



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.

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SHARI'AH LAW AND THE ARMM

INTRODUCTION

In 1977, then President Marcos promulgated Presidential Decree 1083 or the Code of Muslim Personal Laws, which also established the Shari'ah courts within the Philippine Court system. The enactment of the Code was intended to recognize the legal system of the Muslims in the Philippines as part of the law of the land, to make Islamic institutions more effective, to codify Muslim personal laws and to provide for an administration and enforcement of Muslim personal laws among Muslims. In the political front, the enactment of the Code was the concrete response of the Philippine government to implement the provision of the Tripoli Agreement that recognized the right of the Muslims to establish their Shari'ah Courts.

After more than two decades since its enactment, the Code of Muslim Personal Laws, while unchanged, has not been fully implemented. The establishment of the Autonomous Region in Muslim Mindanao (ARMM), which was given the power by its Organic Act to establish Shariah Courts, provided the opportunity not only to expand the jurisdiction of the Shari'ah Courts but also to determine the direction of the Shari'ah in the Philippines. The ARMM Regional Legislative Assembly is empowered in consultation with the Supreme Court and consistent with the Constitution to formulate a Shariah legal system including the criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith (Sec. 5, Art. 3, R.A. 9054). The Legislative Assembly of the ARMM to date has not passed any legislation on the Shari'ah Law or the Shari'ah Courts.

The roundtable discussions on Shariah Law and the ARMM held in the Islamic City of Marawi seeks to find ways by which the ARMM can promote the development of Shari'ah Law in the Philippines. The following questions were addressed in the discussions: What is the state of Shari'ah Law in the ARMM? To what extent does the present system of Shari'ah Law addresses the root causes of the Bangsamoro rebellion? What steps must be taken to further develop and promote Shari'ah Law? What legislations in the ARMM may be enacted relative to the Shari'ah Law?

The Center for Autonomy and Governance expresses its gratitude to the Shari'ah Center of the College of Law of the Mindanao State University headed by Dean Basari Mapupuno for organizing the roundtable in Marawi City. Resource persons during the discussions were Atty. Michael O. Mastura who was part of the Committee that drafted The Code of Muslim Personal Laws and Dr. Hamid A. Barra of the King Faisal Center of MSU. Konrad Adenauer- Stiftung has provided the grant for the holding of the roundtable discussions.

THE STATE OF SHARI'AH LAW IN THE PHILIPPINES

In a survey conducted by Pilipina Resources Legal Center, Inc. (PLRC) on the Shari'ah Law in the Philippines, the following trends were noted: 1) With respect to the Shari'ah Courts, the wide gap between the actual number of existing courts against the number mandated by law; the failure to appoint judges even for the existing courts and the large number of undocketed cases or cases resolved by settlement. 2) Lack in physical court infrastructure and support facilities and court personnel. 3) Judges are working in various courts, wide gender disparity in the appointment of judges and that decisions are based on Qur'an, Sunnah and the Code of Muslim Personal Laws. 4) There is a low level of awareness on the nature and function of Shari'ah courts among the Muslim community 5) Local government units do not appropriate budget for local Shari'ah courts.

But for Dr. Barra, **the problems of the present system of Shari'ah Law are more fundamental than issues of implementation.** He asserts that the Code of Muslim Personal Laws cannot be considered Shari'ah Law if we go by the classical definition of Shari'ah. According to him, the Code is more of a human interpretation of the law (Fiqh) which is not eternal and not unchangeable while the Shari'ah is the divine law, Allah's commandments to man which is unchangeable and eternal. Since it is a Divine Law, the Shari'ah cannot be subject to any legislation. As part of Fiqh, the present Code of Muslim Personal Laws is merely a piece of legislation with some aspects of Shari'ah but it is by no means the Islamic Shari'ah.

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Dr. Barra laments that Shariah terms are not used according to their original meaning but are abused under the present system. He observes that many Shariah lawyers or counselors do not even know the Koran. There are also conflicting provisions in the Constitution and national laws on one hand and the Code of Muslim Personal Laws. Ideally in case of conflict between secular laws and the Islamic Law, the latter should at all times prevail among Muslims. But under the ARMM Organic Act for instance, in case of conflict between the Muslim Code and the tribal Code, the national law shall apply. It further provides that in case of conflict between the Muslim Code or the tribal code on the one hand and the national law on the other, the national law shall prevail (Sec. 22, Art, VIII). Dr. Barra finds these provisions to be not in accord with the Code of Muslim Personal Laws, which provide that in case of conflict between any provision of the Code and laws of general application, the Code as a special law shall prevail. (Art. 3, Title II, P.D. 1083).

Dr. Barra further observes that in the absence of a provision in the Code of

Muslim Personal Laws that Shari‘ah judges and lawyers or counselors must be Muslims, it is now possible that non-Muslims may be admitted in the Shari‘ah bar or bench. This violates classical Islamic Law that provides that The Shari‘ah must be exclusively administered by Muslims.

CODE OF MUSLIM PERSONAL LAWS: A GOOD FIRST STEP

While he admits that the present Code of Muslim Personal Laws is by no means a substitute for the Koran and the sources of Shari‘ah, Atty. Michael O. Mastura, who was one of the drafters of the Code, says that the Code must be judged with due consideration of the prevailing conditions when it was enacted. At the time it was enacted as it is today, the majority refused to understand the sentiments of Muslims that a more comprehensive Code could not have been enacted. The when the Code of Muslim Personal Laws was enacted, the Civil Code provisions affecting Muslims were also about to expire that there was an urgent need for a legal system that will recognize the personal laws of Muslims. Had the Code not been enacted, Muslim marriages for instance, would not have been recognized. Thus, while the original draft of the Code was more comprehensive and complete, the all-Muslim drafters decided to scale its scope down to Personal Laws to insure its enactment and to avert a looming legal crisis where Muslim institutions would ceased to be recognized. The fact that the Code was enacted at all is already victory for the Muslims in the Philippines. Considering that the country refused and continues to refuse to understand the Muslims, Atty. Mastura opines that the best way is to adhere to the philosophy of gradualism where the enactment and implementation of Shari‘ah law may be done incrementally.

If the Code is a first good step for the Muslims in their quest to be governed by the Islamic Law, what should then be the succeeding steps for the Code of Muslim Personal Laws? Atty. Mastura strongly warns against allowing the national legislature, largely composed of people who are ignorant of the Shari‘ah, amend the Code. He is alarmed at the growing interest of non-Muslims to things that are Muslims. According to him, the Bangsamoro is not merely a subject of research but must be involved in charting its future. He urges his fellow Muslims to assert their right and power over things that are rightfully theirs including the Shariah Law. Muslims must be actively involved in charting the course for Shariah Law in the Philippines to give meaning to their right to self-determination.

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THE ROLE OF THE ARMM ON SHARI‘AH LAW

The ARMM, particularly its Regional Legislative Assembly, plays a crucial role in the development and promotion of Shari‘ah Law in the Philippines. Under the ARMM Organic Law, the Regional Legislative Assembly is empowered to pass legislations covered by the Shari‘ah which shall apply only to Muslims. In legislating matters on the Shari‘ah, the RLA’s power is 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 (Sec. 3e, Art. IV, R.A. 9054).

The participants of the roundtable acknowledge that the ARMM has not done much in terms of developing and promoting the Shariah. Since its establishment in 1989, the RLA has not enacted any single legislation on the Shariah Law. Except for the integration of Islamic principles in the recently RLA-approved Forestry Code, the RLA has failed to utilize their power to advance Shariah Law. Shariah Judge Amiladin Alauya points to some legal issues confronted by the RLA on the Shari'ah. First, any legislation by the RLA is enforceable only within the ARMM. This means that any regional legislation on the Shari'ah will be applicable only to Muslims in the ARMM while the Code of Muslim Personal Laws will continue to govern Muslims outside the ARMM. Secondly, it is not clear whether the RLA can amend the Code of Muslim Personal Laws, a national law, since laws passed by the RLA are only local in application.

Judge Alauya acknowledges that in order for the Shariah to be considered part of the solution to the Bangsamoro rebellion, there is a need to codify all aspects of the Shari'ah Law including Islamic Criminal Law, Islamic Election and Commercial Laws. But these legal issues impede the passage of a regional law that will expand the scope of the present Code.

Atty. Mastura says that the RLA does not need to amend the Code on Muslim Personal Laws but instead pass a separate legislation on Islamic Criminal Law as a way of testing the extent of its powers. In doing so, the RLA may have to hurdle some legal issues such as the question on whether the Revised Penal Code is suspended in the ARMM when the Islamic Criminal Law operates. These are legal issues that must be confronted in due time. But the key is for the RLA to assert its powers notwithstanding potential legal challenges. The limits of its powers are legal questions that should be eventually be decided by the Supreme Court. Atty. Mastura also calls on the Office of the Mufti to take the leadership role in advancing the cause of Shari'ah Law. For instance, it can ask the Supreme Court to establish Shari'ah Courts in Manila and Cebu for Muslims outside the ARMM. The greatest tragedy is when the ARMM and the Muslims lose by default by doing nothing to advance the development and promotion of Shari'ah in the country.

MORE ISSUES AND CONCERNS

- Marawi City Prosecutor Elias Yusof laments the lack of trained Shari'ah judges and lawyers. The 45-day training for Shari'ah bar candidates is not sufficient to adequately prepare them to be effective Shari'ah Counsellors. He also observes that Muslims seem not interested in bringing their dispute before the Shariah Courts. Judge Alauya is of the view that the reason for people's low regard for the Shariah Courts is because the Courts have limited original jurisdiction. The Shariah Courts with expanded jurisdiction and competent judges could be a significant factor in helping unlog the dockets of the regular courts.
- The adoption of Islamic laws in commercial transactions can help boost the moribund ARMM economy. Atty. Mastura sees the need to introduce the concepts of Islamic banking and the Zakkat as means to achieve economic growth.
- Prof. Salik Abdul observes that the Muslim grassroots communities are not being educated in Shariah Law. While we already recognize that Shariah Judges and lawyers have limited training on the Shariah, ordinary Muslims are in much worst condition in so far as knowledge of Islamic law is

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concerned. There is therefore a need to bring down the information campaign on the Shari'ah Law to the Muslim grassroots communities.

POLICY RECOMMENDATIONS

- The RLA must seriously consider the passage of laws that will expand the scope of the Shari'ah Law in the Philippines that may include Islamic criminal, election and commercial laws.
- Steps must be taken to raise the qualifications for Shariah Judges particularly those for the Ulamas.
- The process of the nomination and appointment of Shari'ah Judges must not be based on political or partisan considerations but on merit and fitness.
- Training for Shari'ah Judges and lawyers must be intensified even as a Shari'ah Law education programs for the Muslim grassroots communities are aggressively pursued. Radio programs promoting and educating people on the Shariah law must be encouraged and supported.
- Strengthen existing Shari'ah Law Centers to conduct research and training on Shari'ah Law. The Shari'ah Center in the College of Law of the Mindanao State University may be supported and funded to perform these important functions.

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CONCLUSION

The blossoming of Shari'ah Law in the Philippines is in the hands of the Muslims in the country. As rightly pointed out by Atty. Mastura, Muslims are not merely subjects of research by non-Muslims. All efforts that would give the Muslims the opportunity to craft, develop and implement Shariah Law as they see fit must be strongly supported by Christians and Muslims alike.

The ARMM must take the lead in the development and promotion of Shari'ah Law. The RLA, in particular, possesses the mandate to chart the course of Shari'ah Law in the Philippines. In doing so, however, care and prudence must be observed to insure that the form and substance of any Shari'ah system must be responsive to the aspirations of the Bangsamoro.

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