and programs</li> <li>16. Health</li> <li>17. Education (basic education, secondary education and state higher education)</li> <li>18. Social welfare</li> <li>19. Cultural development</li> <li>20. Sports development</li> <li>21. Regional and local language development</li> <li>22. Social Security</li> </ol>	<p><b>R.A. 9054 or the Organic Law for the Autonomous Region in Muslim Mindanao (ARMM)</b></p>
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<ul style="list-style-type: none"> <li>a. unemployment</li> <li>b. sickness</li> <li>c. old age</li> </ul> <p>23. Police, public safety, law and order</p> <p>24. State and local infrastructure</p> <p>25. Entertainment and amusement</p> <p>26. Marriage and legal separation</p> <p>27. Offenses against laws with respect to any matters in this list.</p> <p>Sec. 1, Art. VII. Exclusive Jurisdiction of the Federasyon (Federation) and the Parlamento (Parliament). The Federasyon through the Parlamento shall have exclusive jurisdiction over the following:</p> <ul style="list-style-type: none"> <li>1. National security, defense, declaration of war</li> <li>2. Foreign relations</li> <li>3. Currency/monetary System</li> <li>4. External Trade/Commerce</li> <li>5. Citizenship</li> <li>6. Civil Rights/Political Rights/Human Rights</li> <li>7. Immigration, emigration, extradition, inter-State migration, inter-state quarantine</li> <li>8. Suffrage</li> <li>9. Federal Civil Service</li> <li>10. Justice <ul style="list-style-type: none"> <li>a. Supreme Court</li> <li>b. Court of Appeals</li> <li>c. Constitutional Tribunal</li> </ul> </li> <li>11. Legal Codes</li> <li>12. Inter-state trade and commerce</li> <li>13. Postal and Telecommunications</li> <li>14. Transportation-promotion and regulation of air, sea, land transportation</li> <li>15. National socio-economic planning</li> <li>16. National finance <ul style="list-style-type: none"> <li>a. Taxation</li> <li>b. Customs</li> <li>c. Budget</li> <li>d. Audit</li> </ul> </li> <li>17. Regulation of the press and media</li> <li>18. Protection of intellectual property, property rights and copyrights</li> <li>19. Metereology and Standard</li> <li>20. Standards of weights and measures</li> <li>21. Time regulation</li> <li>22. Grants-in-aid to the States</li> <li>23. Research and Development in Agriculture Forestry, Fisheries,</li> </ul>	<p>Sec. 3, Art. IV. Scope of Regional Legislative Power; Exceptions.- The Regional Assembly may exercise legislative power in the autonomous region for the benefit of the people and for the development of the region except on the following matters:</p> <ul style="list-style-type: none"> <li>a. Foreign Affairs</li> <li>b. National defense and security</li> <li>c. Postal service</li> <li>d. Coinage and fiscal and monetary policies</li> <li>e. Administration of justice; It may, however, legislate on matters covered by the Shariah. The Shariah shall apply only to Muslims. Its application shall be limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent national legislation that promotes human rights and the universally accepted legal principles and precepts;</li> <li>f. Quarantine</li> <li>g. Customs and tariff</li> <li>h. Citizenship</li> <li>i. Naturalization, immigration and deportation</li> <li>j. General auditing</li> <li>k. National elections</li> <li>l. Maritime, land and air transportation and communications; The autonomous government shall, however, have the power to grant franchises, licenses, and permits to land, sea, and air transportation plying routes in the provinces or cities within the region, and communications facilities whose frequencies are confined to and whose main offices</li> </ul>
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<p>Industrial Development and Mining</p> <p>24. Census, surveys and statistics</p> <p>25. Borrowing money on the public credit of the Federation</p> <p>26. Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state</p> <p>27. To define and punish piracies and felonies committed on the high seas, and offenses against the Law of Nations</p> <p>28. The establishment, management and maintenance of penitentiaries</p> <p>29. Social insurance institutions whose sphere of competence extends beyond the territory of one State</p> <p>30. Cloning/Genetic research and engineering</p> <p>31. Offenses against laws with respect to any matters in this List</p>	<p>are located within the autonomous region;</p> <p>m. Patents, trademarks, trade names and copyrights; and</p> <p>n. Foreign trade.</p>
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The following observations can be made out of this survey of powers of the States under the proposed federal system and the ARMM:

- While the powers of the federal government and the states are clearly delineated in the proposed Federal Constitution, the powers of the ARMM are not defined in the Organic Law. Instead, the Organic Act provides for those that cannot be the subject of legislation by the Legislative Assembly of the ARMM. It can therefore be argued that the ARMM has almost plenary and broad powers since it can legislate on any matter as long as it is not contrary to the Constitution and not excluded by the Organic Law. On the other hand, the proposed Federal Constitution limits the powers of the states to those expressly enumerated in Section 2. Moreover, Sec. 5 of the proposed Federal constitution provides for the supremacy of Federal laws in the event of conflict between the Federal law and state law and that residual powers (those not expressly reserved to the federal or state government) are vested in the federal government.
- A close perusal of the powers reserved to the federal government and those that are excluded from the ARMM shows that there are 31 matters outside the competence of the states while there are only 14 items that are outside the domain of the ARMM. According to Atty. Santos, 19 matters in the exclusive jurisdiction of the federal government are not among the 14 exceptions in the Organic Law for the ARMM. He wonders whether this is indicative that the powers of the states offer less autonomy compared to the powers of the ARMM in the Organic law.
- Despite the exclusions to its legislative powers, the Regional Assembly of the ARMM can legislate on the excluded matters as long as it promotes the general welfare of the people of the autonomous region (Sec. 4, Art. V, R.A. 9054). With the clear delineation of the powers of the federal government and the states in the proposed Federal Constitution, the state assemblies are barred from legislating on any of the matters within the domain of the Federal government.

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- The proposed Federal constitution provides that mining falls under the domain of the states while the Organic Law still reserves the exploration, utilization, development and protection of strategic minerals such as uranium, petroleum and other fossil fuels, mineral oils and all sources of potential energy to the national government (Sec. 5, Art. XII, R.A. 9054). Federal states having control over mining is a superior feature of the federal system.

While these findings are raw and incomplete and by no means conclusive, it highlights the importance of subjecting the framework of autonomy and federalism to close scrutiny and critical analysis relative to the root causes of the Mindanao conflict. We should guard against sloganeering where federalism is trumpeted as superior to autonomy without going into the details of these two general frameworks of government. As Dean Mama Dalandag puts it, autonomy and federalism are mere appellations or forms that detract us from focusing on substance that matter most. Unfortunately, the ARMM-brand of autonomy has earned notoriety as it has, rightly or wrongly, become synonymous with inefficiency, bad governance, corruption and failure. But as the survey of powers of the two systems show, there are features in the Organic Law that provide for a higher level of self-determination than in the proposed federal system. For all we know, the failure of the present autonomy may not lie on autonomy as a framework but on its operationalization, which can probably be the same problem that can be encountered in a federal system. The better view perhaps is not making the federalism debate an “either-or” proposition with autonomy but one that builds from the gains and learns from the failures of the present autonomy.

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In theory, autonomy is a more flexible solution to ethnic and nationalist conflicts for it can be carved out from peace pacts that address the interests of the parties in conflict. Autonomy therefore may be custom-made solution to a specific problem. On the other hand, a federal system borne out of an amendment of a national constitution and established on a national scale, can possibly leave out and be unresponsive to the interests of particular groups like the Bangsamoro.

## **THE BANGSAMORO STATE IN A NATIONAL FEDERAL SYSTEM**

One concern raised in the roundtable discussions is the implications of the establishment of the Bangsamoro state in a national federal system. If the Bangsamoro state is established with the other states in the Federal Philippines, will not the unique reason for its being as fought for by the Moros for many years be lost in the gamut of a nationwide federal set-up? If autonomy cannot be made to work in one region-the ARMM- how can the federal system bring development to eleven or more states? In these times of scarcity and need when not enough budget support can be given the ARMM, will the Bangsamoro state further lag behind as resources are siphoned off to more developed regions? Conversely, would not the Bangsamoro state, as one of the poorest regions, now have to compete with the other poor regions for limited federal subsidy?

Atty. Mastura opines that the beauty of federalism is precisely in providing the Moro equal footing in the national economic and political life. He believes that it is high time that the Moros chart their own political and economic life. Under a federal system, they will have to strive to be self-sufficient and independent. A question was raised on whether self-sufficiency of the Moros should be a product or a condition that paves the way for a viable Bangsamoro state. Klaus Preschle of the Konrad Adenauer Foundation, drawing lessons from the experiences of the Federal Republic of Germany, says that the key to an effective federal system is strong states that have a history of having effectively exercised a high degree of autonomy. In this sense, failure of autonomy may be an argument against the viability of a federal system.

Atty. Naguib Sinarimbo observes that one Bangsamoro state under a federal system blurs the distinction of ethnicity among the Muslims in the Philippines. Any political system must recognize the uniqueness of the different tribes to be effective. This premise has led some quarters to advocate three federal states for the Bangsamoro – a state each for the Maguindanaons, Maranaws and the Tausugs. Considering the discussions on strong states as foundations of a federal system, dividing further the present ARMM along ethnic lines does not make good sense since it will just further decimate an already weak institution.

## **THE NEED FOR A NEW CONSTITUTIONAL PARADIGM**

Atty. Santos reiterates the main thesis of his book “The Moro Islamic Challenge: Constitutional Rethinking for the Mindanao Peace Process” on the need for a new constitutional paradigm to address the relationship of the national government and the Bangsamoro. He observes the limitations of the present Constitution and the proposed Federal Constitution in addressing the issue of self-determination of the Moros particularly in fashioning a Moro Islamic State. As in the present Constitution, the proposed Federal Constitution provides the inviolability of the separation of Church and State, which according to Atty. Santos, poses a constitutional stumbling block to the establishment of a Bangsamoro Islamic State where Islam is regarded as the foundation of the state’s political, social and economic life.

Dean Dalandag disagrees by saying that there is no institution such as a Church in Islam and the provision on separation of Church and State does not proscribe the establishment of an Islamic state. Ultimately, the issue is a constitutional question that the Supreme Court will have to rule on in the future. In any case, the form and substance of the Bangsamoro Islamic state in a federal system must be thought of very carefully as it must do justice, in the words of Atty. Santos, “to the complexity of the problem”. The new constitutional paradigm that accommodates a Bangsamoro Islamic state or republic is an option in either a unitary or a federal system. Whether unitary or federal, the same questions are posed by Atty. Santos: How can the Moro Islamic system be accommodated within the Philippine republic and territory considering the fundamentally opposed constitutional paradigms of the Government of the Republic of the Philippines and the Moro rebel groups? How can such a system find a space in the Philippine constitutional system, a highly centralized presidential-unitary system dominated by a political and economic elite with a Western-Christian orientation? Can the two systems coexist in one country? From the Islamic perspective, how can the God-given Qur’an be subordinated to a man-made Constitution or the sovereignty of Allah to the sovereignty of the people?

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## **POLICY RECOMMENDATIONS**

- The details of the federal system especially as it relates to the establishment of a state for the Bangsamoro must be subjected to further study, research and discussions. The primordial consideration must always be to insure that any federal system is one that addresses the root causes of the Moro rebellion.
- The Bangsamoro must organize its advocacy for federalism that will be responsive to its peculiar conditions and needs. Advocacy groups within the ARMM should be organized for this purpose.
- The ongoing peace negotiations between the GRP and the MILF must be brought to the level of constitutional negotiations to pave the way for federalism as a viable option. A new constitutional paradigm must be seriously pursued in the negotiations.

This may entail broadening the dialogue and include in the talks all possible options including autonomy, federalism and even independence.

*While federalism is packaged as a solution to the Mindanao conflict, the Moros must be able to articulate the form and substance of federalism that will be able to address the root causes of the Moro rebellion otherwise they will end up with just another system imposed on them from outside.*

- Study groups must be organized to draft a constitution for the proposed Bangsamoro state and to suggest amendments to the proposed draft Federal Constitution.

## CONCLUSION

The discussions on federalism and autonomy have produced more questions than answers. This highlights the fact that there are still more questions yet to be raised and questions that remain unanswered once the substance and details of the proposed federal system are subjected to critical analysis. It is significant to note that there has been no time in our nation's political history that the shift to a federal system has become a distinct possibility than today. The drive for more local autonomy that may culminate in a federal system appears irreversible. More candidates in the 2004 elections are including the shift to a federal system in their platforms of government indicating the growing if not the snowballing support of the electorate for federalism. While the growing support for federalism is good news for federalist advocates, the more difficult task of raising the right questions and finding the right answers to hard questions is just beginning.

For the Moros, the hard questions have to do with how federalism can promote the causes fought and died for by their own people. It will be a tragedy if the Moro agenda is to be swept under the national advocacy for federalism that may be pushing federalism for reasons different from the causes of the Bangsamoro. While federalism is packaged as a solution to the Mindanao conflict, the Moros must be able to articulate the form and substance of federalism that will be able to address the root causes of the Moro rebellion otherwise they will end up with just another system imposed on them from outside.

The dynamics of autonomy and federalism must be appreciated in a way that will enrich our understanding that political systems are not static but developmental and evolving. Autonomy in its broadest sense includes federalism which may or may not offer more autonomy. There is therefore a need to take stock of where we are in our quest for more autonomy and higher level of self-determination, heed its lessons and build from its gains. Whatever is in store for the Bangsamoro in the future- autonomy, federalism and even independence- the present ARMM must be strengthened as the only institution on which any political system in the future can be built on.

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*The Center for Autonomy and Governance acknowledges the participation of the following in the roundtable discussion.*

**Mr. Klaus Preschle**  
*Konrad Adenauer Foundation*

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### ROUNDTABLE SERIES SCHEDULE

- **"ARMM and the GRP-MILF Peace Process"**, October 6, 2003, 8:00-12:00 noon, NDU College of Law, Cotabato City
- **"Democratization in the ARMM"**, October 29, 2003, 1:30-5:00 P.M., NDU College of Law, Cotabato City
- **"Evolving an Effective ARMM Bureaucracy"**, November 13, 2003, 1:30-5:00 P.M., NDU College of Law, Cotabato City
- **"Corruption, Culture and Conflict"**, November 18, 2003, 1:30-5:00 P.M. NDU College of Law, Cotabato City.
- **"ARMM Development Framework: Issues and Concerns"**, November 27, 2003, 1:30-5:00 PM, NDU College of Law, Cotabato City.
- **"Federalism vs. Autonomy: Roadmaps to Peace"**, December 10, 2003, 1:30-5:00 P.M., NDU College of Law, Cotabato City