

The Bangsamoro Civil Service Code: A Legal Facilitative Mechanism to Integrate the *Mujahideens* and *Mujahidats* into Modern Society Through the Bangsamoro Government

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I. BANGSAMORO FREEDOM FIGHTERS — MUJAHIDEENS AND MUJAHIDATS

A. Introduction

Understanding the integration of Bangsamoro freedom fighters, or the *Mujahideens* and *Mujahidats*, through the legal tools afforded by the Bangsamoro Organic Law (BOL)¹ and the Bangsamoro Civil Service Code

I. An Act Providing for the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, Entitled “An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao,” as Amended by Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic

(BCSC)² requires a discussion of the collective history shared by the Bangsamoro. For this reason, the BOL must always be read in the context of decades' worth of international politics,³ local uprisings,⁴ continuous massacres,⁵ institutionalized land-grabbing,⁶ and the eventual establishment of the Moro National Liberation Front (MNLF)⁷ and the Moro Islamic Liberation Front (MILF).⁸

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- Act for the Autonomous Region in Muslim Mindanao” [Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao], Republic Act No. 11054 (2018).
 2. An Act Providing for the Bangsamoro Civil Service Code of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) [BANGSAMORO CIVIL SERVICE CODE OF 2021], Bangsamoro Autonomy Act No. 17 (2021).
 3. Amina Rasul-Bernardo, *Islam, Bangsamoro and Democracy*, 61 PHIL. J. PUB. ADMIN. 91, 92 (2017). The “decades-old conflict” in Mindanao carries significant implications for the “international communities and fellow peace stakeholders, since paving and sustaining of peace is a global initiative.” *Id.*
 4. See, e.g., Lualhati M. Abreu, *Colonialism and Resistance: A Historical Perspective*, in THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE 22 (Bobby M. Tuazon ed., 2008) (citing SAMUEL K. TAN, THE FILIPINO MUSLIM ARMED STRUGGLE, 1900-1972 (1977) & SALAH JUBAIR, BANGSAMORO: A NATION UNDER ENDLESS TYRANNY 79-87 (1999)).
 5. See, e.g., AYESAH UY ABUBAKAR, PEACEBUILDING AND SUSTAINABLE HUMAN DEVELOPMENT: THE PURSUIT OF THE BANGSAMORO RIGHT TO SELF-DETERMINATION 94 (2019) (citing JUBAIR, *supra* note 4, at 131-43 & Carolyn O. Arguillas, Lone Survivor of Jabidah Massacre Dies in Vehicular Accident, *available at* <https://www.mindanews.com/top-stories/2011/02/lone-survivor-of-jabidah-massacre-dies-in-vehicular-accident> (last accessed Nov. 30, 2021) [<https://perma.cc/WFJ2-6V3E>]).
 6. See generally JUBAIR, *supra* note 4, at 95-97, 102-04, & 119-21.
 7. See generally Center for International Security and Cooperation (CISAC), Moro National Liberation Front, *available at* <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/moro-national-liberation-front> (last accessed Nov. 30, 2021) [<https://perma.cc/B753-LXRS>].
 8. See generally Center for International Security and Cooperation (CISAC), Moro Islamic Liberation Front, *available at* <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/moro-islamic-liberation-front> (last accessed Nov. 30, 2021) [<https://perma.cc/FR3B-7E3T>].

The policy of integrating⁹ the Bangsamoro freedom fighters into modern society is premised on the rebel status that they were once given by the Philippine government.¹⁰ One cannot integrate into society that which was never removed from its collective membership. Such was the previous fate of the Bangsamoro freedom fighters.

From the Spanish colonial period until the present day, the Bangsamoro freedom fighters have been geographically separated from Imperial Manila and discriminated against by both foreign conquerors and domestic leaders.¹¹ This state of civil unrest and ethnic friction is typical in territories that were never fully integrated into a single state mindset, with such territories never having been completely occupied or conquered by either imperialists or state representatives.¹² The assimilation not only of state power and government

9. ABUBAKAR, *supra* note 5, at 93.

10. See Megumi Kagawa, *Uneven Peace Infiltration: Two Case Studies of Rebel-Led Community Peace Initiatives in the Bangsamoro*, in CONFRONTING PEACE: LOCAL PEACEBUILDING IN THE WAKE OF A NATIONAL PEACE AGREEMENT 317 (Susan H. Allen, et al. eds., 2021).

Across the whole of the south Philippines, every local community's main concern has been focused on security. At the community level, one major security problem has been that Christian settlers, over time, have formed armed vigilante groups and joined with the military in order to defend their 'titled' land and forcibly eliminate 'illegal' inhabitants. In response and in order to defend their ancestral domain, indigenous Muslim people have also formed armed vigilante groups and joined together with the rebel groups seeking independence, initially with the Moro National Liberation Front (MNLF), later the Moro Islamic Liberation Front (MILF). Those who live in less marginalized island provinces joined the Moro Fronts to support Muslim brothers and sisters in the marginalized areas, basing these actions on the Muslim religious duty to defend the 'Ummah[,] or Islamic World.

To deal with such 'rebellions[,] government security forces were usually dispatched, so Bangsamoro communities have experienced much lethal violence at the hands of government forces.

Kagawa, *supra* note 10, at 317 (emphasis supplied).

11. Anushka D. Kapahi & Gabrielle Tañada, *The Bangsamoro Identity Struggle and the Bangsamoro Basic Law as the Path to Peace*, COUNTER TERRORIST TRENDS & ANALYSES, Volume No. 10, Issue No. 7, at 2-3.

12. See, e.g., Oliver Charbonneau, *Civilizational Imperatives: American Colonial Culture in the Islamic Philippines, 1899-1942*, at 56 & 170 (2016) (unpublished Ph.D. dissertation, The University of Western Ontario) (on file with the Western Libraries, The University of Western Ontario); WILLIAM ALADE FAWOLE, THE

structure,¹³ but also that of culture and religion,¹⁴ never came into fruition.¹⁵ The result, of course, is an active armed struggle that has spanned decades and met the agenda of several presidencies and administrations.¹⁶

Although this unrest was recognized as early as the deliberations of the 1987 Constitution,¹⁷ the BOL was only passed in 2018, more than three decades and six presidencies since the directive to pass the same was promulgated by the highest law of the land.¹⁸ The BOL represents the dreams and aspirations of the Bangsamoro and the Filipino nation.¹⁹ It embodies legislation that will serve as a foundation for lasting peace and sustainable development for the Bangsamoro.²⁰

The BOL itself is a lengthy work of legislation.²¹ It establishes the parliamentary system of the Bangsamoro Government and the powers wielded

ILLUSION OF THE POST-COLONIAL STATE: GOVERNANCE AND SECURITY CHALLENGES IN AFRICA 54, 127, & 187-89 (2018); KUAN-HSING CHEN, ASIA AS METHOD: TOWARD DEIMPERIALIZATION 150-51 (2010); & SUSAN C. TOWNSEND, YANIHARA TADAO AND JAPANESE COLONIAL POLICY: REDEEMING EMPIRE 84-85 (2000).

13. See generally ABUBAKAR, *supra* note 5, at 91-93.

14. JUBAIR, *supra* note 4, at 47. Early during the Spanish occupation, the Spaniards were [initially] cautious, adopting a friendly approach in dealing with the Moros. *The new policy was especially felt in [the] matter of religion.* The Spaniards abandoned conversion to Christianity as an imposed requirement and to merely ask the Moros to allow missionaries in their areas in exchange for commercial partnership. As expected, the policy did not bear good fruit. The Moros refused to trust the Spaniards. Not long after, hostilities resumed with even more fury and bloodshed.

Id. (emphasis supplied).

15. *Id.*

16. See, e.g., ABUBAKAR, *supra* note 5, at 93-96 & Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. No. 183591, 568 SCRA 402, 434 (2008).

17. 3 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 53, at 171 (1986).

18. See PHIL. CONST. art. X, § 18.

19. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, pmbL.

20. *Id.*

21. By dictate of the fundamental law, an organic act must necessarily provide for the matters enumerated under Article X, Section 18 of the 1987 Constitution.

by it,²² the rights acknowledged and protected in the covered political territories,²³ the legal framework for the transition period,²⁴ and the integrative and rehabilitative framework for those who sacrificed their lives in the name of the Bangsamoro's struggle for self-determination.²⁵

However, this Article will primarily focus on the integration and rehabilitation of the Bangsamoro freedom fighters into modern Philippine society through the BOL and the BCSC. A discussion on the government structure envisioned by the BOL shall likewise be threshed out in this Article to clarify the fundamentals of the law and, more importantly, how the BCSC figures into the dynamics of the Bangsamoro as a whole.

Discrimination can only be cured by integration; injustice can only be remedied by justice. It is the Authors' fervent hope that as readers wade into the historical injustice endured by the Bangsamoro, they also understand how the integration of the Bangsamoro freedom fighters serves as a foundational step towards national justice.

B. Historical Injustices

One of the earliest and most disrespectful instances of injustice committed against the Moros was the inclusion of Mindanao among the territories that were ceded by Spain to the United States (U.S.) through the infamous Treaty of Paris on 10 December 1898.²⁶ Mindanao, the home of the Moro people, was included in the deal despite the primordial and ongoing resistance of the Moros against Spanish colonial rule for more than 300 years.²⁷ To this day, the Moros consider this as the immoral and unlawful annexation of their ancestral homeland by the U.S.²⁸

22. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. IV, § 3 & art. VII, § 5.

23. *Id.* art. IX.

24. *Id.* art. XVI.

25. *Id.* art. XIV, § 1.

26. Treaty of Peace Between the United States of America and the Kingdom of Spain, U.S.-Spain, Dec. 10, 1898, 30 Stat. 1754. *See also* Abreu, *supra* note 4, at 17.

27. Federico V. Magdalena, *Moro-American Relations in the Philippines*, 44 PHIL. STUD. 427, 427-28 (1996).

28. Abraham P. Sakili, *Historical Truth and Bangsamoro Autonomy*, PHIL. DAILY INQ., Mar. 15, 2015, available at <https://opinion.inquirer.net/83325/historical-truth->

History demonstrates that the Moros also resisted U.S. colonial rule.²⁹ As shown in Table 1, by the end of 1937, a total of 20 uprisings were led by Moro leaders against the U.S. in the following territories: Sulu, Cotabato, Lanao, and Palawan.³⁰

Table 1. Moro Uprisings Against U.S. Colonial Rule³¹

YEAR OF UPRISING	LOCATION
1903	Lanao
1903	Cotabato
1903	Sulu
1904	Sulu
1906	Sulu; Basilan; Lanao
1911	Palawan
1911	Jolo, Sulu
1911	Cotabato
1913	Sulu
1913	Sulu
1916	Lanao

and-bangsamoro-autonomy (last accessed Nov. 30, 2021) [<https://perma.cc/268V-PNT2>]. See also Abreu, *supra* note 4, at 17.

29. ABUBAKAR, *supra* note 5, at 92 (citing ROBERT A. FULTON, MOROLAND, 1899-1906: AMERICA'S FIRST ATTEMPT TO TRANSFORM AN ISLAMIC SOCIETY 12, 33, & 38-43 (2007)).

However, upon the [U.S.] take-over, the Americans found themselves lost and in no position of control in Mindanao, where the vast majority remained beholden to the *Sultans* and *Datus*. Contrary to the Spanish claim, the people of Mindanao had not been effectively colonized by them, but instead continued to flourish under their own well-structured and indigenous *datuship* government system.

Id.

30. Abreu, *supra* note 4, at 22 (citing TAN, *supra* note 4 & JUBAIR, *supra* note 4, at 79-87).

31. *Id.*

1917	Cotabato
1919	Jolo, Sulu
1920	Pata Island, Sulu
1923	Cotabato; Lanao del Norte
1924	Lanao
1926	Cotabato
1934	Lanao
1936	Lanao; Sulu
1937	Talipao Island in Sulu

The next wave of historical injustices committed against the Moros began with a U.S.-led initiative for “land laws” that effectively deprived the Moros of their own native territories.³² The 1912 resettlement programs gave landless Christians from Luzon and Visayas title over lands in Mindanao that had been previously occupied by Moros and their ancestors.³³ A year later, “rice colonies”³⁴ were established in Mindanao and Sulu pursuant to Philippine Commission Act No. 2254³⁵ and Philippine Commission Act No. 2280,³⁶

32. THOMAS M. MCKENNA, *MUSLIM RULERS AND REBELS: EVERYDAY POLITICS AND ARMED SEPARATISM IN THE SOUTHERN PHILIPPINES* 117 (1998) (citing PETER G. GOWING, *MUSLIM FILIPINOS: HERITAGE AND HORIZON* 190 (1979)).

33. ERIC GUTIERREZ & SATURNINO BORRAS, JR., *THE MORO CONFLICT: LANDLESSNESS AND MISDIRECTED STATE POLICIES* 8 (2004).

34. Nobutaka Suzuki, *Upholding Filipino Nationhood: The Debate Over Mindanao in the Philippine Legislature, 1907-1913*, 44 *J. SOUTHEAST ASIAN STUD.* 266, 268 (2013) (citing KARL J. PELZER, *PIONEER SETTLEMENT IN ASIATIC TROPICS: STUDIES IN LAND UTILIZATION AND AGRICULTURAL COLONIZATION IN SOUTHEASTERN ASIA* 129 (1945)).

35. An Act Appropriating the Sum of Four Hundred Thousand Pesos for the Establishment of Colonies and Plantations for the Cultivation of Rice and Other Food Cereals, for the Better Distribution of the Population of These Islands, and for Other Purposes, Act No. 2254 (1913).

36. An Act Appropriating the Sum of Fifty Thousand Pesos for the Establishment, in That Part of the Philippine Islands Inhabited by Moros or Other Non-Christian Tribes, of Colonies and Plantations for the Cultivation of Rice and Other Food

which contributed to further discrimination against Moros by allowing Christians to till a maximum of 16 hectares of land each in comparison to the Moros, who were only allowed to till a maximum of eight.³⁷

Removed from their ancestral homes³⁸ and displaced through discriminatory “land laws,”³⁹ the Moros led several “localized and sporadic uprisings”⁴⁰ but also fell victim to multiple massacres,⁴¹ including those perpetrated by a paramilitary group called “Ilaga.”⁴² By 1972, a total of 21 massacres were recorded as having been committed against the Moro population in Cotabato and Lanao.⁴³

C. *Who Are the Mujahideens and the Mujahidats?*

The Moro National Liberation Front (MNLF) was established following the bloody *Jabidah* massacre of 1968,⁴⁴ during which Moro fighters from the island province of Sulu — comprised of the modern-day provinces of Sulu and Tawi-Tawi — were recruited and misled into supposedly helping reclaim Sabah during the Marcos regime, only to be subsequently massacred for their refusal to obey the order to attack.⁴⁵ This awakened the collective Moro consciousness, fueling their fight for the right to self-determination.⁴⁶

Cereals, for the Better Distribution of the Population, and for Other Purposes, Act No. 2280 (1913).

37. JUBAIR, *supra* note 4, at 96–97 & Abreu, *supra* note 4, at 23.

38. See MCKENNA, *supra* note 32, at 117 (citing GOWING, *supra* note 32, at 190).

39. Abreu, *supra* note 4, at 23.

40. *Id.* at 20.

41. *Id.* at 25.

42. *Id.*

43. *Id.* at 26 tbl. 3 (citing JUBAIR, *supra* note 4, at 138–39 tbl. 8).

44. Abreu, *supra* note 4, at 26.

45. JUBAIR, *supra* note 4, at 131–33 & Temario C. Rivera, *The Struggle of the Muslim People in the Southern Philippines: Independence or Autonomy?*, in THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE 40 (Bobby M. Tuazon ed., 2008). See also Official Gazette, Timeline of the Jabidah Massacre, available at <https://www.officialgazette.gov.ph/2013/03/18/jabidah-timeline> (last accessed Nov. 30, 2021) [<https://perma.cc/4ADU-CUFD>].

46. Eliseo R. Mercado, *The Effect of 9/11 on Mindanao Muslims and the Mindanao Peace Process*, in ASIAN ISLAM IN THE 21ST CENTURY 231 (John L. Esposito, et al. eds., 2008). “The Bangsamoro people take the Jabidah Massacre in March 1968 as the

Although the MNLF's power and influence did force the Philippine government to negotiate in the hopes of reaching a just and peaceful settlement over Muslim Mindanao, ideological differences among the leadership of the MNLF led to the establishment of a separate Moro Islamic Liberation Front (MILF).⁴⁷

For purposes of this Article, the *Mujahideens* and *Mujahidats* are defined as those who fall within the roster of the organic members of the MILF and the MNLF, within the purview of the Bangsamoro Civil Service Code (BCSC).⁴⁸ Although the term may be loosely translated to refer to Muslim freedom fighters,⁴⁹ the definition to be used in this Article is restricted to membership in the MILF and the MNLF.

While the struggle of the Moro people against former colonial masters does not appear to have been in direct coordination with the revolutionaries behind the Philippine struggle for independence,⁵⁰ Cesar Majul, a reputable scholar and author on Bangsamoro history, posits that "theirs was a parallel movement" which ultimately advanced "the anti-colonial aspect of Philippine nationalism[]" and resistance.⁵¹ It is important to note, however, that the experience of colonial incursions by the Bangsamoro is sharply different from that of the rest of the Philippines. While the Philippines arguably remained tied to its former colonial master, the United States, as manifested primarily in

'new' turning point in their 'separatist' struggle. It was the single event that set the fuse of the Bangsamoro rebellion under the leadership of the Moro National Liberation Front[.]" *Id.*

47. *Province of North Cotabato*, 568 SCRA at 433 (citing Eric Gutierrez & Abdulwahab Guialal, *The Unfinished Jihad: The Moro Islamic Liberation Front and Peace in Mindanao*, in *REBELS, WARLORDS AND ULAMA: A READER ON MUSLIM SEPARATISM AND THE WAR IN SOUTHERN PHILIPPINES* 275 (Kristina Gaerlan & Mara Stankovitch eds., 1999)).

48. See BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 6 (s). "'Mujahideen/Mujahidat' refers to the legitimate members (men and women), of the [MILF] and the [MNLF] duly certified by the Chair of their respective Central Committees." BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 6 (s).

49. See, e.g., SAMUEL K. TAN, *THE MUSLIM SOUTH AND BEYOND* 112 (2010). "Transformed now to a *mujahidin* or *mujahidat* (female fighter), the freedom fighter becomes at once a hero to the younger generations of Muslims who now look to him/her as a role model." TAN, *supra* note 49, at 112.

50. See Oscar Evangelista, *Preface* to *THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE* 8-9 (2008).

51. Evangelista, *supra* note 50, at 9.

its political economy⁵² by way of what political scientists refer to as “neocolonialism,”⁵³ it is forwarded that even with the establishment of the Fourth Republic of the Philippines in 1946 following the Second World War, the Bangsamoro continued to experience “multiple colonialism.”⁵⁴

To understand “multiple colonialism” as conceptualized by Moro scholar Julkipli Wadi, it is imperative to note that the Bangsamoro People consider the inclusion of the Moro homeland in Philippine territory by virtue of the Treaty of Paris as the “illegal and immoral annexation” of the Bangsamoro,⁵⁵

52. See Daniel B. Schirmer, *The Conception and Gestation of a Neocolony*, in *THE PHILIPPINES READER: A HISTORY OF COLONIALISM, NEOCOLONIALISM, DICTATORSHIP, AND RESISTANCE* 40 (Daniel B. Schirmer & Stephen Rosskamm Shalom eds., 1987).

The U.S. switch away from a traditional colonialist posture was to be seen not only in the Platt Amendment, but also in the policies adopted to set up a colonial administration in the Philippines. What you had here was nothing less than the establishment of a colony in a neo-colonial manner.

President [William] McKinley gave the signal for this development when he said in 1900 that the goal of U.S. policy in the Philippines was to ‘guide the Filipinos to self-development.’ But it was [William Howard] Taft, with the general support of [Elihu] Root, who was responsible for the elaboration of this policy in its concrete applications to the military, political, economic[,] and educational spheres.

Since the Taft approach was new in many ways, it aroused opposition from U.S. imperialists who favored traditional methods. But there was a matter of ideology which Taft, with his neo-colonialist leanings, shared with the traditionalists. This was the assumption that the colored citizens of the Philippines were inferior to the white citizens of the United States, and that, therefore, white Americans were bound to run the affairs of the Filipinos for them, to one degree or another[.]

Schirmer, *supra* note 52, at 40.

53. *Id.* at 38. “Describing a form of colonial domination that sprang into international prominence after World War II, neocolonialism is characterized, on the part of the imperial powers, by the exercise of indirect[,] rather than direct, control over subject nations.” *Id.*

54. Julkipli Wadi, *Multiple Colonialism in Moroland*, in *THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE* 29–33 (Bobby M. Tuazon ed., 2008).

55. Abreu, *supra* note 4, at 17.

taking into account that the Moros successfully resisted Spanish colonial rule.⁵⁶ The same can be said with respect to the Moros' continued resistance against the United States and Japan.⁵⁷ Consequently, with the dawn of Philippine independence upon the establishment of the Fourth Republic in 1946, the Philippines effectively became the successor-colonizer of the sovereign Bangsamoro nation-states from the pre-colonial Philippines.⁵⁸ In this sense, the Bangsamoro has been on the receiving end of multiple forms of colonialism from Spain, the United States, Japan, and the Philippines.⁵⁹ Wadi explains in this wise —

As the Philippines and other foreign countries monopolize the charting of [the] political, social[,] and economic development of Mindanao[,] particularly the Moroland[,] while extracting her resources with impunity or in complicity with comprador interest in the area, Moros are perturbed as to where [] they configure in such [a] hegemonic project[,] which comes in euphemism as 'development;' what strings, if any, they hold in the visioning and implementing of a project concocted by foreigners; whether such project is intended for their salvation or for their continuing slavery and beggary before the Filipino government and international community in both [the] short and long term.⁶⁰

Through the continued shared experience of social exclusion in the Philippines, the formation of a collective Moro identity primarily situated in the Southern Philippines became imminent.⁶¹ Remarkably, the initial struggle

56. *Id.* at 21. “Spanish colonialism was unable to gain total victory in subjugating the Moro people. At most, the colonial forces only had nominal rule over the Moro people.” *Id.*

57. *Id.* at 19-20 & 24.

58. Wadi, *supra* note 54, at 31.

59. *See id.* at 30.

Neocolonialism is so weak a term, as if an oxymoron, to describe the colonial status of the Moros. Apart from having a separate history of their own, the Moros have distinct experience of Spanish, American[,] and Philippine colonization[,] including the emergence of a totally new form of colonialism that has imbued Moros beyond neocolonial status; it is a status, for lack of a better term, that is ‘*multiple colonial*’ in character.

Wadi, *supra* note 54, at 30 (emphasis supplied).

60. Wadi, *supra* note 54, at 32.

61. Kapahi & Tañada, *supra* note 11, at 3. “Eventually, the refusal of Filipinos to accept the Moros in the nation-building process resulted in a separate national consciousness among the Moros.” *Id.*

for the independence of a separate Bangsamoro State fought for by the *Mujahideens* and *Mujahidats* paralleled several movements around the globe.⁶² The establishment of the MNLF and the MILF thus coincided with the rise of various militant Islamic liberation movements that were equipped to supply military, political, and economic “support [for] Islamic struggles for independence in [different] parts of the world.”⁶³ In fact, Temario C. Rivera notes that “the MNLF was granted special observer status as the official representative of the [Bangsamoro] by the Organization of Islamic Conference (OIC), the world’s largest [and most powerful] organization of Muslim states.”⁶⁴

In addition to receiving support from the Palestine Liberation Organization (PLO), its counterpart in Palestine, the MNLF was provided with military and combat training from Libya, an active member of the OIC.⁶⁵ This level of Islamic solidarity was further enhanced by the founding of a separate MILF.⁶⁶ Salamat Hashim, the founding leader of the MILF, established meaningful “international connections with various radical Muslim leaders” in Egypt and in the Middle East.⁶⁷ Accordingly, “Salamat was [] based in Pakistan between [the years] 1982 and 1987[,] and was responsible for sending as many as 500 [*Mujahideens* from the Bangsamoro homeland] for

62. See, e.g., JOSEPH CHINYONG LIOW, *MUSLIM RESISTANCE IN SOUTHERN THAILAND AND SOUTHERN PHILIPPINES: RELIGION, IDEOLOGY, AND POLITICS* 49 (2006) & ANGEL RABASA & PETER CHALK, *INDONESIA’S TRANSFORMATION AND THE STABILITY OF SOUTHEAST ASIA* 5-6 (2001).

63. Rivera, *supra* note 45, at 41.

The MNLF had international support from various Muslim states and also from an influential international body, the Islamic Conference of Foreign Ministers. The Islamic Conference threatened to suspend oil deliveries to the Philippines from Arab oil producers should Philippine policy toward its Muslims not take a visibly more benevolent turn.

James F. Eder & Thomas M. McKenna, *Minorities in the Philippines: Ancestral Lands and Autonomy in Theory and Practice*, in *CIVILIZING THE MARGINS: SOUTHEAST ASIAN GOVERNMENT POLICIES FOR THE DEVELOPMENT OF MINORITIES* 72 (Christopher R. Duncan ed., 2004).

64. Rivera, *supra* note 45, at 41.

65. *Id.*

66. See *id.*

67. Rivera, *supra* note 45, at 41.

religious and military training [at] the Afghan-Pakistan border.”⁶⁸ A number of MNLF and MILF *Mujahideens* also took part in the Afghanistan war against the Soviet Union.⁶⁹ In the process, a lifelong linkage of brotherhood and solidarity was formed among “Islamic leaders and militants from different parts of the Muslim world.”⁷⁰

With growing and continued resistance from the South having already obtained international support, the Government of the Philippines (GPH) entered into various peace negotiations with the MNLF and MILF, which eventually led to the signing of various agreements.⁷¹ The first was the Tripoli Agreement,⁷² which was signed on 23 December 1976 “between the [GPH] and the MNLF with the participation of the OIC and [] Libyan Leader Muammar Qaddafi[.]”⁷³ The “most significant provision” therein was the establishment of an autonomous region in Muslim Mindanao as a form of compromise aimed to quell and address the growing separatist sentiments in

68. *Id.* (citing International Crisis Group, Southern Philippines Backgrounder: Terrorism and the Peace Process, at 4, available at <https://icg-prod.s3.amazonaws.com/80-southern-philippines-backgrounder-terrorism-and-the-peace-process.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/66J2-QM9T>] & ZACHARY ABUZA, MILITANT ISLAM IN SOUTHEAST ASIA: CRUCIBLE OF TERROR 89-119 (2003)).

69. Rivera, *supra* note 45, at 41.

70. *Id.*

71. See *Province of North Cotabato*, 568 SCRA at 432-33. The history of the “Memorandum of Agreement on the Ancestral Domain (MOA-AD) Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001” made reference to “a long process of negotiation and the concluding of several prior agreements[.]” *Province of North Cotabato*, 568 SCRA at 432-33.

72. Government of the Republic of the Philippines & The Moro National Liberation Front, Tripoli Agreement (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), available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_761223_Tripoli%20Agreement.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/89UT-QFLL>] [hereinafter Tripoli Agreement]. See also Ramon Miguel C. Samson, *The Law of Philippine Peace Processes: Agreements, Issues, and Engagement in Peace-Building After Conflict*, 59 ATENEO L.J. 1255, 1271 (2015).

73. Rivera, *supra* note 45, at 44.

the region.⁷⁴ The second was the GPH-MNLF Final Peace Agreement of 1996,⁷⁵ through which the Nur Misuari-led MNLF agreed to the autonomy framework of the then Autonomous Region in Muslim Mindanao.⁷⁶ With the support of President Fidel V. Ramos, Misuari was elected as Governor of the ARMM in 1996.⁷⁷

However, “the MILF refused to recognize the ARMM” and continued with their armed struggle.⁷⁸ For the MILF, the ARMM did “not provide genuine autonomy”⁷⁹ and did not represent the collective aspirations of the Bangsamoro People in the exercise of their right to self-determination.⁸⁰ With the growth of the MILF’s military and political strength, armed resistance eventually led the administration of President Joseph E. Estrada to declare an “all-out war” in 2000.⁸¹ In contrast, President Gloria Macapagal-Arroyo, Estrada’s successor, took a different approach upon her assumption to office in

74. *Id.* See also Stephen C. Druce, *Not the “ASEAN Way”: The Southern Philippines Conflict and Its Internationalization*, in CONTEMPORARY CONFLICTS IN SOUTHEAST ASIA: TOWARDS A NEW ASEAN WAY OF CONFLICT MANAGEMENT 49 (Mikio Oishi ed., 2015).

75. Government of the Republic of the Philippines & The Moro National Liberation Front, 1996 Peace Agreement (The Final Agreement on the Implementation of the 1976 Tripoli Agreement Between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) with the Participation of the Organization of Islamic Conference Ministerial Committee of Six and the Secretary General of the Organization of Islamic Conference), available at https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/peace_agree_07181996.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/E5CT-ZLEJ>] [hereinafter 1996 Peace Agreement].

76. Rivera, *supra* note 45, at 45.

77. *Id.*

78. *Id.*

79. *Id.* (citing Interview with Mohagher Iqbal, Chair of MILF Peace Panel, in Cotabato City, Maguindanao (July 18, 2004)).

80. See Jacques Bertrand, *Peace and Conflict in the Southern Philippines: Why the 1996 Peace Agreement Is Fragile*, 73 PAC. AFFAIRS 37, 49 (2000). Among the causes attributed to the failure of the peace process and the floundering of the 1996 Peace Agreement is the division among Muslims with respect to the issue of autonomy. Such divisions have hindered the implementation of the peace process through the emergence of “alternative channels to voice continued grievances,” over which the MILF has gained ascendancy. Bertrand, *supra* note 80, at 49.

81. Rivera, *supra* note 45, at 46.

2001 and opened peace talks with the MILF with the intervention of Malaysian Prime Minister Mahathir Mohamad.⁸²

Years of negotiations were halted in 2008 when the Memorandum of Agreement on Ancestral Domain (MOA-AD) was declared unconstitutional in the landmark ruling of *Province of North Cotabato v. Government of the Republic of the Philippines*.⁸³ The subsequent Framework Agreement on the Bangsamoro⁸⁴ on 15 October 2012 and the Comprehensive Agreement on the Bangsamoro⁸⁵ on 27 March 2014, both of which were signed under the administration of President Benigno Aquino III,⁸⁶ took into account the lessons from the failed MOA-AD and became the legal anchors of today's Republic Act (R.A.) No. 11054,⁸⁷ more commonly known as the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao."

Considering the role of the *Mujahideens* and *Mujahidats* in the Bangsamoro quest for meaningful self-governance and for the right to self-determination, their sacrifice has cost them access to opportunities that would have allowed them to meet the usual minimum qualifications in terms of education, experience, and training for eligibility in career positions in the government, even in those considered first level positions.⁸⁸ In order to open the doors of

82. *Id.*

83. *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, 568 SCRA 402 (2008).

84. *Government of the Republic of the Philippines & The Moro Islamic Liberation Front, Framework Agreement on the Bangsamoro*, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/D28C-ZQHV>] [hereinafter Framework Agreement on the Bangsamoro].

85. *Government of the Republic of the Philippines & The Moro Islamic Liberation Front, The Comprehensive Agreement on the Bangsamoro*, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/P29P-64EL>] [hereinafter The Comprehensive Agreement on the Bangsamoro].

86. Bryony Lau, *The Philippines: Peace Talks and Autonomy in Mindanao*, in *TERRITORY AND POWER IN CONSTITUTIONAL TRANSITIONS* 209 (George Anderson & Sujit Choudhry eds., 2019).

87. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao.

88. Bangsamoro Information Office, *Opportunities Open for Mujahideen in New BARMM Civil Service Code*, available at

the Bangsamoro bureaucracy to aspiring and willing civil servants among the *Mujahideens* and *Mujahidats*, it was necessary for the Bangsamoro Government to enact the BCSC with a special provision in their favor.

II. INTEGRATION AND REHABILITATION OF BANGSAMORO FREEDOM FIGHTERS

Central to the peace negotiations between the GPH and the MILF is the rehabilitative intent to integrate former freedom fighters or legitimate members of the MILF and the MNLF, referred to as *Mujahideens* and *Mujahidats*,⁸⁹ into Philippine society.⁹⁰ Consistent with the normalization principle provided under the Framework Agreement on the Bangsamoro,⁹¹ both the GPH and the MILF agreed that “[i]t is through normalization that communities can return to conditions where they can achieve their desired quality of life, which includes the pursuit of sustainable livelihoods and political participation within a peaceful deliberative society.”⁹²

To this end, due recognition of the legitimacy of the Bangsamoro cause was extended by the Philippine government through the signing of the Comprehensive Agreement on the Bangsamoro —

Underlying the CAB is the recognition of the justness and legitimacy of the cause of the Bangsamoro people and their aspiration to chart their political future through a democratic process that will secure their identity and posterity and allow for meaningful self-governance.

This Comprehensive Agreement is a product of the pursuit for a solution to the Bangsamoro Question with honor, justice, and dignity for all concerned. It ends the armed hostilities between the two Parties and provides for the negotiated political settlement of the Bangsamoro Question, thereby ending the armed conflict between the GPH and the MILF, and promoting peace and stability in this part of the world.⁹³

<https://bangsamoro.gov.ph/news/latest-news/opportunities-open-for-mujahideen-in-new-barmm-civil-service-code> (last accessed Nov. 30, 2021) [<https://perma.cc/JM4W-KZ9E>].

89. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 6 (s).

90. See Bangsamoro Information Office, Opportunities Open for Mujahideen in New BARMM Civil Service Code, *supra* note 88.

91. Framework Agreement on the Bangsamoro, *supra* note 84, pt. VIII, ¶¶ 1-12.

92. *Id.* pt. VIII, ¶ 1.

93. The Comprehensive Agreement on the Bangsamoro, *supra* note 85, paras. 3 & 4 (emphasis supplied).

Within the framework of meaningful self-governance contemplated in the foregoing provision,⁹⁴ the Bangsamoro Government is expected to create opportunities to integrate the *Mujahideens* and *Mujahidats* into mainstream society upon the official cessation of hostilities between the GPH and MILF with the signing of the said agreements.⁹⁵ The most pronounced legal mandate therefor is enshrined in R.A. No. 11054, the pertinent provision of which reads —

SECTION 1. *Rehabilitation and Development.* — The Bangsamoro Government, with funding support from the National Government, shall intensify development efforts for the rehabilitation, reconstruction, and development of the Bangsamoro Autonomous Region as part of the normalization process. *It shall formulate and implement a program for rehabilitation and development that will address the needs of Moro Islamic Liberation Front/Bangsamoro Islamic Armed Force members and its decommissioned women auxiliary force, Moro National Liberation Front/Bangsamoro Armed Forces members, and address the needs of internally displaced persons, widows and orphans, and poverty-stricken communities.* It shall observe, promote, and ensure gender-responsiveness in all aspects of security and peace building, including the participation of women in decision-making.⁹⁶

In this regard, the Bangsamoro Government, in the exercise of its delegated legislative power,⁹⁷ enacted a regional law that would bring to life its mandate to provide integration and rehabilitation for legitimate members of both the MILF and the MNLF.⁹⁸ In fact, one of the highlighted provisions contained in the BCSC is that which allows *Mujahideens* and *Mujahidats* to serve in government despite their lack of the usual qualifications set for education, experience, training, and eligibility.⁹⁹

This Article will begin its legal discourse with a basic introduction to the Bangsamoro Organic Law (BOL) and to the operation of the Bangsamoro

94. *Id.* para. 3.

95. *See* Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XIV, § 1.

96. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XIV, § 1 (emphasis supplied).

97. *Id.* art. VII, § 3. Under the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, “[t]he Parliament shall have the authority to enact laws on matters that are within the powers and competencies of the Bangsamoro Government.” *Id.*

98. *Id.* art. XIV, § 1 & BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305.

99. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305.

Government, as well as examine the legality of the said special provision on the *Mujahideens* and *Mujahidats* found in the BCSC.

III. DELEGATED LEGISLATIVE POWER OF THE BANGSAMORO GOVERNMENT ON CIVIL SERVICE MATTERS AND THE PARLIAMENTARY PROCESS

A. Right to Self-Governance

The BOL provides that “[i]n the exercise of its right to *self-governance*, the *Bangsamoro Autonomous Region is free to pursue its political, economic, social, and cultural development* as provided for in this Organic Law.”¹⁰⁰

This provision expressly states that the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) has been given the right to self-governance.¹⁰¹ This means that as an autonomous region, it is “free to pursue its *political, economic, social, and cultural* development” within the confines of the BOL.¹⁰² The lengths of what the BARMM can do with this right to self-governance are explained in Section 2, Article V of the BOL —

SECTION 2. *Powers of the Bangsamoro Government.* — Subject to Section 20, Article X of the Constitution and this Organic Law, the *Bangsamoro Government shall exercise its authority* over the following matters without prejudice to the general supervision of the President of the Republic of the Philippines:

- (a) Administration of justice;
- (b) *Administrative organization*;
- (c) Agriculture, livestock, and food security;
- (d) Ancestral domain and natural resources;
- (e) Barter trade and countertrade;
- (f) Budgeting;
- (g) Business name registration;

100. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. IV, § 2 (emphasis supplied).

101. *Id.*

102. *Id.* (emphases supplied).

(h) Cadastral land survey; [and]

(i) *Civil service*[.]¹⁰³

Although the right to self-governance suggests an extensive scope of power, the same is still limited by the BOL itself and by the 1987 Constitution.¹⁰⁴ Such is the case because the BOL remains to be a national law within the purview of the national government¹⁰⁵ and the Constitution that created the government itself.¹⁰⁶

A common misconception is that this right to self-governance gives the BARMM the power to separate itself from the GPH.¹⁰⁷ This is not the case because the BOL only provides for the right of internal self-determination, not external self-determination.¹⁰⁸ External self-determination, on one hand, “concerns the international status of a people[.]” recognizing “that each people has the right to constitute itself [as] a nation-state or to integrate into, or federate with, an existing state.”¹⁰⁹ Internal self-determination, on the other

103. *Id.* art. V, § 2 (emphases supplied).

104. *Id.*

105. *See* Pimentel, Jr. v. Aguirre, G.R. No. 132988, 336 SCRA 201, 230 (2000) (J. Kapunan, dissenting opinion) (citing *Magtajas v. Pryce Properties Corp., Inc.*, G.R. No. 111097, 234 SCRA 255, 272-73 (1994)). The limits of national policy on the BARMM’s right to self-governance are implied by the principle that “[o]rdinances cannot contravene statutes and public policy as declared by the national government.” *Pimentel, Jr.*, 336 SCRA at 230 (J. Kapunan, dissenting opinion) (citing *Magtajas*, 234 SCRA at 272-73).

106. *See* ISAGANI A. CRUZ & CARLO L. CRUZ, PHILIPPINE POLITICAL LAW 16 (2014). “The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution.” CRUZ & CRUZ, *supra* note 106, at 16.

107. *See, e.g., Province of North Cotabato*, 568 SCRA at 439. One of the issues surrounding the Memorandum of Agreement (MOA) was whether the Philippine government, by signing such, would effectively “create and recognize the Bangsamoro Juridical Entity (BJE) as a separate state[.]” *Province of North Cotabato*, 568 SCRA at 439.

108. *Province of North Cotabato*, 568 SCRA at 490.

109. Salvatore Senese, *External and Internal Self-Determination*, 16 SOC. JUST. 19, 19 (1989).

hand, refers to the “right of people to freely choose their own political, economic, and social system.”¹¹⁰

The distinction was cited in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* —

The people’s right to self-determination should not, however, be understood as extending to a unilateral right of secession. A distinction should be made between the right of internal and external self-determination. REFERENCE RE SECESSION OF QUEBEC is again instructive:

...

126. The recognized sources of international law establish that *the right to self-determination of a people is normally fulfilled through internal self-determination — a people’s pursuit of its political, economic, social[,] and cultural development within the framework of an existing state*. A right to *external* self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances. [...]

External self-determination can be defined as in the following statement from the *Declaration on Friendly Relations*[] as

*The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.*¹¹¹

The right to self-governance under the BOL can be understood as the *right to internal self-determination*.¹¹² It does not give the BARMM the right to establish another sovereign and independent State,¹¹³ but merely grants the right to pursue “its political, economic, social[,] and cultural development

110. *Id.*

111. *Province of North Cotabato*, 568 SCRA at 490 (citing Reference Re Secession of Quebec, [1998] 2 S.C.R. 217, ¶ 126 (Can.)) (emphases supplied).

112. *See id.*

113. *See* Sedfrey M. Candelaria & Sang Mee A. Lee, *Testing Constitutional Waters V: The Proposed Bangsamoro Basic Law and the Primacy of the Sovereign Power of the State*, 59 ATENEO L.J. 1027, 1051-52 (2015) (citing JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 1139 (2009)). “The creation of this new separate [Bangsamoro] entity ‘does not mean the establishment of a sovereign[y] distinct from that of the Republic.’” Candelaria & Lee, *supra* note 113, at 1051-52 (citing BERNAS, *supra* note 113, at 1139).

within the framework of an existing State.”¹¹⁴ The former falls under the right to external self-determination,¹¹⁵ as aptly defined in the abovementioned case.

The BARMM remains a regional government under the GPH.¹¹⁶ It is a government representative of the Bangsamoro that still falls within the structural rule of law under the national government.¹¹⁷ It was the MILF that negotiated with the GPH in creating this representative government under the national rule of law, which led to the signing of the Framework Agreement on the Bangsamoro and the Comprehensive Agreement on the Bangsamoro.¹¹⁸ The BARMM thus represents the collective aspirations of the Bangsamoro people, rooted on their shared history and struggle.

B. The Bangsamoro Government, the Bangsamoro Parliament, and the Bangsamoro Transition Authority

The powers of the Bangsamoro Government are wielded by its Parliament,¹¹⁹ which holds the authority to enact laws within its mandate and “on matters that are within the ... competencies of the Bangsamoro Government.”¹²⁰

114. *Province of North Cotabato*, 568 SCRA at 490 (citing *Reference Re Secession of Quebec*, [1998] 2 S.C.R. ¶ 126).

115. *Province of North Cotabato*, 568 SCRA at 491. “[E]xternal self-determination can arise, namely, where a people is under colonial rule, is subject to foreign domination or exploitation outside a colonial context, and — less definitely but asserted by a number of commentators — is blocked from the meaningful exercise of its right to *internal* self-determination.” *Id.*

116. *See generally* Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao.

117. *See* AJIT S. BHALLA, ASIA’S TROUBLE SPOTS: THE LEADERSHIP QUESTION IN CONFLICT RESOLUTION 85 (2019) & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. IV, § 1. The Bangsamoro Organic Law provides that “[t]he Bangsamoro people shall uphold the Constitution as the fundamental law of the land and unequivocally owe allegiance and fidelity to the Republic of the Philippines.” Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. IV, § 1.

118. *Philippine Constitution Association (PHILCONSA) v. Philippine Government (GPH)*, G.R. No. 218406, 811 SCRA 284, 291-94 (2016).

119. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. VII, § 3.

120. *Id.*

However, during the transition period, the powers of the Parliament are given to the Bangsamoro Transition Authority (BTA).¹²¹

Acting as the “interim government” of the BARMM,¹²² the BTA, whose majority is presently composed of nominees recommended by the MILF,¹²³ is mandated to establish the institutional and working foundations of the region.¹²⁴ The present BTA is thus governed by the following provision —

SECTION 3. *Powers and Authorities.* — Legislative and executive powers in the Bangsamoro Autonomous Region during transition shall be vested in the Bangsamoro Transition Authority. During the transition period, executive authority shall be exercised by the interim Chief Minister who shall be appointed by the President as such, while legislative authority shall be exercised by the Bangsamoro Transition Authority.

All powers and functions of the Bangsamoro Government as provided in this Organic Law [are] vested in the Bangsamoro Transition Authority during the transition period.¹²⁵

Moreover, included within the BTA’s mandate is the enactment of a framework of legislative measures during the transition period —

SECTION 4. *Functions and Priorities.* — The Bangsamoro Transition Authority shall ensure the accomplishment of the following priorities during the transition period:

- (a) Enactment of priority legislations such as the Bangsamoro Administrative Code, Bangsamoro Revenue Code, Bangsamoro Electoral Code, Bangsamoro Local Government Code, and Bangsamoro Education Code consistent with powers and prerogatives vested in the Bangsamoro Government by this Organic Law: *Provided*, That until the abovementioned laws are enacted, the Muslim Mindanao Autonomy Act No. 25, otherwise known as the ‘Autonomous Region in Muslim Mindanao Local Government Code,’ and subsisting laws on elections

121. *Id.* art. XVI, § 3.

122. *Id.* art. XVI, § 2, para. 1.

123. Julie S. Alipala, *Fight for Seats in Bangsamoro Transition Body Starts*, PHIL. DAILY INQ., Nov. 3, 2021, available at <https://newsinfo.inquirer.net/1509638/fight-for-seats-in-bangsamoro-transition-body-starts> (last accessed Nov. 30, 2021) [<https://perma.cc/JXL3-72SR>]. “The current BTA is composed of 41 nominees from the MILF and 39 from the government.” *Id.*

124. See Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVI, § 4.

125. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVI, §§ 3.

and other electoral matters shall apply in the Bangsamoro Autonomous Region.

The Bangsamoro Transition Authority may also enact a Bangsamoro Civil Service Code, as provided in this Organic Law, subject to the Constitutional mandate of the Civil Service Commission.¹²⁶

Being the first and only parliamentary form of *regional* government in the country,¹²⁷ there is no existing government structure in the Philippines that serves as a guide for the BARMM. As such, the Bangsamoro Government looks into other models of parliamentary government, including that of Malaysia, and explores the applicability of their experiences within a regional space and within the confines of the Constitution.¹²⁸

Additionally, with intergovernmental mechanisms in place, the GPH and the BARMM Government regularly coordinate with each other on key areas of administration.¹²⁹ It bears emphasis that all regional laws enacted by the BTA should be consistent with national laws.¹³⁰

IV. THE BANGSAMORO CIVIL SERVICE CODE

The BTA is permitted to enact a Bangsamoro Civil Service Code (BCSC),¹³¹ with the Civil Service Commission directed to establish field offices in the region for the “efficient performance of its powers and duties.”¹³²

The Parliament is also mandated to enact a Civil Service Code that is “in accordance with existing national laws.”¹³³ This Code shall “govern the

126. *Id.* § 4 (a).

127. *See generally* Emil P. Bolongaita, Jr., *Presidential Versus Parliamentary Democracy*, 43 PHIL. STUD. 105, 105-07 (1995).

128. *See* Michael Henry Ll. Yusingco, *The Vital Role of the Bangsamoro People in Setting Up Their Regional Parliamentary Government*, available at <https://accessbangsamoro.ph/2020/07/23/the-vital-role-of-the-bangsamoro-people-in-setting-up-their-regional-parliamentary-government> (last accessed Nov. 30, 2021) [<https://perma.cc/4JYW-BHTY>].

129. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. VI, § 2.

130. *See Pimentel, Jr.*, 336 SCRA at 230 (J. Kapunan, dissenting opinion) (citing *Magtajas*, 234 SCRA at 272-73).

131. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVI, § 4 (a).

132. *Id.* art. VII, § 39, para. 1.

133. *Id.* art. VII, § 39, para. 2.

conduct of civil servants, the qualifications for nonelective positions, adopt the merit and fitness system, and protect civil service eligibles in various government positions, including government-owned or controlled corporations with original charters in the Bangsamoro Autonomous Region.”¹³⁴

A. Enactment of the Bangsamoro Civil Service Code

On 24 February 2021, the BTA,¹³⁵ through a 67-0 vote,¹³⁶ unanimously enacted Bangsamoro Autonomy Act No. 17, Series of 2021, or the “Bangsamoro Civil Service Code,”¹³⁷ which was signed into law on the same date by Interim Chief Minister Ahod B. Ebrahim.¹³⁸ As provided under Section 2, Article V of the BOL, among the powers of government delegated to the Bangsamoro Government is authority over civil service.¹³⁹ The extent of such power, however, as discussed, is limited by the Constitution, national laws, and existing national civil service laws, rules, and regulations, to wit —

SECTION 39. *Civil Service.* — The Civil Service Commission shall establish a regional Civil Service field office and other field offices as may be needed in the Bangsamoro Autonomous Region for the efficient performance of its powers and duties.

The Bangsamoro Government shall enact a civil service law: Provided, That it shall be in accordance with existing national laws. In case of conflict with the national laws,

¹³⁴. *Id.* art. VII, § 39, para. 3.

¹³⁵. The BTA, as the interim government during the transition period, acts as the Bangsamoro Parliament. See Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVI, §§ 2 & 3.

¹³⁶. Bangsamoro Information Office, Bangsamoro Parliament Approves New Civil Service Law, available at <https://bangsamoro.gov.ph/news/latest-news/bangsamoro-parliament-approves-new-civil-service-law> (last accessed Nov. 30, 2021) [<https://perma.cc/BRP6-VJP4>].

¹³⁷. An Act Providing for the Bangsamoro Civil Service Code of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) [BANGSAMORO CIVIL SERVICE CODE OF 2021], Bangsamoro Autonomy Act No. 17 (2021).

¹³⁸. *Id.* See also Edwin Fernandez, BARMM Parliament Approves Civil Service Code, available at <https://www.pna.gov.ph/articles/1131837> (last accessed Nov. 30, 2021) [<https://perma.cc/3Y4Q-B22W>].

¹³⁹. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. V, § 2 (i).

*the Constitution and existing national civil service laws, rules[,] and regulations shall prevail.*¹⁴⁰

Notably, the BTA was conscious of the said limitation and restated the same in Article 2 of the BCSC.¹⁴¹

B. The Bangsamoro Civil Service Code on the Integration and Rehabilitation of the Mujahideens and Mujahidats

Among the most significant provisions in the BCSC is an Article which affords the *Mujahideens* and the *Mujahidats* the opportunity to serve in the Bangsamoro civil service despite not meeting the ordinary qualification standards for the contemplated government positions therein —

ARTICLE 305. *Special Provisions for Mujahideen/Mujahidat. — Mujahideen/Mujahidat may be hired as temporary appointees for first level positions (SG 9 and below) of the Bangsamoro Government regardless of the presence of applicants who are civil service eligible; Provided, That not more than 30% of the total number of entry level plantilla positions of the Bangsamoro Government shall be allocated to them.*

The appointments under this provision shall be *valid for 12 months, renewable for three (3) times*. However, if the appointee has possessed the required eligibility within that period, he/she shall be qualified for permanent appointment to said position subject to performance appraisal and without prejudice to the discretion of the appointing authority.

To ensure smooth integration of the [M]ujahideen/[M]ujahidat in the civil service, the DAB shall develop specialized training programs for their training and professional development.

*It shall be the responsibility of the Central Committees of the MILF and the MNLF to determine the [M]ujahideen/[M]ujahidat in the roster of their organic members who shall be considered for hiring under this provision. The hiring should be within [the] transition period.*¹⁴²

Mindful of the limitations on lawful enactments where the civil service was concerned, the BTA provided at least five safeguards for this special accommodation:

140. *Id.* art. VII, § 39, paras. 1-2 (emphasis supplied).

141. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 2, para. 2.

142. *Id.* art. 305 (emphases supplied).

- (1) that the *Mujahideens* and *Mujahidats* may only be appointed to first level positions with salary grade nine (SG 9) and below;¹⁴³
- (2) that the said appointments are temporary in nature and shall be valid for only 12 months;¹⁴⁴
- (3) that the said appointments are subject to a maximum of three renewals;¹⁴⁵
- (4) that not more than 30% of the entry level positions in the regional government shall be allocated to them;¹⁴⁶ and
- (5) that only the *Mujahideens* and *Mujahidats* whose names appear in the roster of organic members of the MILF and the MNLF, duly determined by their respective Central Committees, shall be considered.¹⁴⁷

The *first safeguard* ensures that the qualified individuals contemplated under the special provision would only occupy positions that perform clerical functions.¹⁴⁸ As a necessary implication, the performance of managerial and

143. *Id.* art. 305, para. 1.

144. *Id.* art. 305, para. 2.

145. *Id.*

146. *Id.* art. 305, para. 1.

147. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 4.

148. *Id.* art. 305, para. 1. *See also* An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes [Compensation and Position Classification Act of 1989], Republic Act. No. 6758, § 5 (d) (1989). “Sub-Professional Non-Supervisory” positions are “assigned Salary Grade 1 to Salary Grade 10[,]” involving “structured work in support of office or fiscal operations or those engaged in crafts, trades[,] or manual work. These positions usually require skills acquired through training and experience of completion of elementary education, secondary[,] or vocational education[,] or completion of up to two (2) years of college education.” Compensation and Position Classification Act of 1989, § 5 (d) (emphasis supplied).

“First Level Positions” are similarly defined in the glossary of the amended 2017 Omnibus Rules on Appointments and Other Human Resource Actions as “positions involved in structured work in support of office operations or those engaged in clerical, trades, crafts, or custodial service which involve sub-professional work in a non-supervisory and supervisory capacity.” Civil Service Commission, 2017 Omnibus Rules on Appointments and Other Human Resource Actions (Revised July 2018), Resolution No. 1800692 [CSC Reso. No. 1800692] (July 3, 2018) (emphases supplied).

supervisory functions that pertain to second level positions¹⁴⁹ in the career service is still reserved for holders of appropriate education, experience, training, and eligibility requirements in accordance with the Qualification Standards under Rule VIII of the amended 2017 Omnibus Rules on Appointments and Other Human Resource Actions (2017 ORAOHRA).¹⁵⁰

The *second* and *third safeguards*, on the other hand, ensure that only those who satisfy the qualification standards shall be issued permanent appointments.¹⁵¹

The *fourth safeguard* ensures that at least 70% of the entry level positions of the regional government are allocated to those issued permanent appointments after having met the required qualification standards,¹⁵² as well as to those issued temporary appointments as contemplated under Section 9 (b) of the 2017 ORAOHRA who are not *Mujahideens* and *Mujahidats*, as contemplated under the Bangsamoro Civil Service Code.¹⁵³

Finally, the *fifth safeguard* ensures a centralized system in determining the legitimate and *bona fide* organic members of the MILF and the MNLF who are qualified under the special provision.¹⁵⁴

149. See Compensation and Position Classification Act of 1989, § 5 (a). “Professional Supervisory” positions are those “responsible positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling[,] and overseeing within delegated authority the activities of an organization[.]” Such positions also require the “*application of managerial or supervisory skills* required to carry out their basic duties and responsibilities involving functional guidance and control, leadership, as well as line supervision.” Compensation and Position Classification Act of 1989, § 5 (a) (emphasis supplied).

“Second Level Positions” are defined in the glossary of the amended 2017 Omnibus Rules on Appointments and Other Human Resource Actions as those including “professional, technical and scientific positions which involve professional, technical and scientific work in a non-supervisory or supervisory capacity up to Division Chief level or its equivalent.” CSC Reso. No. 1800692.

150. CSC Reso. No. 1800692, rule VIII.

151. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 2. See also Bangsamoro Information Office, Opportunities Open for Mujahideen in New BARMM Civil Service Code, *supra* note 88.

152. See BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 1.

153. See CSC Reso. No. 1800692, rule IV, § 9 (b).

154. See BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 4.

C. *Constitutionality of the Special Provision for the Mujahideens and Mujahidats*

As stated earlier, the scope of legislative power delegated to the Bangsamoro Parliament, currently exercised by the BTA, and specifically pertaining to the civil service, is defined by its conformity with the Constitution, national laws, and existing national civil service laws, rules, and regulations.¹⁵⁵ It is worth noting that while the BCSC was still a bill,¹⁵⁶ the governing civil service rule on the issuance of temporary appointments was found in Section 9 (b), Rule IV of the 2017 ORAOHRA,¹⁵⁷ which provides for Employment Status, Nature of Appointment, and Other Human Resource Actions —

Temporary — an appointment issued to a person who meets the education, experience[,] and training requirements for the position to which he/she is being appointed to, except for the appropriate eligibility. *A temporary appointment may only be issued in the absence of an applicant who meets all the qualification requirements of the position as certified by the appointing officer/authority. The appointment shall not exceed twelve months, reckoned from the date it was issued but the appointee may be replaced sooner if a qualified eligible who is willing to accept the appointment becomes actually available.*

However, in no case shall a temporary appointment be issued for positions that involve practice of profession regulated by bar/board law for lack of the required license and/or certificate of registration.

A temporary appointment issued to a person who does not meet any of the education, training[,] or experience requirements for the position shall be disapproved/invalidated except to positions that are hard to fill, or other meritorious cases as may be determined by the Commission, or as provided by special law, such as [m]edical [o]fficer/[s]pecialist positions, [s]pecial [s]cience [t]eacher, [f]aculty positions[,] and [p]olice [o]fficer positions. *Except for these positions, temporary appointments may only be renewed once.*

A temporary appointment to a position which involves practice of profession may be issued to a person who lacks the required experience or training but

155. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 2 & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. V, § 2 (i) & art. VII, § 39.

156. Rasol Y. Mitmug, Jr., Bangsamoro Autonomy Act No. 17: Bangsamoro Civil Service Code, at iv, available at <https://rasmitmug.com/ebooks/BCSC-4.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/5DYT-PDA5>]. “The Bangsamoro Civil Service Code was filed in the Bangsamoro Transition Authority on July 21, 2020, as Bill No. 59[.]” *Id.*

157. CSC Reso. No. 1800692, rule IV, § 9 (b).

only in the absence of an applicant who meets all the qualification requirements of the position as certified by the appointing officer/authority.

When there are no available qualified faculty in the region, place or locality, as certified by the appointing officer/authority, temporary appointments may be issued until the required Master's degree is met/complied with.

...

A temporary appointment issued to a person who meets all the requirements of the position shall be disapproved/invalidated.¹⁵⁸

A cursory reading of the foregoing provision would show patent inconsistencies between the BCSC's special provision for *Mujahideens* and *Mujahidats*, on one hand, and the provision governing the issuance of temporary appointments as found in the amended 2017 ORAOHRA, on the other. The following table highlights the significant points of divergence —

158. *Id.* (citing Further Amending Republic Act No. 1243, as Amended by Republic Act No. 2251, Otherwise Known as the Hospital Residency Law, Presidential Decree No. 1424 (1978); An Act to Establish the Philippine Science High School System and Providing Funds Therefor [Philippine Science High School (PSHS) System Act of 1997], Republic Act No. 8496 (1998); An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes [Higher Education Modernization Act of 1997], Republic Act No. 8292 (1997); An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled, "An Act Establishing the Philippine National Police Under a Re-Organized Department of the Interior and Local Government, and for Other Purposes [Philippine National Police Reform and Reorganization Act of 1998], Republic Act No. 8551 (1998); & Civil Service Commission, Status of Appointments to Faculty Positions in State Universities and Colleges (SUCs) and Local Universities and Colleges (LUCs) Where There is Dearth of Holders of Master's Degree in Specific Fields, Memorandum Circular No. 25, Series of 2017 [CSC Memo. Circ. No. 25, s. 2017] (Aug. 25, 2017)).

Table 1. Temporary Appointments in the 2017 ORAOHRA and BCSC

MATTER	TEMPORARY APPOINTMENTS AS CONTEMPLATED UNDER THE 2017 ORAOHRA, AS AMENDED	SPECIAL TEMPORARY APPOINTMENTS AS CONTEMPLATED UNDER THE BANGSAMORO CIVIL SERVICE CODE
When Allowed	Only when there is no qualified and willing eligible.	Even when there is a qualified and willing eligible, provided that the special temporary appointments issued do not exceed 30% of the entry level positions of the Bangsamoro Government.
Covered Positions	All levels	Only First Level Positions that usually perform clerical work.
Allowable Number of Renewals	May only be renewed once.	May be renewed three (3) times.
Minimum Qualification Standards Met	For positions that do not involve the practice of a profession, a temporary appointee must at least meet the education, experience, and training requirements.	None prescribed. ¹⁵⁹

159. Note that the positions contemplated under the special provisions for the *Mujahideens* and *Mujahidats* only pertain to first level positions. The qualified *Mujahideens* and *Mujahidats* under the said provision thus may not be appointed to positions that involve the practice of a profession, as they are considered second level or technical positions.

	For positions that involve the practice of a profession, the temporary appointee must at least meet the education and eligibility requirements.	
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As illustrated above, a temporary appointment, under the amended 2017 ORAOHRA, may only be issued in the absence of a qualified and willing eligible.¹⁶⁰ This means that temporary appointments, as a matter of policy, are only issued by way of an exception (i.e., only when none of the applicants meets the minimum qualification standards for the position). On the other hand, the special temporary appointments contemplated under the BCSC may be issued in favor of a *Mujahideen* or *Mujahidat*, as certified by their respective Central Committees,¹⁶¹ even in the presence of qualified and willing applicants who meet the minimum qualification standards for the position.¹⁶² However, the total number of special temporary appointments issued in accordance with the subject provision may not exceed 30% of the entry level positions of the entire Bangsamoro Government.¹⁶³

Another key difference is the level of positions covered by both provisions. Temporary appointments under the amended 2017 ORAOHRA may cover even supervisory positions.¹⁶⁴ In contrast, the special temporary appointments permitted for *Mujahideens* and *Mujahidats* cover only first level or entry level positions, the functions of which are restricted to clerical duties and responsibilities.¹⁶⁵ The BCSC, in effect, takes cognizance of the usual educational attainment of the *Mujahideens* and *Mujahidats* who have served

160. CSC Reso. No. 1800692, rule IV, § 9 (b).

161. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 4.

162. *Id.* art. 305, para. 1.

163. *Id.*

164. Section 9 (b) of CSC Resolution No. 1800692, which describes “temporary” appointments, does not contain explicit reference to the “managerial” or “supervisory” nature of positions to which such temporary appointments may or may not be made.

165. *See* BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 1; Compensation and Position Classification Act of 1989, § 5 (d); & CSC Resolution No. 1800692.

most of their lives in the armed struggle;¹⁶⁶ hence, the applicability of the special provision pertains only to positions that do not require discretion in the context of performing managerial or supervisory functions.¹⁶⁷

Next is the key difference in the number of instances that a temporary appointment may be renewed. Temporary appointments under the amended 2017 ORAOHRA may only be renewed once,¹⁶⁸ while special temporary appointments granted to the *Mujahideens* and *Mujahidats* under the BCSC may be renewed up to three times.¹⁶⁹ The longer period of renewal under the BCSC coincides with the transition period of the Bangsamoro Government under R.A. No. 11054,¹⁷⁰ which is deemed enough time for the *Mujahideens* and *Mujahidats* to earn the necessary education, experience, training, and eligibility requirements for the positions they occupy.¹⁷¹

Finally, in connection with the foregoing discussion point, while temporary appointments under the amended 2017 ORAOHRA require that the appointee at least meets the other qualification standards depending on the nature of the position in question,¹⁷² special temporary appointments granted to the *Mujahideens* and *Mujahidats* under the BCSC do not prescribe any minimum qualification standards, considering the usual lack of education,

166. See Bangsamoro Information Office, Opportunities Open for Mujahideen in New BARMM Civil Service Code, *supra* note 88.

167. See BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 1; Compensation and Position Classification Act of 1989, § 5 (d); & CSC Resolution No. 1800692.

168. CSC Reso. No. 1800692, rule IV, § 9 (b).

169. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 2.

170. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVI, § 1.

171. *Contra* Mitmug, Jr., *supra* note 156, at vii. Rasol Y. Mitmug, Jr., a member of both the Bangsamoro Transition Authority and the Panel on the Bangsamoro Civil Service Code, was of a different view —

[Mitmug, Jr.] questioned the special provision on the *mujahideen*, explaining that temporary appointments for first level positions would be insufficient, as they could be easily replaced after the transition period. Instead, he suggested that hiring ministries or agencies should invest in the training and professional development of the temporary appointees to ensure that they would still have employment opportunities available to them in the event they are not retained after the transition period.

Mitmug, Jr., *supra* note 156, at vii.

172. See CSC Reso. No. 1800692, rule IV, § 9 (b).

experience, training, and eligibility requirements on the part of the *Mujahideens* and *Mujahidats*.¹⁷³

In light of the limitations earlier discussed, the legal gap left by the discrepancy between the Civil Service Resolution (CSC) Resolution and the special provision in the BCSC prompted the Bangsamoro Government of the Day to request from the CSC an exception to the general rule,¹⁷⁴ considering that the absence of an appropriate accommodation could render the special provision constitutionally infirm.¹⁷⁵ The problem was premised on inconsistency with Section 39, Article VII of R.A. No. 11054, which, to reiterate, mandates that regional legislation by the Bangsamoro Parliament pertaining to its civil service must conform to existing national CSC rules such as the amended 2017 ORAOHRA.¹⁷⁶

D. Promulgation of Civil Service Commission Resolution No. 2000769

As the constitutional commission mandated to ensure, protect, and promote merit and fitness in the civil service,¹⁷⁷ the CSC promulgated CSC Resolution No. 2000769 on 28 August 2020,¹⁷⁸ acting on the various issues raised by the Bangsamoro Government of the Day, including the latter's request to approve

173. See Bangsamoro Information Office, Opportunities Open for Mujahideen in New BARMM Civil Service Code, *supra* note 88.

174. Civil Service Commission, Transition from Autonomous Region in Muslim Mindanao (ARMM) to the Bangsamoro Autonomous Region in Muslim Mindanao, Resolution No. 2000769 [CSC Reso. No. 2000769], at 1 & 8-11 (Aug. 28, 2020).

175. See *id.* at 11. Working on the premise that “the enactment of the BCSC shall be made in accordance with existing national laws[,] and that *in case of conflict, the Constitution and the existing national civil service laws, rules, and regulations shall prevail*[,]” the Civil Service Commission (CSC) found that the then “proposed special provision on the *mujahideen* seemingly [ran] contrary to the provisions of the ORAOHRA and E.O. No. 292[.]” The CSC, however, “based on equity, [supported] the proposal[,] but subject to certain revisions.” CSC Reso. No. 2000769, at 11 (emphases supplied).

176. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. VII, § 39.

177. Home Insurance and Guaranty Corporation (HIGC) v. Civil Service Commission, G.R. No. 95450, 220 SCRA 148, 154 (1993) (citing PHIL. CONST. art. IX-B, § 2 (2)).

178. CSC Reso. No. 2000769.

the then proposed special provision for the *Mujahideens* and *Mujahidats*.¹⁷⁹ In the said Resolution, the CSC stated in clear and unequivocal language that the contemplated special provision in the BCSC ran contrary to existing civil service rules on the issuance of temporary appointments.¹⁸⁰ However, in ultimately approving the proposed provision, the CSC took notice and consideration of the rehabilitative intention behind R.A. No. 11054.¹⁸¹ Relevant portions of CSC Resolution No. 2000769 read —

Both E.O. 292 and the ORAOHRA are emphatic in stating that temporary appointments may be issued if there is no qualified civil service eligible available, which temporary appointment shall not exceed [12] months.

The Commission recognizes the intent to include a special provision for [mujahideen] in the BCSC as a means for rehabilitation and development of the Bangsamoro Government enunciated under Section 1, Article XIV of R.A. No. 11054, viz:

‘ARTICLE XIV

REHABILITATION AND DEVELOPMENT

‘Section 1. *Rehabilitation and Development*. — The Bangsamoro Government, with funding support from the National Government, shall intensify development efforts for the rehabilitation, reconstruction, and development of Bangsamoro Autonomous Region as part of the normalization process. It shall formulate and implement a program for rehabilitation and development that will address the needs of Moro-Islamic Liberation Front/Bangsamoro Islamic Armed Force members and its decommissioned women auxiliary force, Moro National Liberation Front/Bangsamoro Armed Forces members, and address the needs of internally displaced persons, widows and orphans, and poverty-stricken communities. It shall observe, promote, and ensure gender-responsiveness in all aspects of security and peace building, including the participation of women in decision-making.’

It bears stressing, however, that the enactment of the BCSC shall be made in accordance with existing national laws and that in case of conflict, the Constitution and the existing national civil service laws, rules, and regulations shall prevail. Section 39, Article VII of R.A. No. 11054 provides:

179. *Id.* at 8.

180. *Id.* at 11.

181. *Id.* at 10.

‘ARTICLE VII

BANGSAMORO GOVERNMENT

‘Section 39. *Civil Service*. The Civil Service Commission shall establish a regional Civil Service field office and other field offices as may be needed in the Bangsamoro Autonomous Region for the efficient performance of its powers and duties.

‘The Bangsamoro Government shall enact a civil service law: *Provided*, That it shall be in accordance with existing national laws. In case of conflict with the national laws, the Constitution and existing national civil service laws, rules, and regulations shall prevail.

‘This law shall govern the conduct of civil servants, the qualifications for nonelective positions, adopt the merit and fitness system, and protect civil service eligibles in various government positions, including government- owned or controlled corporations with original charters in the Bangsamoro Autonomous Region. The Bangsamoro Government shall have disciplinary authority over its own officials and employees.’

In the instant case, while the proposed special provision on the mujahideen seemingly runs contrary to the provisions of the ORAOHRA and E.O. No. 292, based on equity, the Commission supports the proposal but subject to certain revisions. We believe that the one-year limitation of a temporary appointment should be followed. The rules pertaining to the limitation on renewal, however, may be relaxed. Hence, in light of the proposal to have a [three]-year period for the effectivity of the temporary appointment, the Commission allows instead a renewal of [three] times in the absence of a qualified eligible who is available. The Commission recognizes that allowing this proposed BCSC provision with some adjustments would go a long way towards achieving the decommissioning of the MILF military force which would invariably contribute to the attainment of lasting peace in the region.¹⁸²

As shown, the identified inconsistencies between the special provision for the *Mujahideens* and *Mujahidats* and the provisions on the issuance of temporary appointments were addressed in the said Resolution.¹⁸³ Notably, the parameters recommended by the CSC through the Resolution were adopted by the BTA in the final version of the Bangsamoro Civil Service Code.¹⁸⁴ Legally speaking, however, the promulgation of the said Resolution was an

182. *Id.* at 10-11.

183. *Id.* at 8-11.

184. CSC Reso. 2000769, at 11 & BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 2.

exercise of the CSC's rule-making power,¹⁸⁵ effectively carving out an exception to the provisions on the issuance of temporary appointments contemplated under the amended 2017 ORAOHRA.

V. ANALYSIS AND RECOMMENDATION

The rehabilitative intent of the BOL,¹⁸⁶ as manifested by the integration of the *Mujahideens* and *Mujahidats* into the Bangsamoro Civil Service,¹⁸⁷ is absolutely in keeping with the long-term goal of maintaining a developed and peaceful BARMM within the structure of the GPH.¹⁸⁸ It gives testament to the fact that there is a wealth of information, experience, and benefit to be derived from Muslims and Christians, all Filipinos, working together. While they may differ as to their culture and religion, such differences create foundational diversity, rather than crippling adversity, for the Filipino people as a whole.

Serving the Filipino people, whether on a national or regional level, is a permanent task that should always be treated as a work in progress, regardless of the milestones reached, which includes the integration of MILF and MNLF freedom fighters into the Bangsamoro Civil Service. There is always room for improvement in nation-building.

A. Possibility That Not All Government Offices Can Accommodate Mujahideens and Mujahidats

The aim of the Bangsamoro Civil Service Code to create opportunities for former MILF and MNLF freedom fighters in government entry-level positions is admirable. Moreover, the safeguards imposed by the provisions on Special Temporary Appointments as contemplated under the Bangsamoro Civil Service Code are more than sufficient to ensure equal rights among the *Mujahideens*, the *Mujahidats*, and those who are not part of the MILF or MNLF.

185. *Trade and Investment Development Corp. v. Civil Service Commission*, G.R. No. 182249, 692 SCRA 384, 396 (2013). The Civil Service Commission is a “constitutionally created administrative agency that possesses executive, quasi-judicial[,] and quasi-legislative or rule-making powers.” *Id.*

186. *See, e.g.*, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XIV, §§ 1-2.

187. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305.

188. *See generally* ABUBAKAR, *supra* note 5, at 119-20.

However, considering the express limitation on the number of special temporary appointments that may be issued in favor of former *Mujahideens* and *Mujahidats*, other BARMM programs for reintegration such as livelihood training programs,¹⁸⁹ assistance afforded to small business,¹⁹⁰ fish farming,¹⁹¹ the Pantawid Pamilyang Pilipino Program,¹⁹² the Normalization Program for Decommissioned Combatants of the MILF,¹⁹³ the Reintegration Program for the KAPATIRAN,¹⁹⁴ and the MNLF Transformation Program¹⁹⁵ should be

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189. Office of the Presidential Adviser on the Peace Process, Former MILF Combatants Undergo Livelihood Training, *available at* <https://www.officialgazette.gov.ph/2016/04/15/former-milf-combatants-livelihood-training> (last accessed Nov. 30, 2021) [<https://perma.cc/LHU9-UXWV>].
190. SunStar Zamboanga, *MSSD-Barmm Grants Cash Aid to 47 Business Owners*, SUNSTAR, Oct. 1, 2020, *available at* <https://www.sunstar.com.ph/ampArticle/1872012> (last accessed Nov. 30, 2021) [<https://perma.cc/KE8U-S2TP>].
191. Edwin Fernandez, *Ex-MILF Combatants Turn to Fish Farming*, PHIL. NEWS AGENCY, July 29, 2021, *available at* <https://www.pna.gov.ph/articles/1148704> (last accessed Nov. 30, 2021) [<https://perma.cc/7FXY-UJ2J>].
192. Department of Social Welfare and Development, *DSWD Continues to Improve Initiatives for Peace-Building*, *available at* <https://www.dswd.gov.ph/dswd-continues-to-improve-initiatives-for-peace-building> (last accessed Nov. 30, 2021) [<https://perma.cc/PZY7-XDF3>].
193. Department of Social Welfare and Development, *Implementing Guidelines in the Provision of the Socio-Economic Programs for Normalization for the Decommissioned Combatants (DC) of the Moro Islamic Liberation Front (MILF) Under the Comprehensive Agreement on the Bangsamoro (CAB)*, Memorandum Circular No. 18, Series of 2019 [DSWD Memo. Circ. No. 18, s. 2019] (Sept. 3, 2019).
194. Department of Social Welfare and Development, *Supplemental Guidelines to Memorandum Circular No. 19 Series of 2019 Otherwise Known as the Unified Guidelines on the Clarificatory Implementing Document (CID) for the 2000 Peace Agreement with the RPM-P/RPA/ABB/TPG for the Provision of DSWD Programs and Services*, Memorandum Circular No. 17, Series of 2021 [DSWD Memo. Circ. No. 17, s. 2021] (Oct. 29, 2021).
195. Office of the Presidential Adviser on the Peace Process, *GPH-MNLF Coordination Committee Launches Info Campaign on MNLF Transformation Program*, *available at* <https://pia.gov.ph/press-releases/2021/11/26/gph-mnlf-coordinating-committee-launches-info->

further sustained and strengthened. To this end, an inter-agency committee composed of the different implementing ministries of the programs mentioned should work loosely with the Central Committees of both the MILF and MNLF in monitoring the support received by the *Mujahideens* and *Mujahidats* from the Bangsamoro Government.

B. Assistance and Programs to Attain the Minimum Eligibility Requirements

Giving the *Mujahideens* and the *Mujahidats* the opportunity to serve in the Bangsamoro Civil Service despite not meeting the ordinary qualification standards of the contemplated government positions is insufficient to achieve complete reintegration. To reiterate, the special temporary appointments under the BCSC can only be renewed thrice.¹⁹⁶ The provision only gives the *Mujahideens* and *Mujahidats* three years to meet the corresponding minimum qualification standards.¹⁹⁷

As a form of direct assistance in this regard, special programs may be formulated in favor of the *Mujahideens* and *Mujahidats* who are currently working for the Bangsamoro Government in accordance with the special provision in the BCSC. After completing the program, certificates may be awarded to attest to compliance with the minimum qualification standards imposed by the civil service for entry-level *plantilla* positions. Such programs have the potential to fast-track the reintegration of all freedom fighters into Philippine society. For skills-based entry-level positions in particular, the Ministry of Basic, Higher, and Technical Education,¹⁹⁸ which also takes

campaign-on-mnlf-transformation-program (last accessed Nov. 30, 2021) [<https://perma.cc/S3GZ-BT6K>].

196. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305, para. 2.

197. *Id.* The special provision states —

The appointments under this provision shall be *valid for 12 months, renewable for three (3) times*. However, if the appointee has *possessed the required eligibility within that period*, he/she shall be *qualified for permanent appointment* to said position subject to performance appraisal and without prejudice to the discretion of the appointing authority.

Id. (emphases supplied).

198. An Act Providing for the Establishment, Management, and Support of a Complete and Integrated System of Quality Education in the Bangsamoro [BANGSAMORO EDUCATION CODE OF 2021], Bangsamoro Autonomy Act No. 18, § 6 (2021). The administration, supervision, and regulation of the Bangsamoro Educational System is “vested [in] the Ministry of Basic, Higher, and Technical

charge of vocational schools,¹⁹⁹ can be directly tapped and engaged to work on this endeavor.

C. Increasing Infrastructure Projects, Environmental Projects, and Tourism Projects to Create More Job Opportunities for Former MILF and MNLF Freedom Fighters

Giving priority to infrastructure, environmental, and tourism projects can create more employment opportunities requiring entry-level *plantilla* positions, thereby creating new windows of opportunity for the former MILF and MNLF freedom fighters to enter public service. These include the construction of ports, airports, sources of energy, telecommunications, and health and water infrastructure, as well as the institution of forest rangers, cleanliness programs for cities and municipalities, garbage collection systems, and tourist destinations.

D. Creation of an Inter-Ministry Committee

Finally, in order to avoid the influx of temporary appointments by the *Mujahideens* and *Mujahidats*, it is also recommended that there be an Inter-Ministry Committee that would help them qualify for permanent appointments. This Inter-Ministry Committee could implement programs to assist the *Mujahideens* and *Mujahidats* in attaining the education, experience, training, and eligibility needed for permanent appointment. The Inter-Ministry Committee can likewise conduct training programs, provide educational materials, and hold interviews to help determine the proper skills development for temporarily appointed *Mujahideens* and *Mujahidats*.

VI. CONCLUSION

The passage of the BOL is both a beginning and an end. It is the beginning of meaningful autonomy and national integration for the Bangsamoro, who have historically endured political injustice, oppression, and social exclusion. At the same time, it signifies the end of decades of armed struggle and a collective movement towards realizing the promise of just peace in Muslim Mindanao.

Education without prejudice to state-colleges and universities which shall be governed by their respective charter[s].” *Id.*

199. *Id.* §§ 5-6. The Bangsamoro Educational System, which falls under the administration of the Ministry of Basic, Higher, and Technical Education, includes “formal, non-formal, public and private, *vocational*, technical, special education, and *Madaris* educational systems in all levels[,] both public and private[,] ... for basic, higher, and technical education[.]” *Id.* (emphasis supplied).

The same can be said with respect to the special provision²⁰⁰ for *Mujahideens* and *Mujahidats* that was made possible through the BOL and the BARMM-CSC. Such is the beginning of the integration of these former freedom fighters into modern society, particularly through the Bangsamoro Civil Service. More importantly, it is hopefully the end of armed struggle in the BARMM in exchange for the meaningful autonomy and national integration of the Bangsamoro.

Nevertheless, the BOL and the special provision for the *Mujahideens* and *Mujahidats* are mere steps towards the fulfillment of a grander dream of a prosperous and inclusive Philippine state. Further progress can be facilitated through the legal mechanisms instituted by the BOL and the evolving regional laws in the BARMM, both of which operate as catalysts of integration, whether through the BARMM-CSC or other BARMM agencies.

The BOL has granted regional autonomy²⁰¹ and legislative authority²⁰² to the BARMM. This permits the BARMM to exercise a certain degree of flexibility in drafting and implementing a variety of legal permutations that can serve as solutions to the underlying cultural and political ills that plague the BARMM, as well as operate as a potential foundation for a national identity that embraces all Filipinos, including the Bangsamoro.

The Authors believe that the present crop of young lawyers and public servants have the task of ensuring that the BOL lives up to its potential — a mission that will ensure that future generations of Bangsamoro and Filipinos will reap the benefits of the generational and historical struggles that preceded the BOL's enactment and subsequent ratification.

It has been no easy feat navigating the legal and political obstacles that impeded the passage of the BOL, despite the obligation to pass an organic law for Muslim Mindanao being enshrined in the 1987 Constitution.²⁰³ Although this imperative upon Congress is itself contained in the fundamental law, it took more than 30 years and six Presidencies before the Philippine

200. BANGSAMORO CIVIL SERVICE CODE OF 2021, art. 305.

201. *See* Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. V, § 2. The authority afforded by the provision is limited by Section 20, Article X of the 1987 Constitution and by the Bangsamoro Organic Law itself, without prejudice to the President's power of general supervision. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. V, § 2.

202. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. VII, § 3.

203. PHIL. CONST. art. X, § 18.

Government, through the current administration, saw to it that the promise would be fulfilled.

The BOL and this Article are for the Bangsamoro people and their struggle. The Moros had to use the *kris*, then the gun, to attain autonomy. May they find lasting peace — with the pen.