

movements that advocate either independence or radical reform of society.¹¹⁷

Maybe under a federal government, if a Bangsa Moro state or states will be established to the satisfaction of the Bangsa Moro, Mindanaoans, Lumads, and the Filipino people as whole, genuine peace and a comprehensive political solution will be achieved. Such an aim should accommodate the Bangsa Moro Identity claims, the protection of their ancestral domains and ancestral lands, the preservation and enforcement of the *Sharia* Judicial system, the *Madrasah* Islamic Education, authority on local peace and public security, effective Islamic governance and clean elections, meaningful participation as partners in Federal governance, and other Bangsa Moro concerns. When that day happens, peace and harmony will finally be attained, through the Grace of Allah, *Insha-Allah*.

117. Dr. Samuel K. Tan, Address during the Muslim Perspective on the Mindanao Conflict held at the AIM Policy Center 6-7 (2003) (on file with the author) (emphasis supplied).

The Federal System of Government: The Key to National Development and Mindanao Peace*

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I. INTRODUCTION	369
II. A HISTORY OF STRIFE AND CONFLICT	371
A. Moro Rebellions: 1940s to the Present	
B. The Efforts at Peaceful Negotiation	
III. TRIBAL SOLUTION	374
IV. ENVISIONING A FEDERAL GOVERNMENT	375
A. Federal States: Powers and Jurisdiction	
B. Structures of Government	
V. RECOMMENDATIONS: SOME ADVANTAGES AND CRITICISM	379
VI. CONCLUSION	381

I. INTRODUCTION

The proposal to adopt the federal system¹ of government for the country is intended (1) to hasten our economic development and (2) to establish the

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1. BLACK'S LAW DICTIONARY 1415 (7d ed. 1999) states that a federal state is a composite state in which the sovereignty of the entire state is divided between the central or federal government and the local governments of the several constituent states; a union of states in which the control of the external relations of all the member states has been surrendered to a central government

foundations of a just and lasting peace in Mindanao in the face of recurrent Moro rebellions in the island that have sapped our energies for centuries.

Philippine experience with the unitary system² of government has shown that there is a concentration all resources needed for the development of the nation in the hands of the central government in Manila. This creates difficulties in accessing funds needed for the development of the localities. From the author's experiences as a local chief executive of Cagayan de Oro in the 1980s and based on current conditions, the situation remains virtually unchanged.

The vaults that contain the money needed to build the infrastructures of development were and still are located in Manila. The bureaucracy that was needed to unlock the vaults of the national treasury was and still is located in Manila. The officialdom that was needed to decide where the money in the national treasury was to be spent was and still is located in Manila.³

so that the only state that exists for international purposes is the one formed by the union.

2. *Id.* [A] unitary state is that which is not made up of territorial divisions that are states themselves. Note however that the Philippines has adopted in 1991, THE LOCAL GOVERNMENT CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 7610, which grants more powers and money to local governments than was previously the case. The Code, in its Declaration of Policy, provides:

SEC. 2 Declaration of Policy. - (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

3. This concentration is imminent in the budgetary process of the general appropriations bill. The Constitution, in Art. VII, Sec. 22, provides that the President drafts the budget of expenditures and sources of financing including receipts from existing and proposed revenue measures, which shall be the basis of the general appropriations bill. Congress passes the general appropriations act, under Art. VI, Sec. 24-25. After this, the President is assisted by the Department of Budget and Management, which is empowered, under the Administrative Code of 1987, E. O. No. 292, Title XVII, Sec. 3, to assist the President in the preparation of a national resources and expenditures budget, preparation, execution, and control of the National Budget, among others.

National experience has therefore ineluctably demonstrated through the years, that the unitary system of government had stymied national development.

That is why — even from the point of view of economic development — there is a need to shift from the unitary system to the federal system of government. The ill effects present in the unitary system of government have been and are exacerbated by the armed challenges that were mounted every now and then by the Moro rebels of Mindanao.

II. A HISTORY OF STRIFE AND CONFLICT

The recurrent Moro rebellions of Mindanao have drained the country's meager resources that the country faces continuing shortages, among other things, of schools, medical supplies and basic infrastructures. This should be addressed at least partially and the country's attention focused solely on economic development rather than getting it diverted by the need to crush the rebellions.

Incidentally, reports state that a one-day military operation against the Moro rebels of Mindanao cost the government in ammunition alone some P4.1 million pesos, money that could have otherwise been put to better use. That was as far as the costs of bullets on a single day of military operations against the Moro rebels are concerned. The costs in human lives — of soldiers, rebels and civilians — are, of course, even more appalling.

However, the Moro rebellions did not start with Nur Misuari of the Moro National Liberation Front (MNLF) or with Hashim Salamat of the Moro Islamic Liberation Front (MILF). The Moro rebellions started the moment the Spanish crown decided to colonize the country in 1521. And through the years, even after Spain ceded the country to the Americans in 1898 to the time that the Philippines became a Republic in 1946 and up to the present, Moro rebellions have continuously challenged government authority.⁴

A. Moro Rebellions: 1940s to the Present

The usual response of the government was basically to use force which unfortunately has failed to curb the Moro violent upheavals that persist to this very day.

From the author's own experience, there were five major Moro rebellions since the 1940s to the present that have shattered the peace in the island.

4. See generally I O. D. CORPUS, THE ROOTS OF THE FILIPINO NATION (1989) which provides a more extensive treatise on the subject-matter.

In the early 1940s, a popular ballad among the Mindanao people was that of Dimakaling. This was commonly sang in the guerilla camps during the Japanese war. This ballad speaks of the exploits of Dimakaling, a Maranaw,⁵ who led a rebellion against the American Commonwealth Government. He reportedly wanted the Maranaw culture to be respected by the government in a manner that was different from that accorded to the culture of Christian Filipinos. In response to this, the American Commonwealth Government's response was to send in the troops who killed Dimakaling and quelled the Maranaw rebellion.

The next major rebellion was that of Hadji Kamlon, a Tausug⁶ from Sulu, who led a rebellion against the government. His main complaint was that his people were oppressed by the government particularly in matters of land registration. The concept of the Torrens Title system was totally foreign to the idea of communal or successional rights to property of the Tausug. The government's responded to this by sending in troops who captured Kamlon, put him in jail, silencing the guns of the Tausug rebels.

One would have thought that the killing of Dimakaling and the capture of Kamlon would have cowed the Moro rebels into submission to the government. However, such was not the case.

In the late 1960s, another Moro rebellion erupted in the Cotabato area. This time, it was led by Datu Udtug Matalam, a Maguindanao.⁷ This was the first time the Mindanao Independence Movement was first aired as a slogan of a Moro rebel group. As usual, the government sent in the troops who pacified Matalam and his followers and quashed the Maguindanao rebellion.

Nevertheless, the quashing of the Maguindanao rebellion led by Matalam did not end the Moro rebellions in Mindanao. During the early 1970s, right after President Ferdinand E. Marcos' proclamation of martial rule, saw the biggest, the longest lasting and the most-widely supported Moro rebellion. This was in the rebellion of the MNLF led by Misuari, a Tausug.

Again, the government used force as its initial response to the MNLF rebellion. It did not prove to be effective. Thus, the government sued for peace. It sent emissaries to Libya, Saudi Arabia, and the Organization of Islamic Conference (OIC) to ask for their help in pacifying the MNLF rebels.

5. The Maranaw is a major tribe of Moros living in Lanao.

6. The Tausug is another major tribe of Moros living in Sulu.

7. The Maguindanaos are another major tribe of the Moros who live mainly in the provinces of Cotabato and Maguindanao.

B. *The Efforts at Peaceful Negotiation*

The OIC helped negotiate a peace agreement in the form of the Tripoli Agreement, which the MNLF and the government entered into in 1976. For a time, hostilities ceased in Moroland as a result of the Tripoli Agreement.⁸ However, it did not last long. The Moro rebels did become restive for the rest of the term of President Marcos until he was deposed in the People Power Revolution in 1986.

The replacement of President Marcos by Pres. Corazon C. Aquino resulted in some peace and quiet at the Moro front from 1986 to 1992. It may be pertinent to mention that President Aquino's government passed the law⁹ creating the Autonomous Region in Muslim Mindanao (ARMM) in an attempt to silence the guns of rebellion in the island. In hindsight, however, it can be validly said that even the creation of the ARMM failed to address the fundamental grievances of the Moro peoples.

In addition, even as there were no major military encounters between the MNLF rebels and the government during the term of President Aquino, her successor, Pres. Fidel V. Ramos, felt compelled to seek the assistance of President Suharto of Indonesia in 1996 to forestall what he saw would be another round of violence from the MNLF. With Suharto's help, the government concluded with the MNLF rebels another peace agreement that is now known as the 1996 Jakarta Agreement. However, the Jakarta Agreement did not result in the establishment of a just and lasting peace in Mindanao. It merely provided a respite from war for the MNLF rebels and the government troops.

In July 2000, four years after the 1996 Jakarta Agreement, the government, headed by Pres. Joseph E. Estrada, decided to destroy the redoubts of another Moro rebel group, the MILF, headed by a Maguindanao Moro tribesman, Salamat in the Cotabato-Maguindanao-Lanao provinces.

Fierce fighting took place in several municipalities in those provinces and sporadic firefights also occurred in Sulu and Basilan between the MILF rebels and the government troops even after President Estrada was ousted by People Power 2 on 20 January 2001.

It was under these circumstances that the MNLF led by Misuari complicated the situation for the government by resuming hostilities on 19

8. Agreement Between the Government of the Republic of the Philippines and Moro National Liberation Front with the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference and the Secretary General of the Organization of Islamic Conference.

9. An Act Creating the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989).

November 2001 against the government now headed by President Gloria Macapagal-Arroyo. Misuari's attacks were repelled by the government, and he had to flee to Malaysia from where he was subsequently extradited back to the country. Misuari is now under detention in Sta. Rosa, Laguna awaiting trial for rebellion.

With Misuari in jail, the mantle of leadership of the Moro rebellion now fell on Salamat Hashim as the rebel leader of the MILF. However, Salamat already died and he has reportedly been replaced by another Maguindanao Moro, Hadji Murad, the MILF military commander.

Now, the response of the government to Salamat's armed dare was the same as its response to all the armed challenges enumerated earlier: the use of superior force followed by negotiations for peace.

Recently it was announced that negotiations between the MILF and the government will be restarted in Kuala Lumpur, Malaysia in the next several days. This is the good news. The bad news is that the renegotiations have been stalled for some unclear reason.

III. TRIBAL SOLUTION

At this point, it needs stressing that the usual government response to the Moro rebellions followed by negotiations with whatever Moro tribe was rebelling did not bring about the just and lasting peace that was sought for the island. The use of force and the tribalization of the Moro rebellions ensured the recurrence of rebellions through the years.

It is hoped that the Kuala Lumpur renegotiations would bring about a just and lasting peace in Mindanao. However, the problem is that the government talks do not place the only thing that the Moros of Mindanao would probably accept as the basis for the settlement of their centuries-old grievances on the negotiating table. That missing element is the creation of a Bangsa Moro Federal State or at least a formal, official offer for its creation.

It can be confidently stated that the Moro of Mindanao will accept and commit to a peace agreement with the government where a pledge for the creation of a Bangsa Moro Federal State is made. The author has undertaken serious consultations over several years with Moro leaders, and it appears that these leaders believe that the creation of a Bangsa Moro Federal State will be best suited to their demands for self-rule without their having to secede from the Republic and that it will enable them to preserve, develop, and enhance their culture without undue interference from the central government.

The good thing about this proposal is that it enjoys a well-nigh universal acceptance from the Moros of Mindanao: from the rebel leaders like Misuari of the MNLF and Salamat, and now, Murad of the MILF, the Moro

traditional and political leaders, the Ulamas, the Moro academics, the Moro studentry, the Moro businesspeople, and other sectors as well.

At the bottomline, the Moros of Mindanao want the Shari'ah, which is the comprehensive principle of the total way of life of Muslims¹⁰ to be implemented in the Bangsa Moro Federal State. Without the Shari'ah, they believe they would lose their being Muslims.

In the course of consultation with legislators from Malaysia, Indonesia, and Egypt — Islamic countries that are modernizing — it appears that it is feasible that the Shari'ah may be modified to remove its harsh and cruel features, such as the decapitation of the limbs of a thief or the public lashing of convicts, so that it may be made to conform to the more modern legal systems of the world.

A federal constitution may provide that ethnic or cultural minority groups who decide to remain in or join the Bangsa Moro Federal State be excluded from the application of the Shari'ah on the ground that they are non-Muslims.

IV. ENVISIONING A FEDERAL GOVERNMENT

The author advocates the conversion of the Philippine Republic into a federal republic of some ten states: four in Luzon, three in the Visayas and three in Mindanao, including the Bangsa Moro Federal State.

A. Federal States: Powers and Jurisdiction

The proposed four federal states of Luzon are the Federal States of Northern Luzon, Central Luzon, Southern Tagalog, and Bicol Area. Metro Manila may become a special administrative region like Canberra, Australia, Kuala Lumpur, Malaysia or even Washington, D.C., U.S.A.

The proposed three federal states of the Visayas are the Federal States of Eastern Visayas, Central Visayas and Western Visayas.

The proposed three federal states of Mindanao are the Federal States of Northern Mindanao, Southern Mindanao and the BangsaMoro.

The powers and the duties of the federal states and the nature of their relationship with the federal government will have to be defined in the constitution.¹¹ It is suggested that the central government of the federal republic may exercise, among other things, powers relative to:

10. See generally, FAZLUR RAHMAN, *ISLAM* (1966) which provides an extensive treatise on the concept of the Shari'ah.

11. Currently, the Moro Mindanao region is covered under the Autonomous Region of Muslim Mindanao. The pertinent provisions of the Constitution, in

1. Foreign Affairs;
2. Armed Forces;
3. Monetary System;
4. Basic Education Curriculum;
5. Basic Justice;
6. Citizenship;
7. National Suffrage;
8. National Taxation and Customs; and
9. National Public Works, and Postal and Telecommunications.

The Federal States may exercise, among other things, powers over:

1. Local Development;
2. Mineral Resources;
3. Marine and Aquatic Resources;
4. Forest and other Natural Resources;
5. Police;

Art. X, on autonomous regions, show the current structure of the autonomous regions within the framework of a unitary government, to wit:

Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

Section 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

Section 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Section 18. The ...organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

6. Local Taxation;
7. Health and Environment; and
8. Education.¹²

The enumeration of the powers of the federal republic and the federal states is not exclusive but is merely indicative.¹³

12. It is interesting to compare this to the limitations on the powers of federal states under the Constitution of the United States of America. The following, from Sec. 10 of the American Constitution, are the limitations on the powers of states:

(1) No State shall enter into any treaty, alliance, or confederation; grant Letters of Marque and Reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any Bill of Attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

(2) No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection Laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

(3) No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

13. This contrasts sharply with the current limited powers of the autonomous regions, within the framework of a unitary government. The pertinent constitutional provisions, in Art. X, provide:

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and
- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Section 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with

The federal constitution may likewise provide for some powers that may be placed under the concurrent jurisdiction of the federal government and the federal states.

This is how the Malaysian Constitution has done it. Malaysia provides a list of subjects that are placed under the concurrent jurisdiction of the federal republic and the federal states.¹⁴ Examples are:

1. Social welfare;
2. Public health; and
3. Personal law relating to marriage, family law and succession.

Whichever body exercises jurisdiction first over a matter that is in the concurrent list acquires it to the exclusion of the other.

B. Structures of Government

Now, how will federalism impact on the present structures of government? In general, the structures of government will have to be defined in the federal constitution. For instance, will there be a head of state of the Federal Republic, a federal legislature, or a supreme judicial body?

The answer to these questions is "yes" and the offices mentioned will be created in the federal constitution.

1. Executive

There may be a President who may, throughout the nation, be elected either with wide reaching powers like the U.S. president or as a symbol of unity of the State like the president of India. Or the form of government may be parliamentary in which case the actual holder of day-to-day government powers will be the prime minister who would be elected by the parliament.

2. Legislature

There may also be a federal legislature that may be unicameral or bicameral depending on how the federal constitution will define it to be.

The federal states may also have their own chief executives and federal legislatures. The federal legislatures may be unicameral or bicameral. Or to

applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

14. See generally MALAY. CONST. part 1, art.2; art. 3 § 2-3; art. 4 § 3-4 (The States, Religion and Law of the Federation), which provides a constitutional list of powers granted to the Federal Republic and Federal States.

save on money, the existing provincial legislatures within the boundaries of a federal state may be constituted as its federal legislature.

3. Local Government

As for local governments, it is suggested that the provinces, cities, municipalities; and barangay be retained as they are or be merged them into larger units of government instead of abolishing them. The problem with doing away with the present local government units is that it may anger so many people in the country that it might endanger the ratification of the federal amendments to the Constitution.

4. Judiciary

As for the judicial system, the federal states may have federal state courts whose decisions on questions of law or on issues of constitutionality may be raised to the supreme federal judicial body, or a Federal Supreme Court. The federal constitution may create the lower courts for the entire nation, or it may leave the matter of their creation to the federal states.

V. RECOMMENDATION: SOME ADVANTAGES AND CRITICISM

The federal system of government, in practice, protects regional diversity in interests or ideas from infringement by national majorities. It also responds more easily to local conditions as it allows areas to protect and express their unique values which may be religious or social.

Federalism, according to Prof. Cheryl Saunders of Australia, balances and enables competing values among the various federal states in such fields as self-rule and shared rule, unity in diversity, uniformity and difference, solidarity and self-reliance, cooperation and competition.¹⁵

It is thus submitted that the federal system is the system of government that is most ideally suited to speed up the economic development of the nation and to address the just grievances of the Moro peoples of Mindanao.

It bears stressing that the Moro rebellions in Mindanao are not a parochial problem that concerns only the people of Mindanao. It is a national problem that is or ought to be the concern of all citizens.

As a final point on how to get the peace process in Mindanao on track, it is suggested that aside from the substantive matters that should be discussed at the negotiating table, the government should get the U.S. involved directly in the peace talks.

15. Cheryl Saunders, *Constitutional Arrangements of Federal Systems*, 25 PUBLIUS 1 (1995).

To ensure that we get to talk peace, that is, real peace and not simply a short and sham stoppage of a shooting war, it is suggested that we ask the U.S. to act as an honest broker for peace in Mindanao. That means that the U.S. should send not its soldiers to war against the MILF rebels in Mindanao but to send its diplomats instead, to work for peace in the island using the methods of peace.

The author has raised this suggestion in various fora, and has been criticized for advocating that the U.S. should broker the peace in Mindanao because critics believe that the advocacy contradicts his previous positions calling for the dismantling of the U.S. bases in the country and opposing the Visiting Forces Agreement. However, there is no contradiction at all.

The U.S. bases in the country and the Visiting Forces Agreement are instruments of war. Therefore, the author was impelled to oppose them. The current advocacy — now contained in Senate Resolution No. 58¹⁶ — is for the Americans to participate in the search for peace in Mindanao by using the major asset of the mind: the force of reason and not by resorting to the force of arms.

Since achieving peace in Mindanao is in the best interest of the nation, Filipinos should not quibble as to who brings that peace to our island. If the Americans can do it by using the methods of peace and not the violence of war, then it is submitted that Filipinos should all support it.

It may be of interest to report that the U.S. Government looks with favor upon the author's advocacy. In talks with U.S. Ambassador to the Philippines, Francis Ricciardone, he said that the U.S. government wants the U.S. Institute of Peace based in Washington, D.C. to take the lead in brokering the peace effort in Mindanao. The author's discussion of the issue with the President of the U.S. Institute of Peace, Ambassador Richard Solomon confirms Ambassador Ricciardone's sentiments.

The only wrinkle that needs ironing out is the role that Malaysia, which had earlier been asked by President Arroyo to help quell the MILF rebellion, would play in the negotiation. It is not an insurmountable obstacle. It is a matter that the U.S. Institute of Peace would know how to overcome.

16. Resolution Expressing the Sense of the Senate that the United States of America Act as Broker for Peace Between the Moro Islamic Liberation Front (MILF) and the Government of the Republic of the Philippines and Urging the President of the Philippines to Continue Peace Negotiations Between the MILF and the Government to End the Centuries Old Conflict in Mindanao. Twelfth Congress, Second Regular Session, adopted by the Senate on May 7, 2003.

VI. CONCLUSION

The U.S.'s involvement as honest brokers for peace in Mindanao is important, nay urgent, so that the country can move forward in matters of economic development. The Philippines will hardly be able to inch its way up in terms of the economy as a nation unless the Moro rebellion is settled once and for all in a reasonable, peaceful, and democratic manner.

However, to go back to the original thesis, it is firmly posited that the conversion of the country into a federal republic is a major undertaking. Filipinos must learn the lessons of the past, recall its collective experience, sustain its people's expertise, and appreciate its people's wisdom in making the federal republic a working reality, hopefully, within the lifetime of the current contending parties.

The author suggests that if the nation really want to move forward in the march towards development and peace, the time to shift to the federal system is now.