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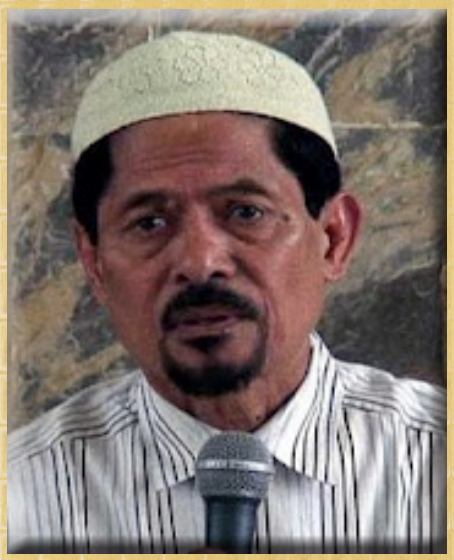
Bringing Closure to the 1996 Final Peace Agreement

Part 1: The GPH Perspective



Bringing Closure to the 1996 Final Peace Agreement: The GPH Perspective*
Atty. Naguib Sinarimbo

Solo Agreement

The Solo Agreement (Solo City, Indonesia) was the more comprehensive formulation of what we intend to do with the Moro National Liberation Front (MNLF) in the event there is a transition in the Autonomous Region in Muslim Mindanao (ARMM) brought about by the passage of RA 10153, or the law that postponed the elections and empowered the President to appoint the officials of the ARMM.

There is also an agreement to hasten the completion of the drafting of appeal to amend RA 9054, the Organic Act of the ARMM to comply with the 1996 FPA and to complete the devolution of national agencies to ARMM in accordance with RA 9054.

The matter of representation to national offices was also agreed as well as improving capacity of ARMM to ensure delivery of basic services including infrastructure development, enhance resource generation to support delivery of basic services to ARMM constituents as well as improving the peace and order condition on the ground and the protection of human rights.

" We have agreed to identify meassures that the government will undertake for the full implementation of the FPA."

I jointly advocate for ARMM to implement transparent and accountable governance and establish a mechanism for effective delivery of basic services.

We've also agreed to legislate on the following:

- Establishment of Darul Iftah (Advisory Council) and Shari'ah Courts in accorance with the FPA,
- Amend the ARMM Local Government Code,
- ARMM Administrative Code,
- Establishment of ARMM Human Rights Commission,
- Special Regional Security Force/PNP Regional Command for the Autonomous Region, and other priority legislations.

We've also agreed to identify and recommend other measures that national government will undertake for the full implementation of the FPA. The

* Transcript of the talk delivered by Atty. Naguib Sinarimbo at the IAG forum on Bringing Closure to the 1996 Final Peace Agreement, May 28, 2012, Cotabato City.

GPH considers the MNLF as the principal partner to effect all of the foregoing in the context of the full implementation of the 1996 FPA.

On how the partnership with the MNLF will be pursued by government, I think there is no formal meeting to actually discuss it. We have not met formally to address that issue.

The earlier issue that was discussed by Atty. Parcasio is the issue on interim agreement with respect to strategic minerals. This is actually an attempt because we cannot achieve a consensus or an agreement on how do we go about amending the provision of RA 9054 as far as sharing of revenue and definition of strategic mineral [is concerned].

We refused to define, or rather re-define, what a strategic mineral is in accordance with RA 9054. We also refused to alter the sharing percentage with respect to revenue derived from strategic minerals situated in the region. Rather, we've come up with a co-management and co-ownership scheme which is translated into this document [Solo Agreement].

" The national government continues to control strategic minerals. The sharing percentage and the definition remains"

Under this agreement [Solo] national government continues to control strategic minerals. The sharing percentage and the definition remain. But for anyone to be able to exploit the natural resources and the strategic minerals in the region, this process will have to be followed. If you intend for instance to exploit a mineral considered strategic in the ARMM, say gold, although there is a debate whether it is strategic or not, the process now would be: You submit your application (documents) to the autonomous regional government who will do the processing, evaluation, assessment of the application for your intention to exploit a resource that is considered strategic in the ARMM. The approval of the application for permit to explore or utilize strategic minerals is duly recommended by the Regional Governor to the central government. What is important is that the Autonomous Regional Government recommends the approval of permits/contracts upon endorsement of all the respective Sanggunian [members] from the area where the resource is supposed to be exploited. If it is situated in areas where there are indigenous cultural communities, you will need to secure consent. The permit which will be recommended to the national government, if it is approved, will be co-signed by the regional government and the national government. One important provision is that if it is not favorably endorsed by the regional government, the national government cannot approve the application.

I think that is a very significant improvement of the current arrangement that we have in the regional government. Because we will be the one assessing

the permits, monitoring the implementation and monitoring compliance with environmental laws, the administrative fee for the filing for application will be exclusive to the regional government. The central government does not share from this administrative fee. What will now be shared between the regional government and the central government are (1) the excise tax that is extracted from the profit of the corporation exploiting the resource (2) the government share from the exploitation.

Normally because these are big ventures, government does not undertake it; it is awarded to a private corporation. In the ordinary scope of things, the sharing between the government and the corporation is 60/40. 40 percent goes to corporation, 60 percent goes to government. That 60 percent now will be equally divided between the national government and the regional government. And because we manage to secure the consent of the national government, the processing of the application and the monitoring of the same is now with the regional government, we do not have the issue of whether or not the central government is actually declaring the right amount. Now it is transparent. You can see it because you are the one processing it. This is significant improvement in the current setup as far as strategic mineral is concerned.

" The parties have not closed the possibility of the RLA recommending a different sharing percentage and different definition as fas as strategic mineralis concerned."

One more important thing is that the parties do not close the possibility of the RLA recommending a different sharing percentage and different definition as far as strategic mineral is concerned. Government is open to that. We have not closed the road for an improvement on the definition as well as of the sharing percentage.

Bandung Agreement

In Bandung, we did not complete the discussion on provisional government and territory or territorial expansion. But we pushed further the discussion on strategic minerals in our table in Bandung. This resulted in the commitment of the government to work on the specifics of a proposed executive order to implement the Solo Agreement. What was agreed in Bandung is that we will issue an executive order signed by the President to adopt formally the interim agreement on strategic minerals. The inputs would come from the Department of Environment and Natural Resources (DENR) as well as Department of Energy (DOE) because as far as strategic mineral is concerned it falls under DOE if it is a source of energy (oil, petroleum) and the DENR.

The ARMM does not have a DOE, because it has not been devolved, so we worked on the commitment of the regional government to create an office on energy concerns, so that together we can operationalize the Solo Agreement

with respect to strategic minerals classified under the energy class.

As far as the discussion on the expansion on the area of autonomy, government position is that we will have to go through the process outlined in the Constitution so it cannot be agreed on because the consistent position of government is that the territory defined in the 1976 Tripoli Agreement has been complied with as a result of the two plebiscites that have been conducted: one for RA 6734, the other for RA 9054.

On telecommunications revenue

We have a provision in RA 9054 that ARMM would share from the taxes derived from the operations of telecommunication companies. However, BIR issued a memorandum circular where all large taxpayers were directed to file and pay their income tax in Makati. The problem is BIR does not have a system for isolating how much income is actually derived from ARMM. The income derived from the operation of a telecommunication company in the ARMM should require it to pay a percentage of the tax for the region. That's income for the region. But because of the BIR circular, it is impossible to isolate the money for the region and remit it to the regional treasury. This faulty system in the BIR deprives ARMM of the appropriate money it should receive from these taxes.

" The government maintains that the territory defined in the1976 Tripoli Agreement has been complied with in the conduct of two plebiscite."

Electricity, power industry, EPIRA law – we will also be reviewing these.

Joint lobby for the enactment of bills in the Regional Legislative Assembly – I don't think we need. We have very active members of the RLA so [this can be done.]

Closure?

In Solo, I presented a formula for closure; the timeline is before appointment, after appointment, and plebiscite. Before appointment, I was proposing that we do all of the executive doables. These are things that the national government can do without amending any law. These are actions that the President or his alter-egos, meaning the Secretaries, can do – the policies of the national government can easily be changed because these do not need legislation. Those are the executive doables, including appointments as a manifestation of the participation of the ARMM into the national government.

During appointment where you have representatives of the MNLF inside the RLA and the RG, you do the amendments of RA 9054 as far as the contentious issues are concerned. There are 3. With respect to the 42 where we do not

have disagreement, we immediately submit that to the President so that the President can certify it as an urgent bill and it can be immediately be passed to Congress to shorten the period of amending RA 9054 with respect to the 42 provisions where you have consensus.

What is left to you are the 3 issues.

My proposal is to give the 3 issues to the RLA where you have members of the MNLF sitting and they can do proposals to Congress to go [about] the issue of transitional mechanism, territory and the issue of redefinition and reformulation of the sharing agreement with respect to strategic minerals, including the possibility of making amendments RA 9054 to accommodate the 3 issues raised by the MNLF. And provide temporary mechanism in the interim to address all the issues which we do not have a consensus.

That's essentially how do we proposed to close the agreement. It is complete with timelines. Unfortunately, and I can understand the position of MNLF, they do not want to part with the 3 issues not being resolved. They would rather want it elevated to the ministerial conference committee meeting which I think will happen in November in Tripoli. Hence a closure agreement did not happen.

" The regional government is an interested party in the review. the constituents of` the regional autonomous government should take active participation in seing to it that we do have an amendment to RA 9054."

The regional government is an interested party in this review and the constituents of the regional autonomous government should take active participation in seeing to it that we do have an amendment to many of the provisions of RA 9054. My hope is that the current RLA would push for amendments of RA 9054 not simply because it does not comply with the 1996 FPA but my view is that it does not provide for a good platform for our expression of the right to self-determination. And because it does not truly reflect that desire of our constituencies, it will remain ineffective in addressing the demands of the constituents of the region.

How do we go about amending RA 9054? My take is that we should have a comprehensive review to evolve a viable and an enhanced autonomous region. Viable in the sense that it can attend to the requirements of its constituency given that it has the resource and the power to do it and that it is at least a near perfect expression of the right to self-determination.

How do we proceed with that?

We should begin by addressing executive doables. These are things that the national government, the President and his alter-egos can do without

amending the law. One would be the complete devolution to the region of the national agencies. To my recollection there are 22 agencies of the government that have been devolved to ARMM, but there are remaining 20 agencies that remain un-devolved.

For instance, NIA is an agency that is important to the region considering that Maguindanao is a rice granary, but it remains un-devolved years after we've signed the peace agreement.

There are still 10 agencies that are partially devolved. Part of that is DOTC.

You should convene the oversight committee as provided in Article 18, Section 3 of RA 9054. It is chaired by the Executive Secretary of the national government. I have expressed my opposition to E.O. 273 and E.O. 273-A. I talked to Sec Robredo that I do not agree with the DILG supervising the regional government, transferring the authority that is exclusive to the President under RA 9054 and the provision of the 1986 Constitution. It is the President that supervises the ARMM, the regional governor, not DILG because ARMM is not an LGU. It is a sui generis. So the EO is misplaced. This one [oversight committee] should be the one taking the lead in the devolution and addressing the issue in the ARMM because it is chaired by the Executive Secretary. Therefore the ES can direct any of the secretaries to do the devolution. The DILG Secretary is in no position to direct for instance the Secretary of DOTC to do the devolution. He cannot do that. Therefore for practical purposes, we have to abide by Article 18, Section 13 of RA 9054. It's the oversight committee, not the DILG.

"ARMM is not an LGU. It is a sui generis."

Executive Doables

National representation of the ARMM: That's in Item 65 to Item 68 of the FPA; Section 4, Article 5 of RA 9054. Cabinet representation, Supreme Court, Court of Appeals, Agencies of national government… It has not been complied. The procedure for this one is also outlined in RA 9054.

Extension of the 5-year period of allotment of central government share to ARMM, Article 9, Section 15: Under this provision, the sharing for internal revenue collections in the ARMM is 70/30 where 70 percent is supposed to be retained by the regional government; 30 percent is remitted to national government. Under this provision, it was suspended for 5 years, meaning the entire 100 percent goes to ARMM. This expired and it was renewed during the time of Zaldy Ampatuan. [We had it for almost half of our tem in the regional govern-

ment] and then I wrote to the Executive Secretary invoking this one because what is provided in Article 9, Section 15 is by mutual agreement between the regional government and the central government we can extend the continuing allotment of 100 percent to the regional government. That translates to around 400 million annually. That's a lot of money for an impoverished region. We should pursue this as an executive doable.

Policy Review and Change: I have enumerated some: BIR regulation, DBM regulation, those things should be changed so that we promote a more self-determining regional government.

Notes for review

In your review [addressed to RLA], what are the notes you need to remember [in] understanding the provisions of RA 9054?

There are provisions that are self-executing, meaning you do nothing because they operate on their own.

There are provisions mandating the Regional Legislative Assembly to create offices such as a commission to codify laws of the indigenous people in the region, or a local tax code.

" The RLA is practically powerless. It has no authority to decide how much money goes to specific project."

There are also provisions mandating the RLA to operationalize created offices. This is important because if it is an office created by the RLA the funding should come from the coffers of the regional government. But what about offices that have been created by the national government which are supposed to be operationalized only by the regional government? Who should fund these offices? My view is because it is an office created by the national government, the national government should fund it. Your task at the RLA is to simply operationalize. You do not have to allocate resources for it from the region. You can demand it from the national government (e.g. Human Rights Commission, Tribal Courts).

Areas of Improvement

Areas of improvement should be on self-governance, or the right to self-determination, or the right to chart freely your own destiny and determine your own political status.

Fiscal autonomy: Resource generation and resource allocation, the right to decide what the sources of revenue are and the right to decide how to allocate

the resource of the region. The current setup is it is the Congress that allocates the resources that you need. The RLA is practically powerless; it has no authority to decide how much money goes to specific project/area.

Territory: We cannot insist that a territorial expansion be undertaken in accordance with the 1996 FPA. But there are avenues by which the current territorial boundaries of the current regional government can be redefined.

Important provisions for review

A. On Budget and Resource Allocation

" There is no fiscal autonomy in the existing regional government because thebudget is ot determined by the RLA."

There is no fiscal autonomy in the existing regional government because the budget is not determined by the Regional Legislative Assembly. It is determined foremost by DBM by imposing a ceiling and Congress by doing line item budgeting in your General Appropriations Act (GAA). It is therefore an act of Congress and no way can the RLA undo the GAA.

Second, you can look at the powers granted the President and the Secretary of Finance to suspend the release of the budget to the region. I don't know how autonomous that fiscal arrangement can be when you empower the President or the Secretary of Finance to suspend the release of the budget and therefore you have to beg before DBM. Why is that? Because when the demand is made by the audit officers for you to disclose the disbursements and you cannot respond to it, the penalty is a collective one. I have no problem with central government removing a regional governor if in the audit findings he has some problems but I have serious problem with the central government who punishes the entire constituency of the region by withholding the release of your funds. The money is not for the regional governor. The money is supposed to be spent for the constituency of the region and therefore, when you empower the President and the Secretary of Finance to suspend the release of funds, you are in effect empowering them to deny and punish the entire constituency of the region.

Why should the constituents suffer the misdeeds of a regional governor?

B. Ecozone and Freeport operation concerns on customs and tariff and quarantine for its effective operation.

It is both the in the 1996 FPA and RA 9054 that the regional government is empowered to operationalize economic zones and Freeports. Unfortunately, there are provisions in RA 9054 that hinder the full operations of both an economic zone and a Freeport.

One concrete experience: We declared Polloc [Polloc, Parang, Maguindanao] as the first economic zone and Freeport of the Autonomous Regional Government. What are the problems we've encountered in the operations of the Freeport? Obvious. Quarantine is not devolved to the regional government and so you have a Freeport who needs to call officers of Region 12 to do quarantine services. Second, you have customs officials inside your Freeport. That is not supposed to be how a Freeport operates. A Freeport is supposed to be a separate customs area and therefore you should have that authority. Third, for your Freeport and economic zone to be attractive to investors, you need to grant certain incentives In the current practice, some of the incentives include tax holiday and privilege for foreign investors to be able to stay in the area without being bothered by the Bureau of Immigration and Deportation, therefore immigration powers should also be granted to the regional government. The power to grant tax holidays is a serious problem because what is your assurance when you don't have an independent Bureau of Internal Revenue in the region that the privilege you've granted to foreign investors will be honored by BIR for instance in Region 10, 11 or 9?

C. Taxes and Revenue collection and Retention by the Regional Government.

This is an interesting provision because in RA 9054, we've been granted the authority to retain the share of the regional government and remit the share of the national government. But because of a BIR issuance (2004-01), it practically contravened this provision. The practice now is the entire collection of the BIR (and there is no BIR inside ARMM; it's BIR Region 9, 10 sharing collection of the internal revenue in the region) is forwarded to the central office in Manila. It is transferred to Department of Finance. The DOF transfers it to the national treasury that is the DBM. DBM gives the share of the regional government. It's a circuitous practice and contributes to the delay of the release of local funds.

D. On grants and access to foreign funds, no need for NEDA.

You are authorized to have access to foreign funds and receive grants but the current setup is not favorable to this one. One experience: We've worked on a grant for a road construction – two roads – from JICA. In the formulation of the study, the NEDA central office kept on delaying the processing of these road projects. We have a feasibility study forwarded to NEDA central office. The NEDA central office advised us to instead transmit the study to NEDA Region 12 for review. Why should a co-equal/co-level of the regional government be made to review the works of the regional government? Our work should be reviewed by the national NEDA. Because of the delay, the project was grabbed by another region.

E. On franchises for air, sea and land transportation and communications.

F. Establishment of Islamic Banks and or allow the operation of

Islamic Banks in ARMM.

G. GSIS, SSS and Pag-Ibig

There is a reservation for the non-devolution and non-transfer of the following government institutions: GSIS, SSS, PAG-IBIG. I can understand central government – the pestering issue of unremitted contributions to GSIS. It is a real problem that we need to accept. But the more serious issue that we need to advocate is that these social institutions are supposed to be enjoyed by employees whether public or private but because the system is such that it is undertaken in a manner that does not comply with Islamic law, my personal view is that we should transfer these systems to the regional government and the RLA should evolve a system for social security purposes that are Shari'ah compliant.

My take went beyond the review but I trust that the current RLA would be active so we can advocate for ideas that form propositions that can radically change the status quo and deliver the region from what it is today to one that would truly be reflective of our right to self-determination.

(L-R) Atty. Naguib Sinarimbo, Fr. Jun Mercado, OMI and Atty. Randolph Parcasio discuss the issues pending the full implementation of the 1996 Final Peace Agreement at the IAG forum in Cotabato City.

Opinions expressed in the articles are those of the authors and do not necessarily represent the views of IAG and KAS. IAG as a policy platform continues to create more "tables" in our common search for genuine autonomy and governance. IAG Policy Brief is published monthly. Associate Editor: Ramie Toledo. Lay-out Artist: Omar Tadeja. Go to www.iag.org.ph to download the pdf version.

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