

Autonomy or Secession: Analysis of the Constitutionality of the Bangsamoro Basic Law

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I. INTRODUCTION

For decades, conflicts between the Government of the Philippines (GPH) and Muslim rebels have been rampant in the southern Philippines.¹ This clash of interests in Mindanao is mainly due to the major Muslim groups, such as the Moro Islamic Liberation Front (MILF) and the Moro National Liberation Front (MNLF).² The goals of these groups are rooted from their ancestry and mainly for the purpose of self-determination.³ The aim of the

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1. See CNN Wirestaff, Muslim rebels reach peace deal, *available at* <http://edition.cnn.com/2012/10/07/world/asia/philippines-peace-deal/> (last accessed Feb. 17, 2015).
2. Alan R. Luga, Muslim Insurgency in Mindanao, Philippines (An Unpublished Master of Military Art and Science Thesis) 1, *available at* <http://www.dtic.mil/get-tr-doc/pdf?AD=ADA406868> (last accessed Feb. 17, 2015).
3. Rizal G. Buendia, The State-Moro Armed Conflict in the Philippines: Unresolved National Question or Question of Governance?, *available at* https://eprints.soas.ac.uk/4362/1/AJPS13-state_moro_conflict_in_the_philippines.pdf (last accessed Feb. 17, 2015) [hereinafter Buendia, State-Moro Armed Conflict].

two rebel groups is to attain an independent *Moro* state with power and territory of their own — an autonomous Muslim state.⁴ The violent events that have transpired due to this conflict have also created a negative image of the Mindanao region, as well as its Muslim inhabitants.⁵ In the eyes of the rebels, however, these are means to reclaim what rightfully belongs to them, rooted from their ancestry and historical antecedents.⁶

In 1997, the GPH and MILF began their peace talks.⁷ In October 2012, the Aquino Administration, through its negotiating panel was able to come up with a peace deal with the MILF in Kuala Lumpur, Malaysia.⁸ Soon after, on 27 March 2014, the Comprehensive Agreement on the Bangsamoro (CAB)⁹ was signed at Malacañang in Manila.¹⁰ This agreement was the entry point for the creation of a Bangsamoro autonomous political entity, which would replace the present Autonomous Region in Muslim Mindanao (ARMM) by an enactment of a law by the Congress.¹¹ This bill is known as

4. *Id.*

5. Susan D. Russell, et al., *The Mindanao Conflict and Prospects for Peace in the Southern Philippines*, available at http://www.niu.edu/cseas/current_initiatives/PYLP/MindanaoConflict_Russell.pdf (last accessed Feb. 17, 2015).

6. Buendia, *State-Moro Armed Conflict*, *supra* note 3.

7. United States Institute of Peace, *The Mindanao Peace Talks: Another Opportunity to Resolve the Moro Conflict in the Philippines (A Special Report of the United States Institute of Peace)* 2, available at <http://www.usip.org/sites/default/files/sr131.pdf> (last accessed Feb. 17, 2015).

8. KD P. Suarez, PH govt, MILF reach peace deal, available at <http://www.rappler.com/nation/13750-ph-govt,-milk-reach-agreement-bangsa-moro-soon-on-map> (last accessed Feb. 17, 2015). See Carolyn O. Arguillas, GPH, MILF resume peace talks in KL 12 days before end of 1st quarter, available at http://www.mpc.org.ph/index.php?option=com_content&view=article&id=223&Itemid=1 (last accessed Feb. 17, 2015).

9. See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, *Comprehensive Agreement on the Bangsamoro*, available at <http://pcij.org/blog/wp-content/uploads/2014/03/Comprehensive-Agreement-on-the-Bangsamoro.pdf> (last accessed Feb. 17, 2015) [hereinafter *Comprehensive Agreement on the Bangsamoro*].

10. Kristine Angeli Sabillo, *What is the Comprehensive Agreement on the Bangsamoro?*, PHIL. DAILY INQ., Mar. 26, 2014, available at <http://newsinfo.inquirer.net/589245/what-is-the-comprehensive-agreement-on-the-bangsamoro> (last accessed Feb. 17, 2015).

11. John Carlo Cahinhinan, Congress to receive final BBL draft Wednesday, available at <http://www.sunstar.com.ph/breaking-news/2014/09/08/congress-receive-final-bbl-draft-wednesday-364321> (last accessed Feb. 17, 2015).

the “Bangsamoro Basic Law” (BBL) or H.B. No. 4994,¹² which would govern the creation of the new Muslim autonomous region.¹³

The creation of this new autonomous entity has raised some issues from well-known politicians, as well as former justices. Senator Miriam P. Defensor-Santiago said that the creation of this autonomous political entity is tantamount to a creation of a sub-state, hence, contrary to the Constitution.¹⁴ The peace pact, according to Senator Defensor-Santiago, appears to facilitate the secession of the Bangsamoro as a sub-state.¹⁵ Also, during the Bangsamoro ad hoc committee hearing, former Supreme Court Justice Vicente V. Mendoza questioned H.B. No. 4994 and labelled it as unconstitutional for allowing a dismemberment of the country.¹⁶ Further, it was said that it would be outside the scope of the powers of Congress to enact such law as it defines the proposed Bangsamoro region as the territory of the Bangsamoro people and “a separate part of [the] country.”¹⁷

This issue of dismemberment of the Philippine territory brings into question the constitutionality of the proposed BBL and the power of Congress to enact such a law. Although peace agreements are made to

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12. An Act Providing for the Basic Law for the Bangsamoro and Abolishing the Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao,” and Republic Act No. 6734, Entitled “An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao,” and for Other Purposes, H.B. No. 4994, 16th Cong., 2d Reg. Sess. (2014).
 13. Cahinhinan, *supra* note 11 & Sara Soliven de Guzman, *The proposed Bangsamoro Basic Law*, PHIL. STAR, Nov. 24, 2014, available at <http://www.philstar.com/opinion/2014/11/24/1395125/proposed-bangsamoro-basic-law> (last accessed Feb. 17, 2015).
 14. Andres Calonzo, Miriam: Govt peace deal with MILF violated PHL Constitution, available at <http://www.gmanetwork.com/news/story/355144/news/nation/miriam-govt-peace-deal-with-milf-violates-phl-constitution> (last accessed Feb. 17, 2015).
 15. *Id.*
 16. Xianne Arcangel, Retired SC justices spit on constitutionality of Bangsamoro bill, available at <http://www.gmanetwork.com/news/story/385493/news/nation/retired-sc-justices-split-on-constitutionality-of-bangsamoro-bill> (last accessed Feb. 17, 2015).
 17. Marc Jayson Cayabyab, *2 ex-magistrates clash over Bangsamoro bill's constitutionality*, PHIL. DAILY INQ., Oct. 28, 2014, available at <http://newsinfo.inquirer.net/647404/2-ex-magistrates-clash-over-bangsamoro-bills-constitutionality> (last accessed Feb. 17, 2015).

eliminate violent disputes in the country,¹⁸ the limits to what the government must agree to in terms of negotiating with rebels should be stated.

This Essay seeks to discuss the Bangsamoro peace process and the GPH's resolution to agree to a creation of a new Muslim autonomous region. Whether or not H.B. No. 4994 would be unconstitutional will be discussed, as well as a proper definition of territory and the limitation to an autonomous region without resulting in the dismemberment of the country's territory.

II. THE HISTORY OF THE BANGSAMORO

The creation of the Bangsamoro is a fairly new concept in the peace talks between the GPH and the Muslim rebel groups.¹⁹ Also, there has been no unified entity of Muslims separate from the GPH.²⁰ There has also been a continuous neglect by the GPH of the interests and the development of the Muslims.²¹ However, the “[r]ecent peace initiatives undertaken by the [GPH] through the mediation of foreign governments and concerned non-government organizations [helped] address these issues and [increased] the momentum for stability and development in the war-weary area[,]”²² hence, the proposed creation of the BBL.

To determine the legality of creating the new Muslim autonomous region, it is necessary to first examine the history of the Muslims in the Philippines and their alleged rights over their ancestral lands. Also, an examination of the conflicts between the Muslim groups and the local government in Mindanao will be shown.

18. Nita Yawandarajah & Julian Ouellet, *Peace Agreements*, available at <http://www.beyondintractability.org/essay/structuring-peace-agree> (last accessed Feb. 17, 2015).

19. See Philippine Daily Inquirer, *GRP-ILF draft pact on Bangsamoro homeland*, PHIL. DAILY INQ., Aug. 4, 2008, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080804-152469/GRP-MILF-draft-pact-on-Bangsamoro-homeland> (last accessed Feb. 17, 2015). See also Shyam Tekwani, *Media, Information Revolution, and Terrorism*, in *TERRORISM AND VIOLENCE IN SOUTHEAST ASIA: TRANSNATIONAL CHALLENGES TO STATES* 238 (Paul J. Smith ed., 2005).

20. See Rizal G. Buendia, *Looking into the Future of Moro Self-Determination in the Philippines*, 29 PHIL. POL. SCI. J. 1, 4 (2008) & Maureen Betita, *The “B”-Side: The Bangsamoro Struggle for Freedom*, available at <http://www.theredchronicles.org/#!blank/cpft> (last accessed Feb. 17, 2015).

21. Luga, *supra* note 2, at 32.

22. Lucio Blanco Pitlo III, *The Bangsamoro Problem*, available at <http://www.sharnoffsglobalviews.com/bangsamoro-zamboanga-philippines-186/> (last accessed Feb. 17, 2015).

The etymology of the term “Bangsamoro” is from the Malay word “*bangsa*,” which means “nation, people, or descent group;”²³ and the Spanish word “*moro*” which was originally meant for the natives of Morocco, but were used for Muslim Malay tribes.²⁴

Muslim missionaries first came in to the Philippines in the 13th Century.²⁵ Their arrival in Tawi-Tawi marked the starting point of the conversion to Islam of the native population of Sulu.²⁶ After Tawi-Tawi, the missionaries went to Talipaw and Lamitan in the nearby islands of Sulu and Basilan.²⁷ The natives of Sulu were able to successfully invade several towns in Mindanao.²⁸ However, they were not able to invade Luzon due to the Tagalog kingdom which was also able to repel the Hindus from the Visayas.²⁹ The influence of the intruders left behind the titles of their leaders and families in the Philippines, such as sultan, *raja*, and *datu*.³⁰

The introduction of Islam in the Philippines caused the creation of sultanates, which included the sultanates of Buayan, Maguindanao, and Sulu.³¹ Nevertheless, due to the Spanish and American occupation, the government that was created in the Philippines hindered and caused the separation of the Muslims and the creation of an independent entity.³² The Muslim suddenly became the minority because of the workings of the Spanish, American, and Japanese colonizers.³³ The influence, power, and authority of the Muslims weakened over the years, mainly due to the creation of an independent Philippine state and the subsequent migration of Filipinos who came from the northern parts of the country.³⁴ The land of

23. Rizal G. Buendia, *The GRP-MILF Peace Talks: Quo Vadis, in SOUTHEAST ASIAN AFFAIRS* 2004 220 (K. Kesavapany ed., 2004).

24. Jamail A. Kamlian, *Who are the Moro people?*, PHIL. DAILY INQ., Oct. 20, 2012, available at <http://opinion.inquirer.net/39098/who-are-the-moro-people> (last accessed Feb. 17, 2015).

25. Luga, *supra* note 2, at 2. See ROBERT DAY MCAMIS, *MALAY MUSLIMS: THE HISTORY AND CHALLENGE OF RESURGENT ISLAM IN SOUTHEAST ASIA 18-19* (2002).

26. See generally Hannibal Bara, *The History of the Muslims in the Philippines*, available at <http://www.ncca.gov.ph/about-culture-and-arts/articles-on-c-na/article.php?i=232&igm=4> (last accessed Feb. 17, 2015).

27. MCAMIS, *supra* note 25, at 19. See generally Bara, *supra* note 26.

28. Bara, *supra* note 26.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Kamlian, *supra* note 24 & United States Institute of Peace, *supra* note 7, at 4.

34. Buendia, *State-Moro Armed Conflict*, *supra* note 3, at 31-32.

the Muslims soon became part of the Philippines, and was subjected to the control of the Philippine government after the independence.³⁵

The Muslims' struggle for the right to self-determination led to the creation of an organization motivated by this goal in 1969 by Nurullaji P. Misuari — the MNLF.³⁶ The MNLF is a secessionist political organization that fought against the government to achieve the independence of the Bangsamoro as a separate state.³⁷ To gain control of the various areas in Mindanao, the MNLF continued their pursuit for “liberation” through armed collisions with the government in the 1970s.³⁸

The conflict in Mindanao in 1973 led to injuries and deaths of innocent citizens.³⁹ This also caused prejudice to the image of Mindanao.⁴⁰ On 7 July 1975, former President Ferdinand E. Marcos signed Presidential Decree No. 742⁴¹ which created the central and western Mindanao regions, as well as the Office of the Regional Commissioner (ORC).⁴² On 23 December 1976, the Tripoli Agreement⁴³ was signed by the GPH and the MNLF in Libya.⁴⁴ Then, Presidential Proclamation No. 1628⁴⁵ was signed by former President Marcos on 25 March 1977 which created the Autonomous Region in southern Philippines.⁴⁶

35. United States Institute of Peace, *supra* note 7, at 3-4.

36. See Sultanate of Sulu & North Borneo/Sabah, Short History of the Moro National Liberation Front (MNLF), *available at* <http://www.royalsulu.com/mnlf%20history.html> (last accessed Feb. 17, 2015) & Luga, *supra* note 2, at 11.

37. Luga, *supra* note 2, at 11.

38. Autonomous Region in Muslim Mindanao Office of the Regional Governor's Information and Communication Technology Office, ARMM History, *available at* <http://armm.gov.ph/history/> (last accessed Feb. 17, 2015) [hereinafter ARMM ICTO].

39. *Id.*

40. *Id.*

41. Restructuring the Regional Organization of Mindanao, Basilan, Sulu and Tawi-Tawi, Presidential Decree No. 742 (1975).

42. *Id.* See ARMM ICTO, *supra* note 38.

43. Government of the Republic of the Philippines & the Moro National Liberation Front, The Tripoli Agreement (An Agreement Between the Government of the Philippines (GPH) and the Moro National Liberation Front (MNLF)), *available at* <http://pcdspo.gov.ph/downloads/2012/10/Tripoli-Agreement-December-23-1976.pdf> (last accessed Feb. 17, 2015).

44. ARMM ICTO, *supra* note 38.

45. Office of the President (OP), Declaring Autonomy in Southern Philippines, Proclamation No. 1628 [Proc. No. 1628] (Mar. 25, 1977).

46. *Id.* See ARMM ICTO, *supra* note 38.

However, this agreement entered by the MNLF created a division among the Muslim leaders.⁴⁷ Thus, the MILF was established under the leadership of Salamat Hashim.⁴⁸ The group intends to continue the armed struggle against the government for the self-determination of the Bangsamoro.⁴⁹ The objective of the MILF, similar to the MNLF, is to “establish an independent state and government[,] and implement [the] Shari’ah (Islamic Law).”⁵⁰ Also, the *Qu’an* is the group’s constitution as they “[make] sure that all [their] policies and activities are in conformity with [it.]”⁵¹ Hence, the MILF stresses the role of Islam in its struggle for autonomy and self-determination.⁵²

In 1987, the MNLF signed a peace agreement with the GPH called the Jeddah Accords.⁵³ The MNLF accepted the offer of autonomy, abandoned its goal of independence, and acquiesced to the creation of a Muslim region.⁵⁴ Meanwhile, the MILF continued its refusal to recognize any peace agreement with the GPH.⁵⁵

Moreover, the GPH sought for the creation of the ARMM as enshrined in the 1987 Constitution.⁵⁶ Former President Corazon C. Aquino created a Mindanao Regional Consultative Commission to draft an organic act for the proposed autonomous region.⁵⁷ The following year, in 1988, the organic act

47. MCAMIS, *supra* note 25, at 95. See Paul A. Rodell, *The Philippines and the Challenge of International Terrorism*, in TERRORISM AND VIOLENCE IN SOUTHEAST ASIA: TRANSNATIONAL CHALLENGES TO STATES 128 (Paul Smith ed., 2005).

48. MCAMIS, *supra* note 25, at 95.

49. Buendia, State-Moro Armed Conflict, *supra* note 3.

50. Bio-data of Sheikh Salamat Hashim, available at <https://www.fas.org/irp/world/para/docs/ph2.htm> (last accessed Feb. 17, 2015).

51. *Id.*

52. *Id.* See Rodell, *supra* note 47, at 128.

53. MCAMIS, *supra* note 25, at 98.

54. *Id.*

55. *Id.*

56. Article X, Section 15 of the Constitution provides that —

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

PHIL. CONST. art. X, § 15.

57. MCAMIS, *supra* note 25, at 98.

for the ARMM was completed and submitted to Congress for approval and deliberation.⁵⁸ On 1 August 1989, Republic Act (R.A.) No. 6734⁵⁹ — the Organic Act of ARMM — was finally enacted.⁶⁰ Only four provinces, namely the provinces of Maguindanao, Lanao del Sur, Tawi-Tawi, and Sulu, chose to join the autonomous region through the plebiscite conducted.⁶¹

Consistent with the agreement between the GPH and the MNLF in 1996, former President Gloria M. Macapagal-Arroyo continued with the efforts to maintain peace in Mindanao.⁶² The Arroyo Administration supported the plebiscite for the R.A. No. 9054⁶³ which expanded the area covered by the ARMM.⁶⁴ Due to this, the provinces of Maguindanao, Lanao del Sur, Sulu, Tawi-Tawi, Basilan, and the Islamic City of Marawi now form the ARMM.⁶⁵

58. ARMM ICTO, *supra* note 38.

59. An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989).

60. ARMM ICTO, *supra* note 38.

61. *Id.*

62. *Id.* See MARIE-HELEN MARAS, THE CRC PRESS TERRORISM READER 233 (2014).

63. An Act to Strengthen and Expand the Organic Act of the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled “An Act Providing for the Autonomous Region in Muslim Mindanao,” as Amended, Republic Act No. 9054 (2001).

64. *Id.* § 1. See ARMM ICTO, *supra* note 38.

65. It must be noted that

[v]iolence in Mindanao continued despite the passage of the Organic Act. In 1996, during the term of [former] President Fidel [V.] Ramos, the MNLF and the Philippine government signed a peace agreement that was considered the most comprehensive attempt to end this violence. In accordance with the earlier Tripoli Agreement, it provided that [the] legislative power in the ARMM [—] with the exclusion of issues such as foreign affairs, national security, and defense [—] was to be exercised by a regional legislative assembly. The agreement was to be implemented in two phases. Phase 1 consisted of a three-year transition period and the establishment of the Special Zone of Peace and Development; the Southern Philippine Council for Peace and Development, assisted by the Advisory Council; and the Southern Philippines Development Authority. *Phase 2 involved amending or repealing the Organic Act by requiring a plebiscite to determine the establishment of a new autonomous government and its area of coverage.*

Paula D. Knack, *Legal Framework and land issues in Muslim Mindanao*, in LAND AND POST-CONFLICT PEACEBUILDING 461 (Jon Unruh & Rhodri Williams eds., 2013) (emphasis supplied). See also ARMM ICTO, *supra* note 38.

Notwithstanding the creation of the ARMM and due to the divergences of ideologies with the MNLF, the MILF refused to cooperate and continued their armed movements against the GPH.⁶⁶ It was only on 7 January 1997 that the GPH and the MILF started the peace talks, which primarily concerned the cessation of the armed hostilities and the formation of an agenda for the formal peace talks.⁶⁷ These peace talks revolved around three important issues — security, rehabilitation, and ancestral domain.⁶⁸ The GPH and the MILF eventually signed and implemented agreements concerning security and rehabilitation.⁶⁹ However, the agreement with respect to the ancestral domain was not resolved because of constitutional issues concerning such. The problem was primarily rooted from the MILF's goal of having a separate territory for Muslims in Mindanao.⁷⁰ These peace talks stretched out to more years of finding the middle ground between the parties.

At present, the administration of President Benigno S. Aquino III is in the process of peace negotiations with the MILF for the creation of a new Bangsamoro region within the bounds of the Constitution and the law.⁷¹

However, in response to this, the MNLF created its own “Bangsamoro Republik,” a separate state from the Philippines.⁷² This was officially known

66. UNRUH & WILLIAMS, *supra* note 65, at 461–62.

67. EUROPA PUBLICATIONS, *A POLITICAL CHRONOLOGY OF SOUTH-EAST ASIA AND OCEANIA* 169 (2001).

68. United States Institute of Peace, *supra* note 7, at 3 & Buendia, *State-Moro Armed Conflict*, *supra* note 3.

69. The Implementing Guidelines of the Security Aspect of the Tripoli Agreement was entered into by the parties on 7 August 2001. It “establishes local cease-fire monitoring teams and calls for the formation of monitoring teams from the Organization of the Islamic Conference.” The Implementing Guidelines of the Humanitarian, Rehabilitation and Development Aspects of the Tripoli Peace Agreement, which “affirms the parties’ observance of international humanitarian law and provides guidelines for the rehabilitation and development of areas affected by conflict[,]” was agreed upon on 7 May 2002. United States Institute of Peace, *supra* note 7, at 4. *See also* Office of the Presidential Adviser on the Peace Process (OPAPP), *Signed Agreements*, available at <http://www.opapp.gov.ph/milf/signed-agreements> (last accessed Feb. 17, 2015).

70. *See* United States Institute of Peace, *supra* note 7, at 8–9 & NAHLA YASSINE-HAMDAN & FREDERIC S. PEARSON, *ARAB APPROACHES TO CONFLICT RESOLUTION: MEDIATION, NEGOTIATION AND SETTLEMENT OF POLITICAL DISPUTES* 175 (2014).

71. Carolyn O. Arguillas, ‘Bangsamoro’ to replace ARMM by 2016, available at <http://www.mindanews.com/peace-process/2012/10/07/bangsamoro-to-replace-armm-by-2016/> (last accessed Feb. 17, 2015).

72. *See* Barbara Mae Dacanay, Misuari declares independence of Mindanao, southern Philippines, available at <http://gulfnews.com/news/world/philippines/>

as the “United Federated States of Bangsamoro Republik (UFSBR).”⁷³ Misuari, the head of the MNLF, stated that the group was disappointed with the failure of the GPH to comply with the provisions of their peace agreement signed in 1995.⁷⁴ MNLF leaders were also “threatened of renewed hostilities in the South if the [GPH] were to sign a final agreement with the MILF and continue to ignore the peace pact with the MNLF.”⁷⁵ However, the Bangsamoro Republik was short-lived. As the MNLF was defeated in Zamboanga City,⁷⁶ the Bangsamoro Republik was dissolved, and the MNLF lost control in the territory.⁷⁷

Finally, on 27 March 2014, the CAB was signed by the GPH and the MILF as they finally try to close the peace negotiations that started since 1997.⁷⁸

III. THE BANGSAMORO BASIC LAW

The peace agreement signed on 27 March 2014 could result to the creation of the new Muslim autonomous entity — the Bangsamoro.⁷⁹ This will be created by an enactment of a law by the Congress.⁸⁰ The peace deal would result into a Muslim-ruled region in Mindanao and, at the same time, the termination of the MILF resistance against the government.⁸¹ Also, the

misuari-declares-independence-of-mindanao-southern-philippines-1.1220970 (last accessed Feb. 17, 2015); Roel Pareño, *Nur declares independence of ‘Bangsamoro Republik,’* PHIL. STAR, Aug. 15, 2013, available at <http://www.philstar.com/nation/2013/08/15/1094161/nur-declares-independence-bangsamoro-republik> (last accessed Feb. 17, 2015); & YVONNE YAZBECK HADDAD & JOHN L. ESPOSITO, *ISLAM, GENDER, AND SOCIAL CHANGE* 223 (1998).

73. See generally *Bangsamoro Constitution: Road Map to Independence and National Self-Determination*, available at http://mnlfnct.com/Articles/BYC_23Aug2013_Bangsamoro%20Constitution.htm (last accessed Feb. 17, 2015).

74. Al Jacinto & Ritchie Horario, *MNLF creates own ‘Bangsamoro Republik,’* MANILA TIMES, July 29, 2013, available at <http://www.manilatimes.net/mnlf-creates-own-bangsamoro-republik/24480/> (last accessed Feb. 17, 2015).

75. *Id.*

76. Frances Mangosing, *Palace confirms Zamboanga crisis is over*, PHIL. DAILY INQ., Sep. 28, 2013, available at <http://newsinfo.inquirer.net/496977/palace-confirms-zamboanga-crisis-is-over> (last accessed Feb. 17, 2015).

77. Political Geography Now, *No More Bangsamoro Republik: Philippine Rebel Occupation Defeated*, available at <http://www.polgeonow.com/2013/10/no-more-bangsamoro-republik-philippine.html> (last accessed Feb. 17, 2015).

78. Sabillo, *supra* note 10.

79. Comprehensive Agreement on the Bangsamoro, *supra* note 9.

80. Cahinhinan, *supra* note 11.

81. Sabillo, *supra* note 10.

MILF would have to give up their firearms and weapons to a third party agreed upon by both sides.⁸² In keeping with this, a regional police will be maintained to assure the reduction of the rebel forces and private armies in the region.⁸³

As of this writing, H.B. No. 4994 is currently being deliberated upon by Congress. As expressly indicated in the title of the BBL, it will replace the Organic Act of the ARMM and its supplementary acts.⁸⁴ The BBL creates a new entity with its own form government called the Bangsamoro government.⁸⁵ A Chief Minister shall head the ministerial government of the Bangsamoro,⁸⁶ where voters will elect their leaders from parties and their ministers.⁸⁷ This entity will have powers separate and independent from the national government, such as generation of revenues and utilization of natural resources, among others.⁸⁸

The creation of the new autonomous region will also end the armed conflict with the MILF as the CAB called for the end of any resistance against the GPH.⁸⁹ The MILF also agreed to allow the Philippine National Police (PNP)⁹⁰ and the Armed Forces of the Philippines (AFP)⁹¹ to provide security in the Bangsamoro, while the regional police is yet to be formed.

The first step for the establishment of the Bangsamoro was the creation of the Bangsamoro Transition Commission (BTC), which drafted the initial BBL submitted to Congress.⁹² Once enacted into law, a plebiscite will be held to determine which affected regions in Mindanao would vote for or

82. Alexis Romero, *MILF ready to turn over firearms*, PHIL. STAR, Oct. 9, 2014, available at <http://www.philstar.com/headlines/2014/10/09/1378046/milf-ready-turn-over-firearms> (last accessed Feb. 17, 2015).

83. Yuji Uesugi, *Toward Creating The Bangsamoro Regional Police: A Review of the Recommendations of the ICP*, available at <http://peacebuilding.asia/1739/> (last accessed Feb. 17, 2015).

84. See H.B. No. 4994.

85. H.B. No. 4994, art. VII.

86. *Id.* art. VII, § 3.

87. *Id.* § 5.

88. *Id.* art. V, § 3.

89. See Comprehensive Agreement on the Bangsamoro, *supra* note 9.

90. H.B. No. 4994, art. XI, § 2.

91. *Id.* § 15.

92. OPAPP, *The Bangsamoro Transition Commission submits a working draft of the Bangsamoro Basic Law to the Office of the President*, available at <http://www.opapp.gov.ph/milf/news/bangsamoro-transition-commission-submits-working-draft-bangsamoro-basic-law-office> (last accessed Feb. 17, 2015).

against their inclusion to the Bangsamoro entity.⁹³ The ARMM is “deemed abolished” upon ratification of the BBL.⁹⁴

The creation of the Bangsamoro entity is a key event, not only in the history of the Philippines, but also in the international setting. In fact, it seems that “[f]oreign governments ... [are] more excited about the event, promising development assistance for the process and [to] the Bangsamoro once it is created.”⁹⁵ They also marvel “at the fact that a predominantly Catholic country is giving Muslims autonomy.”⁹⁶

The BBL, however, has received a number of conflicting views from prominent individuals from, the Judiciary, as well as from Congress.⁹⁷ There are also questionable and vague provisions in the proposed law; and some believe that these contravene certain mandates of the Constitution.⁹⁸ In this Essay, the proposed BBL will be analyzed, and the provisions which bring questions to the constitutionality of the law will also be discussed.

IV. ANALYSIS OF THE BANGSAMORO BASIC LAW AND ITS UNCONSTITUTIONAL PROVISIONS

Before the congressional deliberations on the BBL, Senator Defensor-Santiago said that the agreement between the GPH and the MILF is unconstitutional because it would create a region with greater economic and political powers that will replace the ARMM.⁹⁹ She stated that the agreement is tantamount to the consent of the Executive to amend the Constitution as the BBL cannot be properly enacted without such amendment.¹⁰⁰ She further asserted that the agreement entered into by the

93. H.B. No. 4994, art. XV. See generally Ana Marie Pamintuan, *A new deal*, PHIL. STAR, Feb. 3, 2014, available at <http://www.philstar.com/opinion/2014/02/03/1285987/new-deal> (last accessed Feb. 17, 2015).

94. Pamintuan, *supra* note 93.

95. *Id.*

96. *Id.*

97. *Id.*

98. Paolo Romero, *MILF to Congress: Be not afraid of Bangsamoro Law*, PHIL. STAR, Sep. 25, 2014, available at <http://www.philstar.com/headlines/2014/09/25/1372872/milf-congress-be-not-afraid-bangsamoro-law> (last accessed Feb. 17, 2015).

99. TJ Burgonio, *Santiago says she's not out to scuttle Moro deal*, PHIL. DAILY INQ., Apr. 5, 2014, available at <http://newsinfo.inquirer.net/591944/santiago-says-shes-not-out-to-scuttle-moro-deal> (last accessed Feb. 17, 2015).

100. ABS-CBN, *Bangsamoro deal unconstitutional, Miriam says*, available at <http://www.abs-cbnnews.com/nation/04/02/14/bangsamoro-deal-unconstitutional-miriam-says> (last accessed Feb. 17, 2015).

GPH diminishes the sovereignty of the government by merely reserving certain powers to the Central Government.¹⁰¹ She said that

the agreement not only reduces the sovereignty of the Central Government, but also provides that in the future, such sovereign powers as have been reserved may be further increased, provided the Bangsamoro agrees. It will therefore be the Bangsamoro which will determine what should be the remaining sovereign powers of the Central Government[.]¹⁰²

The Constitution, according to Senator Defensor-Santiago, only provides for local autonomy and not for the creation of a separate and distinct government.¹⁰³ She considers the BBL as tantamount to the secession of the Bangsamoro entity from the Philippines.¹⁰⁴

Former Justice Mendoza also questioned the constitutionality of the BBL and the Congress' power to enact such law.¹⁰⁵ He stated that, “[s]uch relationship cannot justify the recognition of the right of the Bangsamoro people to ‘self-determination, to chart their political future’ without impairing the sovereignty and [the] territorial integrity of the Philippines[.]”¹⁰⁶ The BBL’s reference to the Bangsamoro region as a territory and as an ancestral homeland, according to former Justice Mendoza, is highly problematic and unconstitutional because the Constitution dictates that an autonomous region must be part of the Philippine territory.¹⁰⁷ The provisions of the proposed law acknowledge the self-determination of the Bangsamoro people¹⁰⁸ and support the creation of a separate Bangsamoro political entity.¹⁰⁹ However, this political entity, as per former Justice Mendoza, is quite similar to the “associative state” called the Bangsamoro Juridical Entity in the Memorandum of Agreement on Ancestral Domain (MOA-AD) which was struck down by the Supreme Court as unconstitutional in *Province of North Cotabato v. Government of the Republic of*

101. Maila Ager, *Santiago: Bangsamoro deal unconstitutional*, PHIL. DAILY INQ., Apr. 2, 2014, available at <http://newsinfo.inquirer.net/591230/santiago-bangsamoro-deal-unconstitutional> (last accessed Feb. 17, 2015).

102. *Id.*

103. *Id.*

104. *Id.*

105. Paolo Romero, *Ex-SC justice: BBL unconstitutional*, PHIL. STAR, Oct. 29, 2014, available at <http://www.philstar.com/headlines/2014/10/29/1385658/ex-sc-justice-bbl-unconstitutional> (last accessed Feb. 17, 2015).

106. Arcangel, *supra* note 16.

107. *Id.*

108. H.B. No. 4994, pmb.

109. DJ Yap, *Former SC justices differ on Bangsamoro constitutionality*, PHIL. DAILY INQ., Oct. 28, 2014, available at <http://newsinfo.inquirer.net/647399/former-sc-justices-differ-on-bangsamoro-constitutionality> (last accessed Feb. 17, 2015).

the Philippines Peace Panel on Ancestral Domain (GRP).¹¹⁰ Former Justice Mendoza “warned [that] the country might be dismembered as a result of the [BBL]’s provision on territory.”¹¹¹

As a pending bill in Congress, there is a high need for the determination of the constitutionality of certain provisions in the BBL.

The analysis will start with the BBL’s Preamble which states that the Bangsamoro people will have the freedom “to chart their political future through a democratic process that will secure their identity and posterity, and allow for genuine and meaningful self-governance as stipulated under the [CAB.]”¹¹² An examination of the CAB shows that there is the danger that a new state, and not merely an autonomous region, may be created. In fact, in the proposed BBL, the elements of a state are present — namely, people, government, territory, and sovereignty.¹¹³ The Bangsamoro has also been granted all state powers, including police power, taxation, and eminent domain.¹¹⁴

Moreover, as earlier stated, “*bangsa*” is a Malay word referring to “nation” or “people.”¹¹⁵ Hence, translated, “Bangsamoro” could mean “nation of Muslims.” Thus, the danger that the Bangsamoro be viewed as a state or a sub-state of Muslim people cannot be set aside.

Also, in the Preamble, the term “Bangsamoro” people is used, providing for a clear distinction between the Bangsamoro people and the Filipinos. The use of the term “Central Government” brings the question as to whether it refers to the national government as differentiated from the local governments. It further raises the issue that the creation of the Bangsamoro is beyond the power of the Congress to enact as the legislature cannot establish

110. Arcangel, *supra* note 16 & Province of North Cotabato v. Government of the Republic of the Peace Panel on Ancestral Domain (GRP), 568 SCRA 402 (2008).

111. Arcangel, *supra* note 16.

112. H.B. No. 4994, pmbl.

113. The 1933 Montevideo Convention on the Rights and Duties of States provides that a “state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.” Montevideo Convention on the Rights and Duties of the States art. 1, *signed* Dec. 26, 1933, 165 L.N.T.S. 19.

114. See H.B. No. 4994, art. V, § 3.

115. Rigoberto Tiglao, *Bangsamoro bill: have they lost their minds?*, MANILA TIMES, Sep. 11, 2014, available at <http://www.manilatimes.net/bangsamoro-bill-lost-minds/126047/> (last accessed Feb. 17, 2015).

a new political entity vested with powers equal to that of the national government.¹¹⁶

Under Article I, Section 2, of the BBL, “[t]he name of the political entity under this Basic Law shall be the Bangsamoro.”¹¹⁷ It must be stressed, however, that Article X, Section 1 of the Constitution only recognizes that the “territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays[,]” and the “autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.”¹¹⁸ Hence, one can conclude that the BBL goes beyond its bounds and contravenes the Constitution as it mandates constituent units to be under the control of a Bangsamoro government as seen in Article III, Section 6 of the BBL.¹¹⁹

Having the Constitution in mind, the Bangsamoro cannot be considered as a political entity and should remain merely as an autonomous region. Hence, a constitutional amendment would be necessary before the BBL may be entertained.

Article I, Section 3 of the BBL provides that the purpose of the law is to establish a political entity, provide for its basic structure of government in 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.¹²⁰

A plain reading of this Section would lead one to conclude that the BBL grants external self-determination to the Bangsamoro — independent and beyond the jurisdiction of the GPH. This is unequivocally unconstitutional. The Bangsamoro political entity to be created is different from the autonomous region recognized under Article X, Section 15 of the Constitution.¹²¹ In *Basco v. Phil. Amusements and Gaming Corporation*,¹²² the Supreme Court declared that “the principle of local autonomy under the

116. See Arcangel, *supra* note 16

117. H.B. No. 4994, art. I, § 2.

118. PHIL. CONST. art. X, § 1.

119. This provision provides that “[t]he provinces, cities, municipalities, barangays[,] and geographical areas within its territory shall be the constituent units of the Bangsamoro.” H.B. No. 4994, art. III, § 6.

120. *Id.* art. I, § 3.

121. See PHIL. CONST. art. X, § 15.

122. *Basco v. Phil. Amusements and Gaming Corporation*, 197 SCRA 52 (1991).

1987 Constitution simply means ‘decentralization.’ ... It does not make local governments sovereign within the state or an ‘*imperium in imperio*.’”¹²³

In addition, Article II of the BBL is entitled the “Bangsamoro Identity.” Section 1 of this Article provides that the Bangsamoro people are those

who at the time of conquest and colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands including Palawan, and their descendants, whether of mixed or of full blood[.] [They] shall have the right to identify themselves as Bangsamoro by ascription or self-ascription. Spouses and their descendants are classified as Bangsamoro.¹²⁴

This limits those who are part of the Bangsamoro. There is also no distinction between Muslims, and non-Muslims and other indigenous people that do not fall under the definition of “Bangsamoro people.” Hence, a question arises as to the possibility of deprivation of certain rights or discrimination against non-Bangsamoro individuals residing in the Bangsamoro territory. Although there is a provision in the same Article providing for freedom of choice for other indigenous people,¹²⁵ this was copied, however, from the MOA-AD which the Supreme Court declared as unconstitutional. The unconstitutionality is rooted from the vagueness of such freedom of choice.¹²⁶

As to social justice, Article IV, Section 7 of the BBL states —

The Bangsamoro shall establish a government that ensures that every citizen in the Bangsamoro is provided the basic necessities and equal opportunities in life. Social Justice shall be promoted in all phases of development and facets of life within the Bangsamoro.¹²⁷

The use of the term “citizen” in this provision is vague as to what it refers. From a plain reading of the law, the word “citizen” refers to those who fall within the definition of the Bangsamoro people, but such reference was already declared by the Supreme Court as unconstitutional.¹²⁸ So, does the word “citizen” mean a Filipino citizen or a “Bangsamoro citizen?”

The term “citizen” is defined as “a person who, by either birth or naturalization, is a member of a political community, owing allegiance to the

123. *Id.* at 65 (emphasis supplied).

124. H.B. No. 4994, art. II, § 1.

125. This provision states that “freedom of choice of other indigenous people shall be respected.” *Id.* § 2.

126. *See Province of North Cotabato*, 568 SCRA at 443-44.

127. H.B. No. 4994, art. VI, § 7.

128. *See Province of North Cotabato*, 568 SCRA at 522.

community and being entitled to enjoy all its civil rights and protection.”¹²⁹ With this, question arises as to whether allegiance with the Bangsamoro would be no different from the allegiance to the Republic of the Philippines. As the words of the BBL give rise to numerous queries, the vagueness and imprecision of language used in Section 7, among other provisions, bring about the question of constitutionality due to the inadequate use of words.

Further, Article II, Section 3 of the BBL provides that the Bangsamoro Parliament would have its own “official flag, emblem, and anthem[.]”¹³⁰ This creation of the Bangsamoro Parliament is unconstitutional for being contrary to the system of local governments and autonomous regions. Also, providing for a different official flag emblem is a violation of Article XVI, Section 1 of the Constitution.¹³¹ This further contravenes Section 4 of R.A. No. 8491, also known as the Flag and Heraldic Code of the Philippines.¹³²

Territory has also been an issue in the deliberations and negotiations for the creation of the Bangsamoro. It has been a delicate topic as some fear that the establishment of the Bangsamoro would lead to the dismemberment of the Philippine territory. Article III, Section 1 of the BBL provides for the territory of the Bangsamoro, which shall be “the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, and the aerial domain above it.”¹³³ This further states that “[t]he Bangsamoro territory shall remain a part of the Philippines.”¹³⁴

Although the provision states that the Bangsamoro would still remain part of the Philippine territory, it must always be kept in mind that the goal of the Bangsamoro is to create a region including the ancestral domain of the original Muslim settlers. Article III, Sections 2 and 3 of the BBL define with particularity the land territory of the Bangsamoro — the core and the contiguous territory;¹³⁵ while Section 4 of the same Article provides for the

129. BLACK’S LAW DICTIONARY 278 (9th ed. 2009).

130. H.B. No. 4994, art. II, § 3.

131. This Section provides that, “[t]he flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law.” PHIL. CONST. art. XVI, § 1.

132. This Section mandates that, “[t]he flag of the Philippines shall be blue, white[,] and red with an eight-rayed golden-yellow sun and three five-pointed stars, as consecrated and honored by the people.” An Act Prescribing the Code of the National Flag, Anthem, Motto, Coat-of-Arms and Other Heraldic Items and Devices of the Philippines [FLAG AND HERALDIC CODE], Republic Act No. 8491, § 4 (1998).

133. H.B. No. 4994, art. III, § 1.

134. *Id.*

135. These Sections provide —

inland waters of the Bangsamoro.¹³⁶ This should be balanced with the integrity of the Philippine territory which must be respected and always subject to constitutional and statutory limitations. The Constitution provides that the Philippine territory must not be divided nor subjected to the exclusive control of a local government unit or autonomous region. The Author believes that any provision that would define an area as the Bangsamoro territory will always be questioned as to its constitutionality due to the fears of many that it will create a separate and definite territory from the rest of the national territory of the Philippines.

Also, in Article III, the inland waters of the Bangsamoro is defined.¹³⁷ This is a violation of Article I of the Constitution which provides —

Section 2. Core Territory — The core territory of the Bangsamoro shall be composed of:

- (a) the present geographical area of the Autonomous Region in Muslim Mindanao;
- (b) the Municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan, and Tangkal in the province of Lanao del Norte and all other barangays in the Municipalities of Kabacan, Carmen, Aleosan, Pigkawayan, Pikit. and Midsayap that voted for inclusion in the ARMM during the 2001 plebiscite;
- (c) the cities of Cotabato and Isabela; and
- (d) all other contiguous areas where there is resolution of the local government unit or a petition of at least ten percent (10%) of the registered voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro.

In order to ensure the widest acceptability of the Bangsamoro Basic Law in the core areas above-mentioned, a popular ratification shall be conducted among all the Bangsamoro within the areas for their adoption.

Section 3. Contiguous Territory — The areas which are contiguous and outside the core territory may opt at any time to be part of the territory upon petition of at least ten percent (10%) of the registered voters and approved by a majority of qualified votes cast in a plebiscite.

Id. §§ 2-3.

136. It states that “[a]ll inland waters, such as lakes, rivers, river systems, and streams within the Bangsamoro territory shall be part of the Bangsamoro. The preservation and management thereof shall be under the jurisdiction of the Bangsamoro [g]overnment.” *Id.* § 4.

137. It provides that “[a]ll inland waters, such as lakes, rivers, river systems, and streams within the Bangsamoro territory shall be part of the Bangsamoro. The preservation and management thereof shall be under the jurisdiction of the Bangsamoro [g]overnment.” *Id.*

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its *territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.*¹³⁸

The Philippine territory covers all of its internal waters and any part thereof cannot be given to the Bangsamoro government for their exclusive control and jurisdiction. Much like issues concerning land, the division of these waters will expose the Philippines to dismemberment of the national territory. According to Article V, Section 3, Paragraphs 35 and 36 of the BBL, the Bangsamoro government is also given the exclusive power over the “inland waterways” and “inland waters” in its territory.¹³⁹ This deprives the national government jurisdiction over these waters, hence, violates the territorial integrity of the state.

As to the form of the Bangsamoro government, Article IV, Section 2 of the BBL states that the “Bangsamoro government shall be parliamentary.”¹⁴⁰ Also, Section 3 of the same Article provides that the “Bangsamoro [g]overnment shall adopt an electoral system suitable to a ministerial form of government, which shall allow democratic participation, encourage formation of genuinely principled political parties, and ensure accountability.”¹⁴¹ These provisions pose constitutional questions as it plainly implies that the Bangsamoro government will have a different form and system from the Philippine government as provided in the Constitution. The government of the Philippines is a tripartite form of government where the powers of the state are separated into three branches — Legislative, Executive, and Judiciary. It is formed in such a way as to ensure checks and balances in the exercise of powers of each branch and to close the doors for any abuse or graft and corruption.¹⁴²

The BBL also provides for powers to be exercised by the Bangsamoro government. In Article V, Section 1, the BBL enumerates for the reserved powers of the national government.¹⁴³ This provision, however, is highly erroneous as it is tantamount to limiting the powers of the government of the Philippines. In Article V, Sections 1 and 2 the BBL, it was mentioned that the concurrent powers are those which are “shared between the

138. PHIL. CONST. art. I (emphasis supplied).

139. H.B. No. 4994, art. V, § 3 ¶¶ 35-36.

140. *Id.* art. IV, § 2.

141. *Id.* § 3.

142. *See Belgica v. Ochoa, Jr.*, 710 SCRA 1 (2013).

143. H.B. No. 4994, art. V, § 1.

[national] government and the Bangsamoro [g]overnment within the Bangsamoro.”¹⁴⁴ Reading together Section 1 and Section 2 of the same Article, it can be observed that the Bangsamoro government is given a wide array of powers whose limitations are only those reserved to the national government. However, as stated earlier in this Essay, the powers of the national government must not be limited to an enumeration. A reading of the provisions concerning autonomous regions in Article X of the Constitution shows how such powers are permissible to be delegated to autonomous regions.¹⁴⁵ In fact, according to Article X, Section 17 of the Constitution, “[a]ll powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the [n]ational [g]overnment.”¹⁴⁶

The concurrent powers of the Bangsamoro government also include auditing¹⁴⁷ and the civil service.¹⁴⁸ The BBL creates a Bangsamoro auditing body and a Bangsamoro Civil Service.¹⁴⁹ It must be emphasized, however, that as provided for in the Constitution, the Commission on Audit (COA) shall have the “exclusive authority ... to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.”¹⁵⁰ COA is the agency created by the Constitution to audit the funds of the government.¹⁵¹ The powers vested in the COA shall include the power to audit the use of funds and properties by the government and of its subdivisions, even including the Bangsamoro government. It is not within the power of Congress to delegate such function to the Bangsamoro government, through the Bangsamoro auditing body; as such power is vested upon the COA. As for the Bangsamoro Civil Service vis-à-vis the Civil Service Commission (CSC), the latter is the “central personnel agency” of the government.¹⁵² Hence, the Bangsamoro Civil Service is bound by the powers of the CSC and would have to respect any constitutional provision concerning the civil service.

144. *Id.* § 2.

145. *See* PHIL. CONST. art X, §§ 17 & 20.

146. PHIL. CONST. art. X, § 17.

147. H.B. No. 4994, art. V, § 2 (7).

148. *Id.* § 2 (8).

149. *Id.* § 2 (7) & (8).

150. PHIL. CONST. art. IX-D, § 2 (2).

151. PHIL. CONST. art. IX-D, § 2 (1).

152. PHIL. CONST. art. IX-B, § 3.

The most pressing provision of the BBL is Article V, Section 3 of the BBL, which provides for the exclusive powers to be exercised by the Bangsamoro government.¹⁵³ These exclusive powers tend to limit the constitutionally granted powers of the government. Any diminution of the power of the national government can only be done through an amendment of the Constitution. This wide-scale grant of powers to the Bangsamoro not only prejudices the plenary powers of the Congress to legislate but also affects the affairs of the whole state by impairing the inherent powers of the state.

Clearly, the powers given to the Bangsamoro government make it more powerful than the national government, within the Bangsamoro. The BBL provides for concurrent powers of both governments, but at the same time, grants exclusive powers to the Bangsamoro government, making the national government seem inferior to the Bangsamoro government.

Also, the exclusive power to protect and manage the environment within their territory is given to the Bangsamoro government.¹⁵⁴ This is a violation of Article XII, Section 2 of the Constitution which dictates that “[t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.”¹⁵⁵ The Bangsamoro government cannot have an exclusive power over the “[m]anagement, regulation[,] and conservation of all fishery, marine[,] and aquatic resources”¹⁵⁶ within its territory as this power is vested upon the state. Similarly, in Article XIII, Section 13 of the BBL the authority to the “exploration, development, and utilization of mines and minerals in its territory”¹⁵⁷ falls to the Bangsamoro government which contravenes Article X, Section 20, Paragraph 3 of the Constitution.¹⁵⁸ The Constitution also

153. H.B. No. 4994, art. V, § 3.

154. H.B. No. 4994, art. V, § 5 ¶¶ 34 & 37.

155. PHIL. CONST. art. XII, § 2.

156. H.B. No. 4994, art. V, § 5 ¶ 37.

157. *Id.* art. XIII, § 13.

158. This Section enumerates the permissible subjects of the legislative power delegated to the autonomous regions. These are:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and

vested such power to the state and therefore, cannot be delegated to other entities.

Another exclusive power granted to the Bangsamoro government in Article V, Section 3, Paragraph 14 is the power to establish government-owned and/or controlled corporations (GOCCs).¹⁵⁹ It provides that “[t]he Bangsamoro government shall legislate and implement the creation of its own GOCCs in the pursuit of the common good, and subject to economic viability.”¹⁶⁰ However, in Article XII, Section 16 of the Constitution, only Congress has the power and authority to create and establish GOCCs by special charters.¹⁶¹ Thus, Paragraph 14 is a clear contravention of the Constitution.

Section 3, Paragraph 57 of the same Article of the BBL also provides that the “Bangsamoro Parliament may create, divide, merge, abolish[,] or substantially alter boundaries of provinces, cities, municipalities[,] or barangays[.]”¹⁶² This is a manifest violation of the Constitution and runs counter to the settled doctrine in *Sema v. Commission on Elections*,¹⁶³ where the Supreme Court invalidated the creation of the Province of Shariff Kabunsuan. The Supreme Court ruled that the power to create a province or city involves the power to create a legislative district, and only Congress has the power to create or apportion legislative districts, as provided for in the Constitution.¹⁶⁴

It must be noted that the provisions mentioned above are the provisions which undermine the powers of the Legislature. Added to the list is Article VII, Section 8 of the BBL which provides for redistricting of provinces, cities, and municipalities.¹⁶⁵ This Section violates Article VI, Section 5 (4) of

(9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

PHIL. CONST. art. X, § 20.

159. H.B. No. 4994, art. V, § 5 ¶ 14.

160. *Id.*

161. PHIL. CONST. art. XII, § 16.

162. H.B. No. 4994, art. V, § 3 ¶ 57.

163. *Sema v. Commission on Elections*, 558 SCRA 700 (2008).

164. *Id.* at 730. See PHIL. CONST. art. VI, § 5 ¶ 3.

165. H.B. No. 4994, art. VII, § 8. This provides —

The Parliament shall have the power to reconstitute, by law, the parliamentary districts apportioned among the provinces, cities, municipalities, and geographic areas of the Bangsamoro to ensure equitable representation in the Parliament. The redistricting, merging[,] or creation, of parliamentary districts shall be based on the number of inhabitants and additional provinces, cities, municipalities,

the Constitution, which bestows the Congress with the authority to re-apportion legislative districts.¹⁶⁶ This delegation of power to the Bangsamoro Parliament would require an amendment to the Constitution as the latter cannot be overturned by another law.

The Executive branch is also not free from encroachment by the BBL. In Article VI, Section 3 of the BBL, it states that, “[c]onsistent with the principle of autonomy and the asymmetric relation of the [national] [g]overnment and the Bangsamoro [g]overnment, the President shall exercise general supervision over the Bangsamoro [g]overnment to ensure that laws are faithfully executed.”¹⁶⁷

The use of the term “general supervision,” accompanied by the phrase “[c]onsistent with the principle of autonomy and the asymmetric relation[,]” weakens the power of the Executive to control or enforce laws in the Bangsamoro. It basically implies that the President should still respect any action done by the Bangsamoro government and is limited to only supervise such actions.

Finally, the Judiciary will also be affected by Article X of the BBL which provides for the creation of the Bangsamoro Justice System.¹⁶⁸ Article X, Section 2 of the BBL provides that the Shari’ah Justice System shall have jurisdiction over cases involving “persons and family relations, and other civil matters, commercial law, and criminal law.”¹⁶⁹ This provision conflicts with Article X, Section 18 of the Constitution which provides that “[t]he organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.”¹⁷⁰ Plainly, the Constitution does not provide for the inclusion of jurisdiction over criminal and commercial cases. Section 7 of the same Article further undermines the Judiciary and contravenes Article VIII of the Constitution. Such section of the BBL dispossess the Supreme Court of its power to “[r]eview, revise, modify, or affirm on appeal or *certiorari* ...

and geographic areas, which shall become part of the territories of the Bangsamoro [g]overnment.

For the purpose of redistricting, parliamentary districts shall be apportioned based on population and geographical area; Provided that each district shall comprise, as far as practicable, contiguous, compact, and adjacent territory and should have at least a population of [100,000].

Id.

166. PHIL. CONST. art. VI, § 5 (4).

167. H.B. No. 4994, art. VI, § 3.

168. *Id.* art. X.

169. *Id.* § 2.

170. PHIL. CONST. art. X, § 18.

final judgments and orders of lower courts[.]”¹⁷¹ It is no less than the Constitution which dictates that the Supreme Court is the final judge for any justiciable controversy. Only the Congress “shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but [it cannot] deprive the [Supreme Court] of its jurisdiction over cases”¹⁷² provided for in the Constitution.

V. CONCLUSION

The BBL mentions the asymmetric relationship between the national government and the Bangsamoro government. This relationship is quite similar to the MOA-AD’s “associative relationship,” which was declared unconstitutional by the Supreme Court in the *Province of North Cotabato*. The proposed bill has similarities to the provisions of the MOA-AD. It is beyond doubt that in the current draft of the BBL, the Bangsamoro is a superior entity compared to the autonomous region recognized in the Constitution.

The BBL is still riddled with questionable provisions. The issues concerning the provisions are mainly due to the vagueness and imprecision of the language used in the proposed law. It is much recommended that the BBL be fixed by clearly defining the terms that opens it up to different interpretations.

For the current BBL to prosper, the ultimate solution would be a constitutional amendment. Further, the issue of the dismemberment of the Philippine territory would be harder to resolve particularly because the Muslim rebels mainly aim for external self-determination. Finding a middle ground in the peace process is never simple. Hence, the search for peace in Mindanao would not cease by the enactment of the BBL and would remain to be a continuing process. It would take several more months or even years to complete the negotiations and the implementation of the agreement. Thus, the goal of establishing the Bangsamoro in 2016 would not be a walk in the park as there are still a number of issues that need to be resolved.

171. PHIL. CONST. art. VIII, § 5 (2).

172. PHIL. CONST. art. VIII, § 2.