

Islamic Law in the Philippines: Challenges to the Review Powers of the Supreme Court Over Decisions of the *Shari'ah* Courts

*Ayla Herazade E. Salendab**

I. INTRODUCTION.....	515
II. A BRIEF HISTORY OF MUSLIM LAW IN THE PHILIPPINES	518
<i>A. The Politics Behind the Passing of the CMPL</i>	
III. MUSLIM LAW IN THE PHILIPPINES: AN OVERVIEW	528
IV. THE PHILIPPINE <i>SHARI'AH</i> COURT SYSTEM AND THE REVIEW POWERS OF THE SUPREME COURT	
<i>A. Rules of Procedure Governing the Shari'ah Court System</i>	
V. CHALLENGES TO THE REVIEW POWERS OF THE SUPREME COURT.....	538
<i>A. The Limited Competence of the Supreme Court to Adjudicate Muslim Law Cases</i>	
<i>B. Lack of a Fully Functioning Shari'ah Court System Below the Supreme Court</i>	
<i>C. Obsolete and Inadequate Rules of Procedure</i>	
VI. EFFECT: THE BONDAGJY DOCTRINE	554
V. CONCLUSION.....	558

I. INTRODUCTION

Muslim or *Shari'ah*¹ law in the Philippines has existed since the 1200s² and was codified into statute in 1977 in the form of Presidential Decree (P.D.)

* '12 LL.B., San Beda University School of Law. The Author is a Muslim lawyer who hails from the Municipality of Buluan in the Province of Maguindanao. At the time of writing, she was employed as a Court Attorney in the Supreme Court of the Philippines.

Cite as 66 ATENEO L.J. 515 (2021).

1. A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for Its Administration and for Other Purposes [MUSLIM CODE], Presidential Decree No. 1083 (1997).

No. 1083,³ otherwise known as the Code of Muslim Personal Laws of the Philippines (CMPL).⁴ The enactment of this Code was largely motivated by a desire to quell the foreign-supported secessionist movement in Muslim Mindanao.⁵ Instead of establishing genuine recognition of the distinct identity of Filipino-Muslims, however, the final version of the CMPL gave little consideration to the Muslim customs and traditions of the South.⁶ The contents of a mostly procedural initial draft were diluted tremendously in the final version, as seen in the latter's lessened number of administrative provisions.⁷ This resulted in a Code consisting largely of substantive personal laws without much guidance and basis for their proper enforcement.⁸

In the present, substantive Muslim law in the Philippines falls into three types:

- (1) The codified, mainly consisting of the CMPL;⁹
- (2) The uncodified, which is taken from sources of Muslim law such as the *Qur'an*, the *Sunnah*, and foreign Islamic law and jurisprudence;¹⁰ and

Presidential Decree (P.D.) No. 1083 uses the spelling “*Shari’a*.” This Article uses “*Shari’a*” only when referring to the courts in the Code of Muslim Personal Laws of the Philippines (“CMPL”).

2. Matthew Stephens, *Islamic Law in the Philippines: Between Appeasement and Neglect*, at 5, available at https://law.unimelb.edu.au/__data/assets/pdf_file/0011/1547795/Stephens_web2.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/34A4-ZGST>] (citing Vincent J.H. Houben, *Southeast Asia and Islam*, 588 ANNALS AM. ACAD. POL. & SOC. SCI. 149, 161 (2003) & Carmen A. Abubakar, *The Advent and Growth of Islam in the Philippines*, in ISLAM IN SOUTHEAST ASIA: POLITICAL, SOCIAL AND STRATEGIC CHALLENGES FOR THE 21ST CENTURY 48 (K.S. Nathan & Mohammad Hashim Kamali eds., 2005)).
3. MUSLIM CODE.
4. *Id.*
5. Gregory M. Chiarella, *Sources of Law, Sources of Authority: The Failure of the Philippines’ Code of Muslim Personal Laws*, 21 PAC. RIM L. & POL’Y J. 223, 227 (2012) (citing G. Carter Bentley, *Islamic Law in Christian Southeast Asia: The Politics of Establishing Shari-a Courts in the Philippines*, 29 PHIL. STUD. 45, 50-51 (1981) & MUSLIM CODE).
6. See Stephens, *supra* note 2, at 7 & Bentley, *supra* note 5, at 61-62.
7. Bentley, *supra* note 5, at 61-62.
8. *Id.*
9. Chiarella, *supra* note 5, at 227 (citing MUSLIM CODE).

- (3) Local customary law or *adat*,¹¹ which is subject to Constitutional limitations and generally applies only to Muslims in the Philippines.

To settle disputes arising from this complex and broad legal system, there exists a *Shari'a* court system, consisting of the *Shari'a* Circuit Courts (SCCs),¹² the *Shari'a* District Courts (SDCs),¹³ and the *Shari'ah* High Court (SHC).¹⁴ These courts operate within the larger judicial framework of the Philippines, which means that they are subject to the supervision of the Supreme Court, but their powers cannot impair the jurisdiction of the Court under the Constitution.¹⁵

Thus, while the SHC's decisions are expressly made final and executory by Republic Act (R.A.) No. 11054, or the Bangsamoro Organic Law (BOL),¹⁶ those falling within the constitutional jurisdiction of the Supreme Court may still be elevated to the latter for review.

This Article discusses some challenges hampering the review powers of the Supreme Court over decisions of the *Shari'ah* courts in the context of the present Muslim legal and court system in the Philippines. These challenges include the following:

- (1) Limitations of the Supreme Court in adjudicating Muslim law cases;
- (2) The lack of a fully functioning *Shari'ah* court system; and

10. See IZA R. HUSSIN, *THE POLITICS OF ISLAMIC LAW: LOCAL ELITES, COLONIAL AUTHORITY, AND THE MAKING OF THE MUSLIM STATE* 9 (2016).

11. ZACHARY ABUZA, *FORGING PEACE IN SOUTHEAST ASIA: INSURGENCIES, PEACE PROCESSES AND RECONCILIATION* 67 (2016).

12. MUSLIM CODE, art. 137.

13. *Id.*

14. 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 Act for the Autonomous Region in Muslim Mindanao" [Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao], Republic Act No. 11054, art. X, § 7.

15. *Id.*

16. *Id.*

- (3) The obsolete and inadequate rules governing procedure in Muslim law cases.

Moreover, this Article briefly discusses some effects of these lapses, such as the erosion of the Muslim public's faith in the *Shari'ah* legal and judicial system. Another consequence of this gap is the creation of a seemingly inaccurate body of Muslim legal precedent that has become a source of concern for many Muslim law scholars. One such precedent is the *Bondagiy* doctrine,¹⁷ which effectively limits the application of Muslim law to a spouse who had remained a Muslim, in contravention of the CMPL.

The Article then concludes that the problems identified, while not exhaustive, must be addressed to give meaning to and effectively enforce Muslim substantive and procedural law in the Philippines. Most of the solutions to the foregoing problems are largely dependent on the Supreme Court. Thus, the Court and, ultimately, the government must take real action to meet the legitimate struggles of Filipino-Muslims, who have long suffered injustice, neglect, and discrimination in a Catholic-dominated Philippines.

II. A BRIEF HISTORY OF MUSLIM LAW IN THE PHILIPPINES

Islam in the Philippines dates back to pre-colonial times, with the earliest documented Islamic settlement in the country recorded in the late 1200s in Sulu.¹⁸ According to the *Sarsila*¹⁹ of the *Tausugs*,²⁰ an Arabian missionary by the name of Sayyid Abu Bakr was believed to be a descendant of Prophet Muhammad.²¹ He arrived at Buansa, Jolo, where he married the daughter of the *rajah* (local chieftain) and became the first Sultan of Sulu.²² There, Abu

17. *Bondagiy v. Bondagiy*, G.R. No. 140817, 371 SCRA 642, 651 (2001).

18. Stephens, *supra* note 2, at 5 (citing Houben, *supra* note 2, at 161 & Abubakar, *supra* note 2, at 48).

19. SAMUEL K. TAN, A HISTORY OF THE PHILIPPINES 8 (2009). The "*Salsila*" refers to a "written genealogy of the Tausug nobility[,] containing "heroic deeds and significant events[,] written in Arabic. This serves as proof that a person is a descendant of Prophet Muhammad, and may hence claim to be royalty. Rita Tuban, *The Salsila*, MINDANAO F., Volume No. 25, Issue No. 2, at 1.

20. The *Tausugs* are the natives of Jolo, Sulu. TAN, *supra* note 19, at 7.

21. WILLIAM LAROUSSE, A LOCAL CHURCH LIVING FOR DIALOGUE: MUSLIM-CHRISTIAN RELATIONS IN MINDANAO-SULU (PHILIPPINES), 1965-2000 40 (2001).

22. *Id.* & TAN, *supra* note 19, at 42. The first Sultan is referred to as "Sultan Sharif ul Hashim Abubakar." Tuban, *supra* note 19, at 1.

Bakr established *Madrasas* (Islamic schools) and mosques, decreed Islamic laws, and adjudicated cases as well.²³

The influence of Islam and Islamic law in Sulu spread to other islands in the Philippine archipelago.²⁴ Hence, when Spanish colonizers arrived in the 1560s, they gave the “Islamised natives in Manila” the term “Moro”²⁵ because of their observed commonalities with the Moors, the “Muslim people of [m]ixed Arab and Barber descent from Northwest Africa, ... who invaded and occupied Spain in the [8]th century.”²⁶ In 1578, the term was “applied to the Muslim inhabitants of the Southern region of Mindanao and Sulu,” while a majority of the Philippines converted to Christianity.²⁷

Three centuries of Spanish rule saw the spread of Catholicism in the country meet unyielding resistance from Muslims in Mindanao.²⁸ Driven by “both missionary and economic interests[,]” the Spaniards attempted to “colonize both territory and minds”²⁹ in Muslim Mindanao, which,

23. BENSAUDI I. ARABANI, SR., COMMENTARIES ON THE CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES WITH JURISPRUDENCE AND SPECIAL PROCEDURE 246 (2d ed. 2011).

24. See TAN, *supra* note 19, at 41-42.

25. 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 1 & 2-3.

“Although a percentage of the [Muslim inhabitants of Muslim Mindanao] still do not accept the term [(“Moro”)] to describe the people from the Bangsamoro region, it is now a well-established term. *Id.* at 1 (citing Asian Institute of Journalism and Communication, Glossary of Terms, available at http://muslimmindanao.ph/glossary_terms.html (last accessed Nov. 30, 2021) [<https://perma.cc/47SK-YUCT>] (citing Macapado A. Muslim & Rufa Cagoco-Guiam, *Mindanao: Land of Promise*, ACCORD, Issue No. 6, at 15)).

26. Kapahi & Tañada, *supra* note 25, at 1 (citing JAINAL D. RASUL, STILL CHASING THE RAINBOW: SELECTED WRITINGS OF JAINAL D. RASUL, SR. ON FILIPINO MUSLIM POLITICS, HISTORY, AND THE LAW (SHARI’AH) 14 (1999)).

27. Kapahi & Tañada, *supra* note 25, at 1 (citing CESAR ADIB MAJUL, THE CONTEMPORARY MUSLIM MOVEMENT IN THE PHILIPPINES 10 (1985)).

28. Anver M. Emon, *Techniques and Limits of Legal Reasoning in Shari’a Today*, 2 BERKELEY J. MIDDLE E. & ISLAMIC L. 1, 5 (2009) (citing Jeffrey Ayala Milligan, *Teaching Between the Cross and the Crescent Moon: Islamic Identity, Postcoloniality, and Public Education in the Southern Philippines*, 47 COMP. EDUC. REV. 468, 470 (2003)).

29. *Id.*

however, withstood this colonial threat.³⁰ Nevertheless, the hostility of the Spaniards passed to Catholic Filipinos, building a legacy that has lingered and radically dichotomized Philippine culture to this day.³¹

Meanwhile, Islamic law continued to flourish in Mindanao. “In accordance with the tradition of Islam as [practiced] in the Arab[] land[s], the [s]ultans or [r]ajahs, as heads of the Muslim communities[,]” served as “protectors and upholders of the Islamic [L]aw[.]”³² They appointed *qadis* (chief judges) — Islamic law scholars who also served as legislative advisers of the Sultan.³³ While some of the *datus* (local chieftains) were “protectors of customary law[,]” other *datus* were moderators “between customary and the Divine Law,” having enough understanding of Islamic law to harmonize it with local customs and traditions.³⁴

To guide the *qadis*, some aspects of personal laws were codified by the Sultan into the earliest surviving codified Islamic law from the 1850s.³⁵ It was the *Diwan* of the Sultan of Sulu, however, which became widely accepted amongst the *datus* in 1878.³⁶ Meanwhile, “[i]n Maguindanao, the *qadis* were guided by the *Luwaran*,” a code of law that was “compiled in the middle of the 18th century[,]” consisting of translated selections from Arabic books and law manuals that were amended to fit local customs.³⁷ The *Luwaran* “deal[t] mainly with property, slaves, transactions, ... homicide, marriage, divorce, adultery, gifts, inheritance, wills, fines, and punishments[,]” but excluded “other aspects of Islamic law such as rituals and moralities.”³⁸

30. *Id.*

31. Emon, *supra* note 28, at 5 (citing Milligan, *supra* note 28, at 470 & Michael O. Mastura, *Administrative Policies Towards the Muslims in the Philippines: A Study in Historical Continuity and Trends*, in MUSLIM FILIPINO EXPERIENCE: A COLLECTION OF ESSAYS 64-66 (1984)).

32. ARABANI, SR., *supra* note 23, at 247.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. ARABANI, SR., *supra* note 23, at 247-48 (citing NAJEEB SALEEBY, *STUDIES IN MORO HISTORY, LAW, AND RELIGION* 99-104 (1976)).

In 1898, the United States (U.S.) took control of the Philippines from Spain.³⁹ The Americans governed Mindanao as a unit separate from the rest of the Philippines⁴⁰ and sought “to gain a foothold over the region [through] officially-sponsored migration of settlers ... , resulting in a significant decline in the number of Muslims [in the region].”⁴¹

Unlike that of the Spaniards, American policy was largely secular and “guaranteed freedom of religious profession, protection of religious customs, and respect for Muslim leaders as ecclesiastics.”⁴² Nevertheless, it was during this period that the powers of the *sultans* and *datus* significantly waned.⁴³ The Americans entered into various agreements with the Sulu Sultanate, including the 1899 Bates Treaty, which ceded to the U.S. sovereignty over Sulu dominions.⁴⁴ However, differences in construing these agreements led the *sultans* and *datus* to continue adjudicating disputes, which the Americans regarded as breach of their contracts.⁴⁵

In 1915, more than a decade after the abrogation of the Bates Treaty by the U.S. Congress in 1904, Deputy Governor Frank Carpenter concluded an agreement with the *Sultan* of Sulu, subtitled “Being the Complete Renunciation by the (*Sultan* of Sulu) of [H]is Pretensions to Sovereignty and a Definition of [H]is Status,”⁴⁶ which then “ceded, for all time, all sovereign

39. Treaty of Peace Between the United States of America and the Kingdom of Spain, U.S.-Spain, Dec. 10, 1898, 30 Stat. 1754.

40. See generally ARABANI, SR., *supra* note 23, at 248-49.

41. Emon, *supra* note 28, at 6.

42. Bentley, *supra* note 5, at 46 (citing CESAR ADIB MAJUL, MUSLIMS IN THE PHILIPPINES 385 (1973); MICHAEL O. MASTURA, ADMINISTRATIVE POLICIES TOWARDS THE MUSLIMS IN THE PHILIPPINES: A STUDY IN HISTORICAL CONTINUITY AND TRENDS 5 (1976); & PETER G. GOWING, MUSLIM FILIPINOS: HERITAGE AND HORIZON (1979)).

43. See generally Charles F. Howlett, *Bates Treaty*, in THE ENCYCLOPEDIA OF THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS 48-49 (Spencer C. Tucker ed., 2009).

44. Bentley, *supra* note 5, at 46 (citing PETER G. GOWING, MANDATE IN MOROLAND: THE AMERICAN GOVERNMENT OF MUSLIM FILIPINOS, 1899-1920 348-49 (1977)).

45. Bentley, *supra* note 5, at 46 (citing MELVIN MEDNICK, ENCAMPMENT OF THE LAKE: THE SOCIAL ORGANIZATION OF A MOSLEM-PHILIPPINE (MORO) PEOPLE (1965)).

46. Memorandum Agreement Between the Governor-General of the Philippine Islands and the Sultan of Sulu, *available at*

rights to the [U.S.] and its officials, ‘including the adjudication by government courts or its other duly authorized officers of all civil and criminal cases falling within the laws and orders of the government.’”⁴⁷ However, the sporadic reemergence of “religious” courts remained a thorn in the side of the American judiciary around the Muslim regions and again in Sulu, especially in the 1930s.⁴⁸

Meanwhile, Filipino officials shared the colonial objective of “a single body of law for all citizens.”⁴⁹ Referring to the issue of religious courts, Commonwealth President Manuel Quezon was quoted saying —

These *datus* and *sultans* should never be allowed to have anything to do with functions that are official. They should be heard exactly and precisely as every other citizen has the right to be heard on matters affecting the nation, his province, his municipality, or his district. Their help should be sought no more than the help of any other citizen in any other part of the Philippines is sought, if and when the services of such citizen may be needed. By this, ... nothing must be done by this Government or its officials that would give the impression that men without official responsibilities and powers may exercise any authority or intervene with authority on governmental or administrative affairs of the nation, the province, the municipality[,] or the district.⁵⁰

Despite the goal of establishing a unified law, some accommodations and concessions were still made. For example, in 1903, the American government attempted to study the various local laws, with the end in view

<https://www.officialgazette.gov.ph/1915/03/22/philippine-claim-to-north-borneo-vol-i-memorandum-agreement-between-the-governor-general-of-the-philippine-islands-and-the-sultan-of-sulu> (last accessed Nov. 30, 2021) [<https://perma.cc/U49P-BN55>].

47. Bentley, *supra* note 5, at 46 (citing WILLIAM CAMERON FORBES, *THE PHILIPPINE ISLANDS* 472-74 (1928)).

48. Bentley, *supra* note 5, at 47 (citing Ralph Benjamin Thomas, *Muslim But Filipino: The Integration of Philippine Muslims, 1917-1946* (1971) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with the University of Pennsylvania Library)).

49. Bentley, *supra* note 5, at 47.

50. Office of the President, Memorandum for the Secretary of the Interior: Administration of Affairs in Mindanao, *available at* <https://www.officialgazette.gov.ph/1937/09/20/memorandum-for-the-secretary-of-the-interior-administration-of-affairs-in-mindanao> (last accessed Nov. 30, 2021) [<https://perma.cc/62ZD-5ZSX>].

of a unified code that accommodated the customary laws of Muslims.⁵¹ However, they found “nothing ... worthy of codification or imitation.”⁵² Nevertheless, some statutes were eventually passed acknowledging the distinct identity of Muslim Filipinos, including one which recognized divorce among Muslims, and another on mixed marriages.⁵³ A significant setback, however, were sunset clauses providing operation for only 20 years.⁵⁴ These limited time periods were “introduced on the assumption” that distinct Muslim laws and practices “would eventually be killed off by policies of integration and assimilation.”⁵⁵

Philippine independence in 1946 did little to integrate Muslims in Mindanao, who took an increasingly hostile stance against the government.⁵⁶ “Most post[-]war Philippine policies toward[s] Muslims [turned to] integrating them through education, proceeding on the liberal assumption that if Muslims could be educated to think like other Filipinos, then persistent law and order problems would gradually disappear.”⁵⁷ The government likewise promoted vigorously “Christian settlement into Mindanao[,]” which saw a major drop in the Muslim population from 1903 to the succeeding century.⁵⁸

In general, government assimilation policies were met with stiff resistance.⁵⁹ Though there were changes in many aspects of the cultures of Muslim Filipinos, their independent Islamic identities remained.⁶⁰ Faith was

51. ARABANI, SR. *supra* note 23, at 248.

52. *Id.*

53. *Id.* at 249. “Mixed marriages” refer to marriages between Muslim males and non-Muslim females. *Id.*

54. *Id.* at 249 (citing An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 78, para. 2 (1949)).

55. Stephens, *supra* note 2, at 6 (citing Bentley, *supra* note 5, at 47).

56. See generally SALAH JUBAIR, BANGSAMORO, A NATION UNDER ENDLESS TYRANNY 131-43 (1999).

57. Bentley, *supra* note 5, at 49 (citing LEOTHINY CLAVEL, THEY ARE ALSO FILIPINOS: TEN YEARS WITH THE CULTURAL MINORITIES (1969)).

58. Stephens, *supra* note 2, at 6 (citing Human Development Network, Philippine Human Development Report 2005, at 29, available at <https://hdr.undp.org/system/files/documents/philippines2005enpdf.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/LNK4-KNDA>]).

59. Bentley, *supra* note 5, at 48.

60. *Id.*

“a galvanizing force” and a catalyst of organization for Filipino Muslims that “defined their identity[] and determined their collective interests.”⁶¹ This “symbol of identity” transcended “regional, ethnic, and linguistic affiliations to situate Muslim Filipinos politically and socially” within a primarily Catholic nation.⁶² Islam thus became an “acknowledgement of one’s marginalization from [the] mainstream.”⁶³

Islam moreover bridged “the larger Islamic Malay and Arab worlds.”⁶⁴ These linkages between Muslim Filipinos and international Islam gave “the major Islamic [powers] more knowledge and greater interest in the fate of their Philippine coreligionists.”⁶⁵

The sanctity of Islamic law [was] a crucial element of Philippine Muslim identity throughout the colonial and postcolonial periods. [To Muslims then, t]he exceptional nature of Islamic inclusions in Philippine law [reflected] ... the ultimate government goal of eradicating Islam entirely. As Islamic consciousness [grew], the unity of the [*shari’ah*] (the ‘beaten path’), the Islamic revealed law, and its expression through [*fiqh*] (‘[Islamic] jurisprudence’), [became] much better known to Filipino Muslims.⁶⁶

In the 1960s, spurred by poverty, political marginalization, the government-sponsored migration of Christians into Muslim Mindanao, and growing Islamic revivalism in the international scene, an organized Muslim separatist movement emerged with support from neighboring Islamic states.⁶⁷ This was further exacerbated by the declaration of Martial Law by President Ferdinand Marcos, Sr. in 1972.⁶⁸

Faced with the “Muslim problem,” the government adopted a policy that oscillated among military action, disastrous attempts at assimilation and

61. Emon, *supra* note 28, at 6.

62. *Id.* at 7.

63. *Id.* at 7 (citing Milligan, *supra* note 28, at 473 & 475).

64. Bentley, *supra* note 5, at 48.

65. *Id.* at 49.

66. *Id.* at 48 (citing Cesar Adib Majul, *The General Nature of Islamic Law and Its Application in the Philippines*, 52 PHIL. L.J. 382-83 (1977)).

67. 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 38-39 (Bobby M. Tuazon ed., 2008).

68. See JUBAIR, *supra* note 56, at 157.

integration, and peace negotiations and accommodation.⁶⁹ This included passing laws aimed at recognizing the distinct Bangsamoro identity,⁷⁰ such as those which created the Autonomous Region in Muslim Mindanao (ARMM)⁷¹ and its successor, the present Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).⁷² However, the first significant statutory concession was P.D. No. 1083,⁷³ or the Code of Muslim Personal Laws of the Philippines, which was passed in 1977 under the regime of President Marcos, Sr. It was through the CMPL that Muslim or *Shari'ah* laws were first codified and recognized in the Philippines.⁷⁴

A. The Politics Behind the Passing of the CMPL

While an undoubtedly progressive step towards integrating and assimilating Muslim Filipinos into a Christian-dominated Philippines, the CMPL has been criticized as being inadequate in substance and enforcement.⁷⁵ This is largely due to motives behind its creation and the “convoluted process” through which it has found its present form.⁷⁶

G. Carter Bentley painted a backdrop of the CMPL’s enactment, citing Dean Cesar Majul’s description of the “Muslim problem” in the Philippines in the 1970s.⁷⁷ This included problems of peace and order; integration; prejudice or indifference against Muslims; and foreign involvement in the

69. *See generally* Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), 568 SCRA 402, 562–68 (2008) (C.J. Puno, separate concurring opinion).

70. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. II, § 1. The “Bangsamoro” are “[t]hose who, at the advent of the Spanish colonization, were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands, whether of mixed or of full blood, [including] ... their spouses and descendants[.]” *Id.*

71. An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989) (repealed in 2018).

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

73. MUSLIM CODE.

74. *See* Chiarella, *supra* note 5, at 227 (citing Bentley, *supra* note 5, at 50–51 & MUSLIM CODE).

75. *See, e.g.*, Chiarella, *supra* note 5, at 229–44.

76. *See* Stephens, *supra* note 2, at 7 & Bentley, *supra* note 5, at 45.

77. Bentley, *supra* note 5, at 50 (citing Cesar Adib Majul, *The Muslim Problem in the Philippines*, Remarks at the Cultural Center, Spanish Embassy (Aug. 16, 1975)).

Mindanao armed conflict.⁷⁸ Muslim leaders argued that codifying and incorporating Islamic law into the Philippine legal system could be a progressive force towards addressing these problems.⁷⁹

On the government's part, the primordial goal was to undermine legal basis for foreign aid to secessionist movements in Mindanao through a display of concern for Muslim rights.⁸⁰ Bentley elucidated —

The Philippines had already become embroiled with Malaysia over claims to Sabah. The Philippine government was accused of having trained an invasion force of Philippine Muslims, almost all of whom were killed when they supposedly refused to fight their coreligionists. Both these events inflamed Philippine and foreign Muslims since they were never fully explained. Core cadres for what became the Moro National Liberation Front (MNLF) received their initial guerilla training in Malaysia in 1969-70. As the conflict mounted, representatives of Islamic nations (especially Kuwait and Libya) denounced the Philippine government's 'campaign of genocide' against its Muslim citizens. The image of the fanatical Muslim '*juramentado*' has a long tradition in the Christian Philippines and the prospect of a strong secessionist movement well[-]armed and financed by Arab oil profits did not appeal to the government. Added to this was the country's dependence on foreign oil and the possible economic sanctions middle Eastern countries, and Malaysia and Indonesia, might impose. Given Philippine dependence on the United States for economic and especially military support, and the inevitably negative reception of the martial law declaration in the [U.S.], any additional evidence of minority oppression had to be avoided. The government needed a dramatic demonstration of its constructive concern for Philippine Muslims. A Muslim law code [fit] the requirements admirably.⁸¹

Hence, the enactment of the CMPL was largely motivated by a desire to assuage foreign concern and involvement in the Bangsamoro problem, rather than one to address the problem itself. This led to the enactment of a final draft of the CMPL that took little consideration of Muslim ideals, customs, and traditions from the South,⁸² having been written by government officials from the center on the basis of experiences of progressive Muslims in

78. *Id.*

79. Bentley, *supra* note 5, at 50-51.

80. *Id.* at 53.

81. *Id.* at 52-53 (citing LELA GARNER NOBLE, PHILIPPINE POLICY TOWARD SABAH: A CLAIM TO INDEPENDENCE (1977) & MAJUL, *supra* note 42, at 353-60).

82. Bentley, *supra* note 5, at 62.

Manila.⁸³ The CMPL, as enacted, is an extremely diluted version of its first draft, which was drawn from months of field research in Muslim Mindanao by a staff consisting mostly of Muslims from Mindanao.⁸⁴ According to the report to the President which accompanied the final draft in 1975, five principles guided its preparation:

- (1) Of the Islamic Legal System, which is considered a complete system comprising civil, criminal, commercial, political, international, and purely religious laws, only those that are fundamentally personal in nature were to be codified;
- (2) Of the personal laws, those relative to acts the practice of which are absolute duties under Muslim law were to be included, and those which according to Muslim law are forbidden and demand unconditional punishment were to remain prohibited;
- (3) Where the provisions of the law on certain subjects were too complicated for a Code, only the fundamental principles were to be stated, and the details left to the judges for proper implementation;
- (4) No precept, fundamental though it might be, was to be incorporated in the Code where it appeared to be contrary to the principles of the Constitution of the Philippines; and
- (5) No precept was to be included unless it was based on the principles of Islamic Law, as expounded by the four orthodox (*Sunni*) schools.⁸⁵

Hence, the result was an overhaul of the original draft code that dispensed with most administrative provisions.⁸⁶ While initially procedural, the final Code was substantive, and “[w]here the draft code created a semi-autonomous judicial structure, the final [C]ode create[d] a small[,] easily[-]controlled compartment within the existing Philippine judicial system.”⁸⁷ Of the Code’s five books that dealt with “general provisions, persons and family relations, succession, adjudication and settlement of disputes and

83. *Id.* at 60.

84. *Id.* at 54-56.

85. *Id.* at 61 (citing UNIVERSITY OF THE PHILIPPINES LAW CENTER, CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES 63 (1977) & Majul, *The General Nature of Islamic Law and Its Application in the Philippines*, *supra* note 66).

86. Bentley, *supra* note 5, at 61-62 (citing UNIVERSITY OF THE PHILIPPINES LAW CENTER, *supra* note 85, at 64).

87. Bentley, *supra* note 5, at 61-62.

rendition of legal opinions, and miscellaneous and transitory provisions[,] only the fourth book [took] procedural matters into consideration.”⁸⁸

President Marcos, Sr. received the final version on 29 August 1975.⁸⁹ However, demonstrating political motivations, the draft was not promulgated into law until the signing of the Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) in 1976.⁹⁰ “In compliance with [the] provisions of that peace accord,” President Marcos, Sr. issued P.D. No. 1083, which promulgated the CMPL on 4 February 1977.⁹¹

III. MUSLIM LAW IN THE PHILIPPINES: AN OVERVIEW

The CMPL remains to be the main source of substantive Muslim law in the Philippines. “More than two-thirds of [its] 190 articles consist of [] specific statutory provisions” on personal laws.⁹² As reported by the review commission to President Marcos, Sr., although the Islamic Legal System is “a complete system [of] civil, criminal, commercial, political, international, and purely religious laws, only those that are fundamentally personal in nature were ... codified[.]”⁹³

Although substantially “watered down” from a first draft that was more faithful to the traditions and customs of Muslim Mindanao,⁹⁴ the CMPL still represented a marked departure from the Philippine Family Code, which

88. *Id.* at 62.

89. *Id.* at 63.

90. *Id.* See also Government of the Republic of the Philippines & the Moro National Liberation Front, The 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, 2022) [<https://perma.cc/89UT-QFLL>] [hereinafter Tripoli Agreement].

91. Bentley, *supra* note 5, at 63.

92. Chiarella, *supra* note 5, at 236.

93. Bentley, *supra* note 5, at 61 (citing UNIVERSITY OF THE PHILIPPINES LAW CENTER, *supra* note 85, at 63 & Majul, *The General Nature of Islamic Law and Its Application in the Philippines*, *supra* note 66).

94. Bentley, *supra* note 5, at 61-62.

was “undeniably influenced by the Catholic majority.”⁹⁵ Several substantial distinctions are on the aspects of divorce, legal age of marriage, inheritance, and polygyny, which is allowed under the CMPL.⁹⁶

The CMPL covers Persons and Family Relations,⁹⁷ which consists of titles on Civil Personality;⁹⁸ Marriage and Divorce;⁹⁹ Paternity and Filiation,¹⁰⁰ Support,¹⁰¹ Parental Authority,¹⁰² and Civil Registry,¹⁰³ with a separate book for Succession.¹⁰⁴ It also punishes special offenses relating to its personal law provisions,¹⁰⁵ with the gravest penalty being *arresto mayor*.¹⁰⁶

Apart from the express provisions of the CMPL, the Code likewise “[r]ecognizes the legal system of [] Muslims in the Philippines as part of the law of the land[.]”¹⁰⁷ “Muslim law,” as defined in the Code, “refers to all the ordinances and regulations governing Muslims[,] as found principally in the *Qur’an* and the *Hadith*[.]”¹⁰⁸ while “Muslim Personal Law” refers to

95. Emon, *supra* note 28, at 8.

96. MUSLIM CODE, arts. 14, 16, 27, & 45; & bk. III, tit. I.

97. *Id.* bk. II.

98. *Id.* bk. II, tit. I.

99. *Id.* bk. II, tit. II.

100. *Id.* bk. II, tit. III.

101. *Id.* bk. II, tit. IV.

102. MUSLIM CODE, bk. II, tit. V.

103. *Id.* bk. II, tit. VI.

104. *Id.* bk. III.

105. *Id.* bk. V, tit. V, ch. II.

106. *Id.* art. 183. For offenses relative to subsequent marriage, divorce, and revocation of divorce, the penalty of *arresto mayor* is imprisonment for one month and one day to six months. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815, art. 27 (1930).

107. MUSLIM CODE, art. 2 (a).

108. *Id.* art. 7 (h). The *Qu’ran* is the “book composed of writings accepted by Muslims as revelations made to Mohammad by Allah and the divinely authorized basis for the religious, social, civil, commercial, military, and legal regulations of the Islamic world[.]” Islamic Da’wah Council of the Philippines, Inc. v. Office of the Executive Secretary, G.R. No. 153888, 405 SCRA 497, 499 n. 3 (2003) (citing WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1255 (1986)).

The *Hadith* is the “[s]aying and the [c]onduct of the Prophet [Muhammad].” MVRs Publications, Inc. v. Islamic Da’wah Council of the Philippines, Inc.,

those personal laws provided for in the CMPL.¹⁰⁹ Hence, it is apparent that the CMPL, in referring to “Muslim law,” encompasses not only its own express provisions, but also the general doctrines and principles of Islamic law, to the extent that the latter are reconcilable with the Constitution, the CMPL, public order, public policy, and public interest.¹¹⁰ In the words of one of the CMPL’s drafters, “[a]s a result of its recognition as part of the law of the land, the Filipino Muslim’s entire legal system, not just what are known as personal laws, ... may now be enforced, like other Philippine [l]aws, with full sanction of the [S]tate.”¹¹¹

Finally, the CMPL prescribes a third source of Muslim law in the Philippines — customary law or *ada*,¹¹² which similarly cannot contravene the Constitution, the CMPL, Muslim law, public order, public policy, or public interest.¹¹³ *Ada* or *adat* is the system of customary laws predating Islam in the Philippines which local tribes combined with Islam, “resulting in a system of law that is neither entirely Islamic nor entirely customary.”¹¹⁴ While *ada* can vary among regions, it generally prescribes “community conduct and individual behavior. Despite geographic variations, most Filipino Muslims share a strong concept of *ada*[].”¹¹⁵

Apart from the CMPL, other codified Muslim laws are those enacted by the legislative bodies of the autonomous region in Muslim Mindanao. R.A. No. 11054, or the Bangsamoro Organic Law,¹¹⁶ gives the legislative body of

G.R. No. 135306, 396 SCRA 210, 274 (2003) (J. Austria-Martinez, dissenting opinion).

109. MUSLIM CODE, art. 7 (i).

110. *Id.* art. 6 (1).

111. ARABANI, SR., *supra* note 23, at 253 (citing ESTEBAN B. BAUTISTA, AN INTRODUCTION TO THE CODE OF MUSLIM PERSONAL LAWS 3 (1977)).

112. MUSLIM CODE, art. 7 (b).

113. *Id.* art. 5.

114. Chiarella, *supra* note 5, at 236-37 (citing Macapanton Y. Abbas, Jr., *The Historical, Political, Social and Legal Justification for the Codification and Enforcement of Muslim Laws and Adat Laws*, in ON THE CODIFICATION OF MUSLIM CUSTOMARY (ADAT) AND QURANIC LAWS 163 & 182 (1976)).

115. Chiarella, *supra* note 5, at 237 (citing Salipada S. Tamano, *Mindanao State University: Its Role in the Development of the Study of Adat Laws*, in ON THE CODIFICATION OF MUSLIM CUSTOMARY (ADAT) AND QURANIC LAWS 16 (1976)).

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

the Bangsamoro Autonomous Region in Muslim Mindanao — the Parliament — the power to enact:

- (1) “[L]aws on personal, family, and property law jurisdiction[;]”¹¹⁷
- (2) “Laws governing commercial and other civil actions not provided for [in the CMPL;]”¹¹⁸ and
- (3) Laws governing “criminal jurisdiction on minor offenses punishable by *arresto menor* or *ta’zir*[.]”¹¹⁹

The BOL’s predecessors, R.A. No. 6734¹²⁰ and R.A. No. 9054,¹²¹ collectively referred to herein as the ARMM laws, provided for the “codification of indigenous laws[, as well as the] compilation of customary laws” or *ada* in the Autonomous Region in Muslim Mindanao.¹²² The ARMM’s legislative body — the Regional Legislative Assembly (RLA) — was likewise empowered to “formulate a *Shari’ah* legal system including [] criminal [laws],” and to “legislate on matters covered by the *Shari’ah*[.]”

117. *Id.* art. X, § 4, para. 1.

118. *Id.* art. X, § 4, para. 2.

119. *Id.* *Arresto menor* entails imprisonment for one day to 30 days. REV. PENAL CODE, art. 27.

Supreme Court of the Philippines & United Nations Development Programme, Institutional Strengthening of the Shari’a Justice System (Phase 1): Draft Final Report (June 2004), available at <https://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2012/12/sharia-final-report1.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/WN2K-A37T>]. *Tazir* crimes are described as

‘lesser crimes’ under the *Qur’an*. [They] are punished when they harm societal or public interest, the assumption being that they will be able to prevent graver offenses from happening if offenders are punished. Historically, *Tazir* crimes are not ... codified. Judges are given freedom to choose from a number of punishments, ... includ[ing] counseling, fines, [and] censure[.]

Supreme Court of the Philippines & United Nations Development Programme, *supra* note 119, ¶ 3.1.30.

120. Republic Act No. 6734.

121. An Act to Strengthen and Expand the Organic Act for 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) (repealed in 2018).

122. Republic Act No. 6734, art. IX, § 16 & Republic Act No. 9054, art. VIII, § 21.

subject to constitutional and legal limitations.¹²³ While the BOL expressly repealed the law creating the ARMM,¹²⁴ subsisting local statutes enacted by the ARMM-RLA pursuant to Republic Act No. 6734 remain valid, unless inconsistent with the BOL or unless repealed by the BARMM Parliament.¹²⁵

Hence, while the Article initially listed three types of Muslim law in the Philippines, the Author posits that it actually comprises four kinds:

- (1) Codified Muslim law, principally consisting of the CMPL and the local statutes of the BARMM;
- (2) Uncodified Muslim law, as interpreted by the four orthodox (*Sunni*) schools;
- (3) *Madhahibs* (orthodox Muslim schools of law);¹²⁶ and
- (4) Customary law or *ada*, codified or uncodified.¹²⁷

Muslim law and *ada* not specifically expressed in the CMPL need to be “proven in evidence as a fact.”¹²⁸ Moreover, where the Code and other Muslim laws are vague, courts are to consider “the primary sources of Muslim law.”¹²⁹ The BOL identifies the principal sources as the *Qur’an* and the *Sunnah* (“traditions of [the] Prophet Muhammad SAW”), while the secondary sources listed thereunder include the *Ijma* (Consensus) and *Qiyas* (Analogy).¹³⁰ “Standard treatises and works on Muslim law and jurisprudence” are likewise given persuasive weight.¹³¹ These works include the “vast libraries” produced over the centuries by the four *madhahibs*.¹³²

123. Republic Act No. 9054, art. III, § 5, para 2 & art. IV, § 3 (e)

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

125. *Id.* art. XVIII, § 1.

126. MUSLIM CODE, art. 6.

127. *Id.* arts. 5 & 7 (b).

128. *Id.* art. 5.

129. *Id.* art. 4 (1).

130. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 3.

131. MUSLIM CODE, art. 4 (2).

132. Chiarella, *supra* note 5, at 236 (citing Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari’a Into Egyptian Constitutional Law*, STUD. ISLAMIC L. & SOC’Y, Volume No. 19, at 13-18).

There are two important characteristics of substantive Muslim law in the Philippines. *First*, it “applies only to Muslims” and cannot prejudice, nor be construed to operate to the prejudice, of non-Muslims.¹³³ It may, however, apply to a non-Muslim in two instances:

- (1) “[I]f the non-Muslim voluntarily submits to the jurisdiction of the *Shari’ah* court[.]”¹³⁴ and
- (2) In the case of a non-Muslim woman who marries a Muslim man, and the marriage is solemnized within the Philippines under Muslim laws, as regards matters arising from such marriage and its incidents.¹³⁵

Second, the laws duly passed by the ARMM-RLA and by the BARMM Parliament¹³⁶ apply only to the inhabitants of the territorial jurisdiction of the BARMM.¹³⁷

133. Chiarella, *supra* note 5, at 236 (citing MUSLIM CODE, art. 3 (3) & *Bondagiy*, 371 SCRA at 651) & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 1, paras. 4 & 6.

134. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 1, para. 4.

135. The incidents of marriage and divorce include “paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (*mahr*), betrothal, breach of contract to marry, solemnization and registration of marriage and divorce, rights and obligations between husband and wife, parental authority, and [] property relations[.]” MUSLIM CODE, art. 13 (3).

136. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. VII, § 5.

137. See Chiarella, *supra* note 5, at 234 (citing An Act Establishing the *Shari’a* District Court System in the Autonomous Region in Muslim Mindanao (ARMM) and in the Areas Outside the Said Autonomous Region, Amending for the Purpose Presidential Decree No. 1083 Otherwise Known as the Muslim Code of Personal Laws of the Philippines, Providing Funds Therefor and for Other Purposes, S.B. No. 1346, § 1, 15th Cong., 1st Reg. Sess. (2010)).

The territorial jurisdiction of the BARMM “is the land mass as well as the waters over which the Bangsamoro Autonomous Region has jurisdiction, which shall always be an integral, indivisible, and inseparable part of the national territory of the Republic of the Philippines as defined by the Constitution and existing laws.” Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. III, § 1.

IV. THE PHILIPPINE *SHARI'AH* COURT SYSTEM AND THE REVIEW
POWERS OF THE SUPREME COURT

The CMPL, the ARMM laws, and the BOL established a *Shari'ah* court system consisting of courts of limited jurisdiction for the adjudication of disputes arising under Muslim laws.¹³⁸ These courts are integrated into the larger judicial system of the Philippines, which means that

- (1) they are subject to the administrative supervision of the Supreme Court, as with the regular courts of the Philippines within the Bangsamoro Autonomous Region;¹³⁹ and
- (2) their jurisdictions are qualified by the constitutional powers of the Supreme Court,¹⁴⁰ specifically the latter's power to review "final judgments and orders of lower courts" in the cases enumerated in Article VIII, Section 5 (2) of the Constitution.¹⁴¹

The CMPL created five *Shari'a* District Courts (SDCs) and 51 *Shari'a* Circuit Courts (SCCs) spread across five districts comprising several provinces and cities in Mindanao,¹⁴² governed by "special rules of procedure

138. MUSLIM CODE, art. 137. *See also* MUSLIM CODE, arts. 143, 144, & 155 (providing for the exclusive original, concurrent original, and appellate jurisdictions of the *Shari'a* District Courts (SDCs), and the exclusive original jurisdiction of the *Shari'a* Circuit Courts (SCCs)).

139. PHIL. CONST. art. VIII, § 6; MUSLIM CODE, art. 137; & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 2.

140. PHIL. CONST. art. VIII, § 5.

141. PHIL. CONST. art. VIII, § 5 (2).

142. MUSLIM CODE, art. 138 (a)-(e).

ARTICLE 138. *Shari'a judicial districts*. — Five special judicial districts, each to have one *Shari'a* District Court presided over by one judge, are constituted as follows:

- (a) The First *Shari'a* District shall comprise the Province of Sulu;
- (b) The Second *Shari'a* District, the Province of Tawi-Tawi;
- (c) The Third *Shari'a* District, the Province of Basilan, Zamboanga del Norte and Zamboanga del Sur, and the Cities of Dipolog, Pagadian and Zamboanga;
- (d) The Fourth *Shari'a* District, the provinces of Lanao del Norte and Lanao del Sur, and the Cities of Iligan and Marawi; and
- (e) The Fifth *Shari'a* District, the Provinces of Maguindanao, North Cotabato and Sultan Kudarat, and the City of Cotabato.

Id.

as the Supreme Court may promulgate.”¹⁴³ It likewise fixed the exclusive original jurisdiction¹⁴⁴ and concurrent jurisdiction (with existing civil courts)¹⁴⁵ of SDCs, as well as the exclusive original jurisdiction of SCCs.¹⁴⁶

On the other hand, the BOL recognizes SDCs and SCCs within the BARMM,¹⁴⁷ and provides for their respective jurisdictions.¹⁴⁸ It bears noting that the jurisdiction of the *Shari’ah* courts under the BOL is broader than under the CMPL, as the former includes cases that may arise from local laws enacted by the Parliament.¹⁴⁹ The concurrent jurisdiction of the SDCs with civil courts under the CMPL is made part of the exclusive jurisdiction of the SDCs within the BARMM.¹⁵⁰ Hence, potential litigants must distinguish between cases falling within the BARMM and those outside.

The BOL likewise created the *Shari’ah* High Court (SHC), which exercises exclusive original jurisdiction over

- (1) petitions for *mandamus*, prohibition, injunction, *certiorari*, *habeas corpus*, and all other auxiliary writs and processes, in aid of its appellate jurisdiction;¹⁵¹ and
- (2) all actions for annulment of judgments of all SDCs, within or outside the BARMM.¹⁵²

It likewise exercises exclusive appellate jurisdiction over cases under the jurisdiction of all SDCs, “within or outside the [BARMM].”¹⁵³ The

143. *Id.* arts. 148 & 158.

144. *Id.* art. 143 (1) (a)-(e).

145. *Id.* art. 143 (2) (a)-(c).

146. *Id.* art. 155.

147. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, §§ 2, 5, & 6.

148. *Id.* §§ 5-6.

149. *See, e.g.*, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 5 (e).

150. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 6 (f)-(h).

151. *Id.* art. X, § 7.

152. *Id.*

153. *Id.*

decisions of the SHC are “final and executory[,]” except for matters falling within the review powers of the Supreme Court under the Constitution.¹⁵⁴

The SHC is “composed of five [] Justices, including the Presiding Justice[,]”¹⁵⁵ with similar qualifications as the Justices of the Supreme Court and the Court of Appeals (CA),¹⁵⁶ except that SHC justices must be Muslims who have completed at least two years of training on Muslim law and jurisprudence.¹⁵⁷ They are accorded the same compensation, benefits, tenure, and privileges as CA Justices.¹⁵⁸ “Pending the complete organization” of the SHC, the decisions of the SDCs are appealable to the CA.¹⁵⁹ As of 26 August 2021, the SHC is yet to be organized.¹⁶⁰

At this juncture, it bears noting that in 1989, R.A. No. 6734 created a *Shari’ah* Appellate Court (SAC), similar in rank and jurisdiction to the SHC.¹⁶¹ Later, the Supreme Court, in Administrative Matter (A.M.) 99-4-06-SC dated 8 June 1999,¹⁶² authorized the SAC’s organization, but this was

154. *Id.*

155. *Id.* art. X, § 9.

156. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 8 (c). Article X, Section 8 (c) provides —

(c) *Shari’ah* High Court. — No person shall be appointed justice of the *Shari’ah* High Court unless a natural-born citizen of the Philippines who is a Muslim, a regular member of the Philippine Bar, at least forty (40) years of age, must have been engaged in the practice of law for fifteen (15) years or more, and has completed at least two (2) years of *Shari’ah* or Islamic Jurisprudence.

Id.

157. *Id.*

158. *Id.* art. X, § 10.

159. *Id.* § 7.

160. Letter *from* Atty. Caridad A. Pabello, Chief of Office, Office of Administrative Services of the Office of the Court Administrator *to* Ayla Herazade E. Salendab (Sept. 2, 2021) (on file with the Author).

161. Republic Act No. 6734, §§ 2 & 5.

Under the BOL, the SHC has exclusive original jurisdiction over “actions for annulment of judgments of *Shari’ah* District Courts.” Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7 (b).

162. Supreme Court, Resolution Authorizing the Organization of the *Shari’a* Appellate Court, Administrative Matter No. 99-4-06-SC [A.M. No. 99-4-06-SC] (June 8, 1999).

never realized until the SAC's express repeal by the BOL in 2018 and its replacement by the SHC.¹⁶³

As mentioned, the Supreme Court's jurisdiction under the Constitution remains inviolable.¹⁶⁴ Hence, the SHC's decisions are generally final and executory,¹⁶⁵ except for those falling within the review powers of the Supreme Court under the Constitution.¹⁶⁶ In such cases, which include those involving pure questions of law,¹⁶⁷ the Court remains the final arbiter.

To recall, as of this Article's writing, the SHC has yet to be organized. Hence, present decisions of the SDCs may be appealable to either the CA¹⁶⁸ or directly to the Supreme Court on pure questions of law, pursuant to the BOL and the Constitution.¹⁶⁹ This also means that cases with factual questions may reach the Supreme Court because the CA's decisions on Muslim law cases are not final and executory, unlike those of the SHCs.¹⁷⁰ Likewise, the decisions on such cases of the CA are stayed pending appeal with the Supreme Court.¹⁷¹

A. Rules of Procedure Governing the Shari'ah Court System

The present Special Rules of Procedure in the *Shari'ah* Courts, or *Ijra-At-Al Mahakim Al Shari'ah* (Special Rules),¹⁷² were approved by the Supreme

163. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVIII, § 4.

164. PHIL. CONST. art. VIII, § 2.

165. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

166. See PHIL. CONST. art. VIII, § 5.

167. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

168. *Id.*

169. See *Tomawis v. Balindong*, G.R. No. 182434, 614 SCRA 354, 361 (2010).

170. See Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

171. See generally 1997 RULES OF CIVIL PROCEDURE, rule 39, §§ 1-2.

172. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI'AH COURTS (Sept. 20, 1983). See also MANGONTAWAR M. GUBAT, THE SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI'A COURTS (IJRA-AT AL MAHAKIM AL SHARI'AH) 24 (2003).

Court on 20 September 1983.¹⁷³ The Special Rules consist of four parts with 20 sections in total.¹⁷⁴ Other than providing for the usual rules on pleadings and the order of trial, they prescribe some procedural rules without counterpart in the 1997 Rules of Court (ROC).¹⁷⁵ These include the concept of *fatwa*, or legal opinion, which may be sought from the Jurisconsult in Islamic law created by the CMPL,¹⁷⁶ and the oath or *yamin*, which may be the basis of judgment “in the absence of any other evidence.”¹⁷⁷

The Special Rules require courts to “adhere to the sources of Muslim Laws relating to the number, status, or quality of witnesses (*adala*)[,] and evidence required to prove any fact.”¹⁷⁸ The Rules of Court “apply in a suppletory manner[,]” except in special offenses where they have primary application.¹⁷⁹ For special cases and offenses, the regular Rules apply chiefly and Muslim laws suppletorily.¹⁸⁰ The Special Rules notably do not establish procedures for the SHC or even the now-defunct SAC, having been issued well before the creation of either adjudicatory body.¹⁸¹ The Special Rules have also never been amended since their issuance in 1983.

V. CHALLENGES TO THE REVIEW POWERS OF THE SUPREME COURT

The Author has observed that certain challenges hamper the efficacy of the Muslim legal and judicial system in the Philippines. This Article limits its

173. The BOL expresses that the 1983 Special Rules “shall continue to be in force and effect until the Supreme Court promulgates a new *Shari’ah* Rules of Court.” Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 11.

174. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS.

175. See 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE.

176. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 12. The Jurisconsult in Islamic Law is an “eminent scholar in the *Qur’an*[, the] *Hadith*[,] and in Islamic jurisprudence[,]” appointed by the President and under the administrative supervision of the Supreme Court, whose function is to “render legal opinions, based on recognized authorities, regarding any question relating to Muslim law.” MUSLIM CODE, arts. 164-166.

177. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 7. See also *Tampar v. Usman*, G.R. No. 82077, 200 SCRA 652, 656 (1991).

178. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 17.

179. *Id.* §§ 17-18

180. *Id.* § 18.

181. See SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS.

focus to the factors affecting the Court's review of *Shari'ah* court decisions as the final tier in the *Shari'ah* appellate system, including:

- (1) Limited Muslim membership in the Supreme Court vis-à-vis accurate application and interpretation of highly complex and broad Philippine Muslim law;
- (2) The lack of a fully functional *Shari'ah* court system below the Supreme Court; and
- (3) The obsolete and inadequate rules governing procedures in Muslim law cases.

These lapses may and have led to arguably erroneous Court decisions, which then become part of the Muslim law in the country. This is illustrated by the case of *Bondagjy v. Bondagjy*,¹⁸² which has seemingly gained notoriety among Muslim law scholars.¹⁸³ All these lapses aggravate the skepticism of Muslim Filipinos in engaging with the *Shari'ah* court system.

A. Limitations of the Supreme Court in Adjudicating Muslim Law Cases

Muslim law, being integrated into the larger legal and judicial system of the Philippines, remains subordinate to the Constitution, as regards both its substantial and procedural aspects. As a consequence, while decisions of the SHC are final and executory under the BOL,¹⁸⁴ the Supreme Court retains review power over the cases enumerated under Section 5 (2), Article VIII of the Constitution, specifically —

- (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question[;]
- (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto[;]
- (c) All cases in which the jurisdiction of any lower court is in issue[;]
- (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher[; and]

182. *Bondagjy v. Bondagjy*, G.R. No. 140817, 371 SCRA 642, 651 (2001).

183. See, e.g., Norhabib Bin Suod Sumndad Barodi, *The Code of Muslim Personal Laws of the Philippines: Beyond the Lenses of Bondagjy v. Bondagjy*, INT'L ISLAMIC U. MALAY., Volume No. 27, Issue No. 2, at 371.

184. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

(e) All cases in which only an error or question of law is involved.¹⁸⁵

The Court may thus review the decisions of the *Shari'ah* courts on “petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.”¹⁸⁶ Finally, the Court may determine whether a *Shari'ah* court, in the performance of its duties, committed grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁸⁷

The Constitution provides for the qualifications of the members of the Supreme Court, who must be natural-born citizens of the Philippines, at least 40 years of age, previously a judge of a lower court or engaged in the practice of law in the Philippines for 15 years or more,¹⁸⁸ and a person of proven competence, integrity, probity, and independence.¹⁸⁹

The requirement that a magistrate be of proven competence ensures that the judge resolving a case is proficient in the relevant law.¹⁹⁰ In *Enriquez v. Caminade*,¹⁹¹ the Supreme Court ruled that proficiency in the law is the *foremost* responsibility that judicial competence entails,¹⁹² requiring no less than knowledge and proper application of the relevant laws in a given case.¹⁹³ It is not enough that judges and justices exhibit a mere “cursory acquaintance with statutes and procedural laws.”¹⁹⁴ Competence further entails “continuous study and research from beginning to end.”¹⁹⁵

185. PHIL. CONST. art. VIII, § 5 (2).

186. Under Section 5 (1), Article VIII of the Constitution, the Court has original jurisdiction “over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.” This is, however, subject to the doctrine of hierarchy of courts, which requires that such petitions first be filed with the appropriate lower courts, subject to certain exceptions. See *generally* *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, 747 SCRA 1, 41-50 (2015). In Muslim law cases, these would be the SHC and SDCs.

187. PHIL. CONST. art. VIII, § 1, para. 2.

188. PHIL. CONST. art. VIII, § 7 (1).

189. PHIL. CONST. art. VIII, § 7 (3).

190. See *Enriquez v. Caminade*, A.M. No. RTJ-05-1966, 485 SCRA 98, 99 (2006).

191. *Enriquez v. Caminade*, A.M. No. RTJ-05-1966, 485 SCRA 98 (2006).

192. *Id.* at 104.

193. *Id.* See also *Department of Justice v. Mislang*, A.M. No. RTJ-14-2369, 798 SCRA 225, 235 (2016).

194. *Mislang*, 798 SCRA at 235.

195. *Enriquez*, 485 SCRA at 104 (citing *Grieve v. Jaca*, A.M. No. MTJ-01-1351, 421 SCRA 117, 123-24 (2004)).

Members of the Judiciary are “not common individuals whose gross errors ‘men forgive and time forgets.’ For when they display an utter lack of familiarity with the rules, they erode the confidence of the public in the competence of [the] courts.”¹⁹⁶ In *Enriquez*, the Court held that

[t]he New Code of Judicial Conduct for the Philippine Judiciary requires judges to be embodiments of judicial competence and diligence. Those who accept this exalted position owe the public and this Court the ability to be proficient in the law and the duty to maintain professional competence at all times. Indeed, competence is a mark of a good judge. This exalted position entails a lot of responsibilities, foremost of which is proficiency in the law. One cannot seek refuge in a mere cursory knowledge of statutes and procedural rules.

...

Exactingly as these standards may be, judges are expected to be personifications of justice and the rule of law and, as such, to have more than just a modicum acquaintance with statutes and procedural rules. Essential to every one of them is faithfulness to the laws and maintenance of professional competence.¹⁹⁷

According to the 2020 Revised Rules of the Judicial and Bar Council (JBC),¹⁹⁸ the body constitutionally mandated to recommend appointees to the Judiciary, including the Supreme Court,¹⁹⁹ competence is measured by

196. *Enriquez*, 485 SCRA at 104-05 (citing *Community Rural Bank of Guimba (N.E.), Inc. v. Talavera*, A.M. No. RTJ-05-1909, 455 SCRA 34, 39 (2005); *Requierme, Jr. v. Yuipco*, A.M. No. RTJ-98-1427, 346 SCRA 25, 34 (2000); *Cui v. Madayag*, A.M. No. RTJ-94-1150, 245 SCRA 1, 11 (1995); *Lim v. Dumlao*, A.M. No. MTJ-04-1556, 454 SCRA 196, 203 (2005); & *Boiser v. Aguirre, Jr.*, A.M. No. RTJ-04-1886, 458 SCRA 430, 439 (2005)).

197. *Enriquez*, 485 SCRA at 103-04 (citing NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC, canon 6 (Apr. 27, 2004); *Lim*, 454 SCRA at 202-03; *De los Santos v. Mangino*, A.M. No. MTJ-03-1496, 405 SCRA 521, 527 (2003); *Gozun v. Liangco*, A.M. No. MTJ-97-1136, 339 SCRA 253, 261 (2000); *Ualat v. Ramos*, A.M. No. MTJ-91-567, 265 SCRA 345, 358 (1996); *Community Rural Bank of Guimba (N.E.), Inc.*, 455 SCRA at 54; & *De Vera v. Dames II*, A.M. No. RTJ-99-1455, 310 SCRA 213, at 226 (1999)).

198. Judicial and Bar Council, 2020 Revised Rules of the Judicial and Bar Council, [JBC No. 2020-01] (May 21, 2020).

199. “The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.” PHIL. CONST. art. VIII, § 9, para. 1.

several factors, like the applicant's educational preparation and relevant experience.²⁰⁰

Indeed, magistrates must possess a thorough understanding of the applicable law to correctly interpret the meaning, significance, and implications of the statute and apply the same to the case before them. The New Code of Judicial Conduct²⁰¹ requires judges²⁰² to “take reasonable steps to maintain and enhance their knowledge, skills[,] and personal qualities necessary for the proper performance of judicial duties[.]”²⁰³ In every case, judges must diligently endeavor to ascertain the facts and the applicable law.²⁰⁴ They must be studious of principles of law,²⁰⁵ and, when “disposing of controverted cases,” must “show their full understanding of the case,” as well as “promote confidence in their intellectual integrity[,] and contribute useful precedents to the growth of the law.”²⁰⁶

The Author submits that there is greater need for a court's legal proficiency when it deals with complex and broad matters such as Muslim laws. As explained earlier, the Muslim legal system in the Philippines consists of multifarious laws and legal principles, including not only codified statutes passed by the national legislative body and uncodified general principles of Muslim law and jurisprudence, but also customary laws from the different localities in Muslim Mindanao.²⁰⁷ Procedural rules in Islamic law differ

200. The JBC performs judicial candidate evaluations to determine whether an individual is fit and qualified to serve as a judge. JBC No. 2020-01, rule 3, §§ 1-3.

201. NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC (Apr. 27, 2004).

202. *Id.* A judge is defined as “any person exercising judicial power, however designated.” *Id.* Hence, it is submitted that a “judge,” as used in the Code of Judicial Conduct, includes a Justice of the Supreme Court.

203. *Id.* canon 6, § 3.

204. *See id.* canon 1, § 1.

205. Department (Ministry) of Justice, Canons of Judicial Ethics, Administrative Order No. 162, Series of 1946 [A.O. No. 162, s. 1946], canon 4 (Aug. 1, 1946). Administrative Order No. 162, Series of 1946 was issued when judges were under the administrative supervision of the Department of Justice. Under the present Constitution, courts and their personnel are under the administrative supervision of the Supreme Court. PHIL. CONST. art. VIII, § 6.

206. *Id.* canon 17.

207. *See* Chiarella, *supra* note 5, at 236-37 (citing Abbas, Jr., *supra* note 114, at 163 & 182 & Tamano, *supra* note 115, at 16-19).

substantially from the Rules of Court, mandating courts to “adhere to the sources of Muslim Laws relating to the number, status, quality of witnesses (*adala*), and evidence required to prove any fact.”²⁰⁸

The plurality of legal sources means that to properly adjudicate a Muslim law case, a court must understand related domestic written laws, Islamic law and jurisprudence, and local customs and traditions in the area where the controversy arose. The court, after appreciating this vast body of Muslim law, must then fit the same within the narrow and rigid confines of the Philippine legal system, particularly that prescribed by the fundamental law. One can only imagine the level of knowledge required of a judge, who must not only apply Muslim law, but also synergize it with the Constitution.

It is in this context that the competence of the Supreme Court in resolving Muslim law cases must be measured. As the final tier in the *Shari’ah* appellate system with the power to set doctrines that will form part of Philippine Muslim law, the Supreme Court’s role as the highest court in the land cannot be understated. Being more than judges, its Justices must be an embodiment of integrity, probity, independence, and competence.

Professor Norhabib Bin Suod S. Barodi suggests that “any non-*Shari’ah* court sitting to decide on matters of Islamic law [will] likely commit errors or inaccuracies in the process.”²⁰⁹ He referenced foreign jurisdictions where Muslim law is enforced in a limited manner, such as Nigeria, where “the colonial strategy of interfering with the administration of Islamic law results in one of the [biggest] problems arising from Nigeria’s legal pluralism[]”²¹⁰ — this is a situation where “common law judges who are unfamiliar with Islamic law could sit on Islamic law matters.”²¹¹

Besides being equipped with learning in the law, a judge must likewise possess judicial temperament,²¹² which encompasses both the ability to apply

208. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 17.

209. Norhabib Bin Suod S. Barodi, *Oath (Yamin) as a Method of Proof and the Right to Due Process in the Philippines: A Response to Tampar v. Usman*, J. MALAY. & COMP. L., Volume 47, Issue No. 1, at 81.

210. *Id.* (citing Abdulmumini A. Oba, *Harmonisation of Shari’ah, Common Law and Customary Law in Nigeria: Problems and Prospects*, J. MALAY. & COMP. L., Volume 35, at 125).

211. *Id.*

212. *Antiporda v. Ante, Jr*, A.M. No. MTJ-18-1908, 851 SCRA 196, 203-04 (2018).

law to facts and to understand how a judicial decision will affect litigants.²¹³ Hence, it requires awareness of the case's particulars and compassion for the parties.²¹⁴ The New Code of Judicial Conduct requires that judges "carry out judicial duties with appropriate consideration for all persons,"²¹⁵ as well as with understanding of "diversity in society and differences" arising from race, religion, national origin, and social and economic status.²¹⁶

On the Supreme Court, a Muslim representative could guide its appreciation of the distinct identity, culture, and traditions of Muslim-Filipinos when dealing with Muslim law cases by offering valuable insight into local customary laws in Muslim Mindanao.

Interestingly, the Tripoli Agreement, which led to the enactment of the CMPL, mandated that Muslims "be represented in all courts including the Supreme Court."²¹⁷ Similarly, R.A. No. 9054 makes it a policy of the national government to have at least one Justice in the Supreme Court and two Justices in the CA coming from "qualified jurists of the autonomous region[,] whenever feasible."²¹⁸ On this point, the Supreme Court's 120-year history²¹⁹ has seen only two Muslims serve in its chambers — Associate Justice Abdulwahid A. Bidin, from 1987 to 1997,²²⁰ and Associate Justice Japar B. Dimaampao, who took his oath on 14 September 2021.²²¹

213. See generally Terry A. Maroney, *(What We Talk About When We Talk About) Judicial Temperament*, 61 B.C. L. REV. 2085, 2095-105 (2020).

214. Stephen Colbran, *Temperament as a Criterion for Judicial Performance Evaluation*, 21 U. TASMANIA L. REV. 62, 77-78 (2002). A measure of judicial temperament is "human understanding and compassion[.]" as concluded in a survey of barristers conducted for the cited work. *Id.*

215. NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, canon 5, § 3.

216. *Id.* canon 5, § 1.

217. Tripoli Agreement, *supra* note 90, pt. 3, ¶ 3.

218. Republic Act No. 9054, art. VIII, § 2. See also Chiarella, *supra* note 5, at 249.

219. The Supreme Court was established by Act No. 136 of the Philippine Commission on 11 June 1901. *Conchada v. Director of Prisons*, 31 Phil. 94, 99-100 (1915).

220. Supreme Court E-Library, Associate Justice Abdulwahid A. Bidin, available at <https://elibrary.judiciary.gov.ph/supremecourtjustices/associatejustice/107> (last accessed Nov. 30, 2021) [<https://perma.cc/FVE7-PSRY>].

221. Lian Buan, *Finally, Japar Dimaampao Is 2nd Muslim Justice of the Supreme Court*, RAPPLER, Sept. 14, 2021, available at <https://www.rappler.com/nation/japar->

It bears mentioning that the Author finished the first draft of this Article prior to the appointment of Associate Justice Dimaampao. The initial draft expressed concerns that the then composition of the Supreme Court, a small group of 15 with no Muslim member or expert in Muslim law, would shape its legal contours in the Philippines.

Without a doubt, the serendipitous appointment of Associate Justice Dimaampao opens doors to major progress in the administration of Muslim Law in the country and in the adjudication of cases thereunder. It is also imagined that this will enfranchise Muslim Filipinos and revitalize their trust in the *Shari'ah* court system.²²² The appointment also fuels hope for the possible appointment of more representatives in the Supreme Court who are as learned in the *Qur'an* and the *Sunnahs* as they are in secular law.²²³

B. Lack of a Fully Functioning Shari'ah Court System Below the Supreme Court

As discussed, *Shari'ah* court decisions are subject to the review powers of the Supreme Court under the Constitution.²²⁴

Today, there exist 51 *Shari'ah* Circuit Courts, five *Shari'ah* District Courts, and one *Shari'ah* High Court, all stationed in Muslim Mindanao.²²⁵ This is without prejudice to the creation of additional *Shari'ah* courts anywhere in the country “where a considerable number of Muslims reside.”²²⁶

The qualifications for SDC and SCC judges are identical to their counterparts in regular courts,²²⁷ with the additional requirement that they

dimaampao-second-muslim-justice-supreme-court (last accessed Nov. 30, 2021) [<https://perma.cc/XMK5-CUEM>].

222. Chiarella, *supra* note 5, at 249.

223. See Abdulcader M. Ayo & Anwar M. Radiamoda, *Critical Review on Muslim Code PD1083: A Basis for a New Enactment of Expanded Islamic Code of the Muslim Personal Law in the BARMM*, 1 AIUAJ. ISLAMIC EDUC. 265, 272 (2019).

224. PHIL. CONST. art. VIII, § 1.

225. MUSLIM CODE, arts. 138 & 150 & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

226. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 2.

227. Unlike under the CMPL, SCC judges within the BARMM must be regular members of the Philippine Bar. SCC judges under the CMPL need only pass an examination in Islamic law and jurisprudence “given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the

be learned in Islamic law and jurisprudence.²²⁸ For judges and Justices of the SDCs and SCCs within the BARMM and the SHC, an additional qualification is that they be Muslims with at least two years of training or education in *Shari'ah* or Islamic jurisprudence.²²⁹ In other words, the *Shari'ah* court magistrates are required to be Muslims who are experts in Islamic law.²³⁰

Viewed in the context of the Supreme Court's review power in Muslim law cases, it is this expertise of the *Shari'ah* courts that should likewise be present in the highest judicial body. Hence, it is crucial for accurate adjudication that Muslim law cases go through all available layers of review in the *Shari'ah* courts before reaching the Supreme Court.

Unfortunately, the *Shari'ah* courts are far from fully operational, and the government has yet to demonstrate genuine efforts to implement the laws creating them. For instance, the SHC, created by the BOL in 2018, has yet to be organized.²³¹ Drawing similarity to the fate of its predecessor, the *Shari'ah* Appellate Court (SAC) created by R.A. No. 6734 in 1989,²³² the future of the SHC's organization does not look particularly promising.

From its creation in 1989 until its abolition in 2018,²³³ the SAC was never organized, and nor were its members ever appointed,²³⁴ despite a resolution of the Supreme Court *en banc* in 1999 declaring that its organization could "not be delayed any longer."²³⁵ On the other hand, in a

Shari'ah Courts." MUSLIM CODE, art. 152 & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 8 (a).

228. JBC No. 2020-01, rule 2, §§ 7-10.

229. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 8 (a)-(c).

230. While the requirement of being a Muslim is imposed for *Shari'ah* courts within the BARMM under the BOL, it is not required for judges in the SDCs and SCCs under the CMPL.

231. Pabello, *supra* note 160.

232. Republic Act No. 6734, art. IX, § 3.

233. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. XVIII, § 4 (expressly repealing the SAC under Republic Act No. 6734).

234. See Senate of the Philippines, Gordon Hails Dimaampao's Appointment to SC, available at https://legacy.senate.gov.ph/press_release/2021/0914_gordon1.asp (last accessed Nov. 30, 2021) [<https://perma.cc/37Y2-5MFR>].

235. Supreme Court, Re: The Organization of the *Shari'a* Appellate Court, Administrative Matter No. 99-4-06 [A.M. No. 99-4-06-SC] (June 8, 1999). This document provides —

2010 case, the Supreme Court ruled that pending organization of the SAC, appeals from the SDC “filed with the CA shall be referred to a Special Division[,]” preferably “composed of Muslim CA Justices.”²³⁶

Presently, with the non-organization of the SHC, the decisions of the SDCs are seemingly appealable to the regular divisions of the CA, or straight to the SC on pure questions of law.²³⁷

Neither are the *Shari’ah* trial courts fully functional. As of 26 August 2021, while all five SDCs were organized, only one had a duly appointed presiding judge.²³⁸ As for the 51 existing SCCs, 36 were formally organized,

WHEREAS, to give meaning to the intent of the Act and to give full appellate relief to parties aggrieved by decision of the *Shari’ah* District courts, the formal organization of the *Shari’ah* Appellate Court should not be delayed any longer.

WHEREFORE, the Court hereby RESOLVES that the *Shari’ah* Appellate Court established by R.A. [No.] 6734 be formally organized effective 1 January 2000, and for that purpose, DIRECTS:

- (a) The Office of the Court Administrator to prepare and submit the required budget for the operation and maintenance of the *Shari’ah* Appellate Court for the calendar year 2000; and, the Regional Assembly of the Autonomous Region in Muslim Mindanao to submit a list of recommendees for the position of Presiding Justice and the two (2) positions of Associate Justices;
- (b) The Judicial and Bar Council to consider at least three (3) nominees for each of the above positions from the aforementioned list. The council’s list of nominees shall forthwith be submitted to the President; and
- (c) The Committee on the Revision of the Rules of Court to draft the Internal Rules of the *Shari’ah* Appellate Court and, for that purpose, to solicit the assistance of the Court of Appeals Justices Jainal D. Rasul and Omar U. Amin.

The Court further RESOLVES to request the Department of Budget and Management to provide the funds for the budget of the *Shari’ah* Appellate Court for calendar year 2000.

Id.

236. *Tomawis*, 614 SCRA at 361.

237. *Id.* (citing 1997 RULES OF CIVIL PROCEDURE, rule 41, § 2 & rule 45 & PHIL. CONST. art. VIII, § 5) & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

238. Pabello, *supra* note 160.

but only 19 had presiding judges.²³⁹ This means that there were 15 SCCs yet to be organized, and 32 with vacant judgeships.²⁴⁰

To stress the figures, over 40 years following their creation, nearly 30% of SCCs await organization. Four of the five SDCs and 32 of the 51 SCCs are without duly appointed presiding judges.²⁴¹ On a similar note, the SAC was officially in existence for 29 years from 1989 to 2018, but the same was never organized. Its successor, the SHC, has been in existence for three years, with no noticeable efforts from the Court or the JBC towards its formal organization.

Without a doubt, the failure of the government to render the *Shari'ah* court system fully functional adversely affects the efficacy of the Court's review powers in Muslim law cases. A complete *Shari'ah* court system could significantly reduce the number of Muslim law cases elevated thereto, considering that the SHC's decisions are generally final and executory.²⁴²

The rewards of an available SHC, however, go beyond deflating the dockets of the Supreme Court. Having an SHC means that appeals of Muslim law cases can generally end with and be decided by a judicial body consisting of Muslims both learned in Muslim law and in possession of the same level of legal competence on Philippine secular law as CA justices. Theoretically speaking, the SHC could effectively harmonize the two legal systems and, at the same time, maximize the efficacy of Muslim law enforcement within the secular framework of Philippine law.

An SHC could potentially relieve the Court of the heavy task of setting precedent in Muslim law, in which its expertise is arguably limited. This lessens the likelihood of inaccurate doctrines becoming part of Philippine Muslim jurisprudence.

As for advantages, cases decided by appropriate *Shari'ah* courts and raised to the Supreme Court for review are less likely to be resolved erroneously on final appeal. Records of such cases, on which the Court would base its decision, would be more comprehensive and instructive, having undergone

239. *Id.*

240. *Id.*

241. *Id.*

242. Decisions of the SHC are final and executory, with the exception of those falling under the constitutionally provided jurisdiction of the Supreme Court. See PHIL. CONST. art. VIII, § 5 & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 7.

appreciation by learned Muslim judges in the courts of the localities where the controversy arose.

The filing of a Muslim law case with the court of the *situs* of the controversy assumes larger significance, given that *ada*, or local custom, is part of Muslim law and, hence, must be considered by the courts.²⁴³ In the present, with some *Shari'ah* courts unorganized or without a duly appointed presiding judge, litigants are strained to travel to courts outside of their localities, and pairing judges have to take cognizance of cases in courts of other territorial jurisdictions.²⁴⁴ This can give rise to situations where judges resolve cases outside of their respective localities, running the risk that local customs may not be correctly considered.²⁴⁵

As long as *Shari'ah* courts remain unorganized and understaffed, they will be unable to play a meaningful role in the country's judicial system.²⁴⁶ Muslim Filipinos will remain reluctant to bring their grievances to these courts, not only for apprehension over the integrity of the appeal process, but also for lack of accessibility.²⁴⁷ This is especially true in Muslim Mindanao, a region mired in poverty and armed conflict, where travel to the nearest court can be costly.²⁴⁸ The statistics provided by the Supreme Court's Statistical Reports Division show that as of 30 June 2021, only 165 cases are pending with the SDCs, and 738 with the SCCs.²⁴⁹ In 2020, 154 cases were filed with the SDCs, while 863 were filed with the SCCs.²⁵⁰ Although there appears to be a general increase in the number of cases filed each year in the SDCs, the SCC's statistics are more volatile, with a significant drop in case filings from 1,130 in 2018 to 803 in 2019.²⁵¹

243. See generally Chiarella, *supra* note 5, at 250–51.

244. See *id.* at 230 & 231.

245. Chiarella, *supra* note 5, at 231. “A lack of qualified *Shari'a* judges and lawyers presents perhaps the greatest practical difficulty in implementing a system of Islamic law in the Philippines.” *Id.*

246. Chiarella, *supra* note 5, at 246.

247. *Id.* at 230.

248. Stephens, *supra* note 2, at 16.

249. Email from Ma. Norie L. Balubar, Statistical Reports Division, Court Management Office, Office of the Court Administrator of the Supreme Court of the Philippines to the Author (Aug. 23, 2021) (on file with Author).

250. *Id.*

251. *Id.*

Interestingly, it appears that one reason for the State's reluctance to organize and fully complement the *Shari'ah* courts is their low engagement with the public.²⁵² During the 2016 JBC interview of then CA Justice Japar Dimaampao, who was then the lone Muslim candidate for a position on the Supreme Court, Maria Milagros Fernan-Cayosa of the JBC conveyed that the SAC had not been organized because there was “no urgent need[]”²⁵³ therefor. In the same interview, Justice Dimaampao was questioned on the necessity of organizing the SAC, “considering the few number of cases pending before [*Shari'ah*] courts.”²⁵⁴

Thus, there appears to be a chicken-and-egg situation — the refusal of the State to fully operationalize the *Shari'ah* court system cites the low rate of its engagement by the Muslim public, while the reluctance of the Muslim public to engage the Muslim courts is rooted on the failure of the state to set up a fully-functioning and reliable *Shari'ah* court system.

C. *Obsolete and Inadequate Rules of Procedure*

Another obstacle to the efficient review by the Supreme Court of Muslim law cases is the lack of adequate, comprehensive, and up-to-date rules governing procedure in Muslim law cases.²⁵⁵

The Court has the constitutional power to promulgate rules concerning pleading, practice, and procedure in all courts.²⁵⁶ Such power being its *exclusive* domain, beyond the reach of the legislative and executive branches,²⁵⁷ the laws creating the *Shari'ah* legal system must yield to the Court's promulgation of special rules of procedure.²⁵⁸ Such interplay, however, has not been without challenge in local jurisprudence.

252. See Chiarella, *supra* note 5, at 245.

253. Jee Y. Geronimo, *CA Justice Vows to Help Enrich Jurisprudence on Sharia Law*, RAPPLER, Nov. 16, 2016, available at <https://www.rappler.com/nation/ca-justice-help-enrich-jurisprudence-sharia-law> (last accessed Nov. 20, 2021) [<https://perma.cc/DPS8-2C2S>].

254. *Id.*

255. See Chiarella, *supra* note 5, at 245.

256. PHIL. CONST. art. VIII, § 5 (5).

257. *Echegaray v. Secretary of Justice*, G.R. No. 132601, 301 SCRA 96, 112 (1999).

258. MUSLIM CODE, art. 148 & Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, art. X, § 11 (providing that the existing Special Rules of Procedure in *Shari'ah* courts shall continue to be in force and effect until the Supreme Court promulgates a new *Shari'ah* Rules of Court).

In a 1991 decision, the Court took issue with the concept of “oath” or *yamin* in the Special Rules, declared it as unconstitutional, and expressed the need to review the Special Rules for appropriate amendment.²⁵⁹ It appears, however, that this review and amendment was never undertaken.

The Court has repeatedly emphasized the importance of procedural rules as tools to obtain substantive justice and the constitutional guarantee of due process.²⁶⁰ Rules of procedure “ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings.”²⁶¹ Although they are “not ends in themselves, they are necessary[] for an effective and expeditious administration of justice.”²⁶² Their “higher ends” are aimed at the “just, speedy[,] and inexpensive disposition of every action and proceeding,”²⁶³ matters guaranteed to litigants by the Constitution.²⁶⁴

Moreover, effective rules of procedure provide legitimacy to the court process.²⁶⁵ Hence, some jurists argue that, in practice, the outcome of cases is “more likely to be affected by procedural rules than by any niceties of substantive law.”²⁶⁶ Litigants are “more likely to regard their treatment at the hands of the law as unjust because of what they perceive to be defects of procedure[,]”²⁶⁷ than because of “defects of substantive law.”²⁶⁸ Thus, the absence of a reliable set of procedural rules not only hinders the administration of justice, but also undermines the confidence of the public in the court system.²⁶⁹

259. *Tampar*, 200 SCRA at 656.

260. *Limpot v. Court of Appeals*, G.R. No. 44642, 170 SCRA 367, 369-70 (1989).

261. *Id.* at 369.

262. *Lanzaderas v. Amethyst Security and General Services, Inc.*, G.R. No. 143604, 404 SCRA 505, 513 (2003).

263. *Morales v. Court of Appeals*, G.R. No. 112140, 461 SCRA 34, 49 (2005).

264. *See* PHIL. CONST. art. III, § 6.

265. *See Heirs of Serapio Mabborang v. Mabborang*, G.R. No. 182805, 757 SCRA 89, 106 (2015).

266. Jeremy Lever, *Why Procedure Is More Important Than Substantive Law*, 48 INT’L & COMP. L.Q. 285, 285 (1999).

267. *Id.*

268. *Id.*

269. *See Chiarella*, *supra* note 5, at 245.

The Special Rules, which remain unamended since their promulgation, are evidently inadequate and antiquated.²⁷⁰ This inadequacy is magnified by the highly complex and expansive nature of Philippine Muslim law, which consists of the codified, uncoded, and customary.²⁷¹ By its nature, Muslim law draws heavily from Islamic jurisprudence, customs, and traditions, extending far beyond the corners of Muslim statutes written by the State.²⁷² This is why the CMPL was initially intended to be primarily remedial rather than substantive, in order to allow a body of precedent to be generated in an evolutionary fashion.²⁷³ Substantive Muslim law was intended to be developed and then written in another round of codification.²⁷⁴

Neither can refuge be had in the suppletory application of the Rules of Court. The unique nature of the Muslim legal system renders inapplicable its provisions, especially where the Rules of Evidence are concerned.²⁷⁵

Islamic procedural law provides for four kinds of evidence: (1) admission or confession (*al iqrar*); (2) testimonial evidence (*shuhud*); (3) oath (*yamin*); and (4) other evidence (*bayyina*).²⁷⁶ Controversial among these forms of evidence is the oath or *yamin*, which is “an invocation of the name of Allah or of some person or object held sacred by the person using the invocation, to witness the truth of a solemn affirmation and to emphasize that affirmation.”²⁷⁷ In Islamic procedural law, an oath (or the refusal to take the same) may be basis for the rendition of judgment, in stark contrast with the Rules of Court.²⁷⁸ The “absence of evidence in favor of the plaintiff does not result [in] the dismissal of the [complaint,]” as “judgment may still be

270. *Id.* Gregory M. Chiarella cited a need on the part of the government to remedy “practical and procedural shortcomings” that hindered the development of Muslim Law in the Philippines. Chiarella, *supra* note 5, at 245.

271. Chiarella, *supra* note 5, at 227 & 236-37 (citing MUSLIM CODE & Abbas, Jr., *supra* note 114, at 163 & 182) & HUSSIN, *supra* note 10, at 9.

272. See generally John Hursh, *The Role of Culture in the Creation of Islamic Law*, 84 IND. L.J. 1401, 1423 (2009).

273. See Bentley, *supra* note 5, at 56-57.

274. *Id.*

275. *But see Tampar*, 200 SCRA at 656.

276. See Barodi, *supra* note 209, at 75.

277. Barodi, *supra* note 209, at 74 (citing THE HOLY QUR’AN, ENGLISH TRANSLATION OF THE MEANINGS AND COMMENTARY (Mushaf Al-Madinah An-Nabawiyah trans., 2004)).

278. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 7.

rendered in favor of the plaintiff if the defendant refuses to take the oath[,] and the plaintiff affirms his claim under oath.”²⁷⁹ This Islamic rule of procedure is based on Prophetic traditions or *Sunnah*.²⁸⁰

The Special Rules expressly recognize *yamin* as binding proof in court, “in the absence of any other evidence.”²⁸¹ It may be administered upon Muslim parties “to establish a fact, or to affirm any evidence presented.”²⁸² If the party directed refuses to take an oath (*nukul*), the Court may direct the withdrawal of the complaint or the admission of the plaintiff’s claim.²⁸³

However, in *Tampar v. Usman*,²⁸⁴ the Supreme Court declared *yamin* to be violative of the constitutional right to due process, depriving a litigant of the right to confront the witnesses against him.²⁸⁵ The *Tampar* ruling gained notoriety among Muslim law scholars who argue that *yamin* can be harmonized with the concept of due process under the Constitution.²⁸⁶

The concept of *yamin* and the ruling in *Tampar* demonstrate the unique nature of Islamic law and procedure and the problem of their integration into the larger legal and judicial system of the Philippines.²⁸⁷ This highlights the need for a judicious and comprehensive set of procedural rules that meticulously considers and accommodates the peculiarities of Muslim law.²⁸⁸

Apart from supplementing and giving meaning to the Special Rules, there is likewise a dire need to update the same. Certainly, from their promulgation in 1983 until the present, there have been significant changes to the court system. An obvious example would be the establishment of the SHC, which, given the nature of its functions and jurisdiction, deserves its own special set of procedural rules.

279. Barodi, *supra* note 209, at 75 (citing MANGONTAWAR M. GUBAT, THE SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’A COURTS (IJRA-AT AL MAHAKIM AL SHARI’A) ANNOTATED 57 (1995)).

280. Barodi, *supra* note 209, at 84.

281. SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI’AH COURTS, § 14 (1).

282. *Id.*

283. *Id.* § 14 (3).

284. *Tampar v. Usman*, G.R. No. 82077, 200 SCRA 652 (1991).

285. *Id.* at 656.

286. Barodi, *supra* note 209, at 79 & 88.

287. *Id.* at 74.

288. See Chiarella, *supra* note 5, at 253.

The deficient and obsolete Special Rules hamper the effective administration of justice as much in the regular courts as they do in the *Shari'ah* courts.²⁸⁹ From a practical standpoint, the failure to amend the Special Rules for the past 38 years demonstrates a lack of genuine interest in enforcing Muslim law in the Philippines, which has greatly undermined the Muslim public's trust on the *Shari'ah* court system.²⁹⁰

VI. EFFECT: THE *BONDAGJY* DOCTRINE

This Article has explained three factors that adversely impact the review powers of the Supreme Court over *Shari'ah* court decisions. This leads to the question of whether the exercise of such review powers is efficient. Stated differently, does the Court, under the present state of affairs, apply and interpret Muslim law accurately and in consonance with its letter and spirit?

This question demands its own research and study, requiring, as it does, empirical evidence to support any verdict. Hence, the Article, instead of offering an answer, will briefly discuss a Supreme Court decision, which, from the sources gathered in the course of this writing, appears to have gained widespread criticism among Muslim law scholars and practitioners in the country.²⁹¹ This is the case of *Bondagjy v. Bondagjy*,²⁹² which established the doctrine that the fitness of a wife, who was a party to a Muslim marriage and who eventually reverted to her non-Islam religion, to have custody of her minor children, must be assessed according to the Family Code and not Muslim law.²⁹³ The Author argues that this doctrine is erroneous and reflective of the flaws in the current judicial system previously discussed.

289. Harmonization, not only with respect to the provision on “*yamin*” in the Special Rules, but between the two systems of law, could lead to “tremendous benefit in the administration of justice in cases where Islamic law and Philippine law interact.” Barodi, *supra* note 209, at 79 & 88.

290. See Chiarella, *supra* note 5, at 230, 233, & 250.

291. See Chiarella *supra* note 5, at 233-34 & Barodi, *supra* note 209, at 82-83.

Additionally, five *Shari'ah* court judges interviewed by the Author for this Article expressed reservations and concerns about the doctrine laid down in *Bondagjy*. Interviews were conducted through video and in-person conferences, electronic mail, and text messaging exchanges during the period from 25 August 2021 to 1 September 2021.

292. *Bondagjy v. Bondagjy*, G.R. No. 140817, 371 SCRA 642 (2001).

293. *Id.* at 644 & 651.

Bondagjy preceded from a custody case involving a mother, Sabrina, who had converted to Islam prior to her marriage to the Muslim father, Fouzi.²⁹⁴ The couple was wed under Islamic rites and begot two children.²⁹⁵ As the marriage soured, Sabrina left Fouzi and took the children to live with her mother.²⁹⁶ In the SDC of Marawi City, Fouzi filed an action to obtain custody of the two children, who were then ten and nine years old.²⁹⁷ The SDC found Sabrina “unworthy to care for her children[,]” following the general principles of Muslim law, because she had committed *zina* or illicit sexual relation, among others, which the SDC held to be “injurious to the mind[s] of the [children.]”²⁹⁸ On the other hand, the SDC found Fouzi capable and awarded custody to him.²⁹⁹

The Court reversed the SDC’s findings and ruled that Fouzi failed to discharge his burden of proving the unworthiness of Sabrina to take custody of the children, which must be assessed using the metrics under the Family Code.³⁰⁰ The Court declared that the “Family Code shall be taken into consideration in deciding whether a non-Muslim woman is incompetent. What determines her capacity is the standard laid down by the Family Code now that she is not a Muslim.”³⁰¹

The Author submits that this ruling contradicts Article 13 (1) of the CMPL³⁰² which reads —

ARTICLE 13. *Application.* —

- (1) *The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.*
- (2) In case of marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

294. *Id.* at 644-45.

295. *Id.*

296. *Id.* at 645.

297. *Id.* at 646.

298. *Bondagjy*, 371 SCRA at 649.

299. *Id.*

300. *Id.* at 651.

301. *Id.*

302. MUSLIM CODE, art. 13.

- (3) *Subject to the provisions of the preceding paragraphs, the essential requisites and legal impediments to marriage, divorce, paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (mahr), betrothal, breach of contract to marry, solemnization and registration of marriage and divorce, rights and obligations between husband and wife, parental authority, and the property relations between husband and wife shall be governed by this Code and other applicable Muslim laws.*³⁰³

Based on Article 13 (1) and (3), P.D. No. 1083 applies to marriage and divorce, as well as to their incidents such as guardianship, custody and parental authority,³⁰⁴ in two instances: (a) where both parties are Muslims; and (b) where only the male party is a Muslim, and the marriage is solemnized in accordance with Muslim laws.³⁰⁵ On the other hand, the Civil Code applies only under the conditions of Article 13 (2).³⁰⁶

Hence, it is the circumstances obtaining at the time of the marriage ceremony that determine which law is applicable to such marriage and its incidents. These circumstances are (a) the religion of the parties; and (b) whether the marriage was solemnized in accordance with Muslim laws.³⁰⁷ The moment that either Muslim law or civil law attaches at the time of the celebration of the marriage, it continues until the dissolution of the couple's marriage and determines its consequences, such as custody over the minor children and property relations between the parties.³⁰⁸ Notably, the *Bondagjy* spouses were not even divorced yet, meaning that their Muslim marriage was still subsisting when the controversy arose and when the case reached the Supreme Court.³⁰⁹

In other words, the religion of the spouses is material only at the time of the marriage. Hence, the subsequent conversion of the Muslim wife to another religion should be inconsequential insofar as the applicability of Muslim law to the Muslim marriage and its incidents is concerned — just as the subsequent conversion to Islam of a party to a marriage under the Civil

303. *Id.* (emphases supplied).

304. Incidents of marriage and divorce under Article 13 (3) may be governed by other applicable Muslim laws, in addition to the CMPL. *Id.* art. 13 (3).

305. *Id.* art. 13 (1).

306. *Id.* art. 13 (2).

307. *Id.* art. 13 (1).

308. MUSLIM CODE, art. 13 (3).

309. *Bondagjy*, 371 SCRA at 649.

Code will not trigger the application of Muslim laws thereto.³¹⁰ In fact, under Article 13 (1) of the CMPL, the religion of the wife at the time of celebration of the marriage is immaterial where the husband is Muslim and the marriage is solemnized in accordance with Muslim laws.³¹¹

Just as Muslim law applies to custody, guardianship, and parental authority in Muslim marriages, the same goes for the fitness of the spouses to assume custody of the minor children. It likewise bears stressing that under the CMPL, a change of religion by a Muslim does not extinguish any obligation or liability incurred prior to such conversion.³¹²

Moreover, a close reading of the *Bondagjy* decision shows that while a non-Muslim mother's fitness to be custodian of her minor children must be assessed using Family Code metrics, such measure was likewise used to determine the comparative fitness of the father, Fouzi, who remained to be Muslim.³¹³ This is clearly violative of the CMPL.

Indeed, *Bondagjy* demonstrates the practical flaw in interpreting the CMPL as applicable only to parties who have remained Muslims. A conflict of laws necessarily arises where one spouse remains Muslim and the other one does not, as in *Bondagjy*. This is why Article 13 of the CMPL fixes the applicable law on the basis of circumstances attendant at the time of celebration of the marriage — so that a subsequent change in the circumstances of the spouses does not force the courts to either apply differing laws to the spouses or to choose a law to apply to both spouses which they did not contemplate upon entering into the marriage.³¹⁴

In fact, in the case of *Sumagka v. Sumagka*,³¹⁵ the Court held that not even a subsequent marriage under the Civil Code could remove the coverage of the law that applied during the first marriage, which in *Sumagka* was Muslim law.³¹⁶ The Court held that the Muslim Code continues to govern the marital relations of Muslim spouses who first wed under Muslim law rites and then wed again under civil law rites.³¹⁷ *Sumagka*, citing the

310. MUSLIM CODE, art. 13 (1)-(2).

311. *Id.*

312. *Id.* art. 179.

313. *Bondagjy*, 371 SCRA at 651-54.

314. MUSLIM CODE, art. 13 (1).

315. *Rohaina Sumagka v. Abdulgani Sumagka*, G.R. No. 200697, June 10, 2019, available at <https://sc.judiciary.gov.ph/6440> (last accessed Nov. 30, 2021).

316. *Id.* at 7.

317. *Id.* at 8-9.

bigamy case of *Zamoranos v. People*,³¹⁸ ruled that the first marriage is the validating rite while the second becomes merely ceremonial.³¹⁹

Significantly, the ruling in *Zamoranos* was heavily based on the commentaries of Muslim personal law experts.³²⁰ This stands in contrast to *Bondagjy*, which did not contain reference to any Muslim law expert in reversing the SDC's decision in favor of the respondent. Interestingly, the losing respondent was represented by a Muslim law office against a Manila-based law firm which represented the winning petitioner.³²¹

In sum, the Author argues that the *Bondagjy* doctrine is flawed and contradicts the CMPL. This erroneous doctrine is perhaps indicative of limitations on the Supreme Court's adjudication of Muslim law cases, in the context of its present composition, as well as the state of the *Shari'ah* court system and the special rules of proceedings applicable thereto.

V. CONCLUSION

The evolution of Muslim law in the Philippines is intertwined with the assimilationist and pacifist policy of the national government on Muslim Mindanao's struggle for self-determination.³²² Some statutory concessions were made, the most significant of which would be the body of substantive

318. *Zamoranos v. People*, G.R. No. 193902, 650 SCRA 304 (2011).

319. *Rohaina Sumagka*, G.R. No. 200697, at 7 (citing *Zamoranos*, 650 SCRA at 325).

320. The Court quoted verbatim Court of Appeals Justice Jinal D. Rasul and Dr. Ibrahim Ghazali's "Commentaries and Jurisprudence on the Muslim Code of the Philippines." *Zamoranos*, 650 SCRA at 322-323 & 325 (citing JAINAL D. RASUL & IBRAHIM GHAZALI, COMMENTARIES AND JURISPRUDENCE ON THE MUSLIM CODE OF THE PHILIPPINES 53-54 & 98 (1984)).

321. The counsel for petitioner was the Manila-based law firm, Castillo Laman Tan Pantaleon & San Jose, while the respondents were represented by Sadain & Sadain Law Offices. *Bondagjy*, 371 SCRA at 644.

Mehol K. Sadain, former Secretary of the National Commission on Muslim Filipinos, also served as an *amicus curiae* in *Mendez v. Shari'a District Court, 5th Shari'a District, Cotabato City*. *Mendez v. Shari'a District Court, 5th Shari'a District, Cotabato City*, G.R. No. 201614, 780 SCRA 53, 67 (2016).

322. See generally Lualhati M. Abreu, *Colonialism and Resistance: A Historical Perspective*, in THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE 19-26 (Bobby M. Tuazon ed., 2008).

Muslim laws laid down in the CMPL and the *Shari'ah* court system created by the CMPL and the BOL.³²³

However, like most of the government's political concessions to Muslim Mindanao, the declared intentions behind the enactment of these laws are hardly matched by implementation. The *Shari'ah* court system, while existent on paper, has not been fully organized and complemented since its enactment in 1977. Its rules of procedure are glaringly inadequate and have not been updated since their issuance in 1983. The membership of the Supreme Court itself — the final arbiter of Muslim law cases — is limited in its expertise to resolve such cases accurately.³²⁴

These lapses may result in the promulgation of erroneous decisions which become part of the Muslim legal system in the Philippines,³²⁵ leading to the erosion of the Muslim public's faith in the *Shari'ah* court system.³²⁶ In a modern democratic society, "confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance[.]"³²⁷ Hence, the primordial need to address these problems.

What can be done? When the Author finished writing the first draft of this Article, she proposed, as a solution, the appointment to the Supreme Court of a Muslim Justice who possesses the necessary expertise in Muslim law and jurisprudence, and who may thus guide the Supreme Court in deciding Muslim law cases.³²⁸ As mentioned, Muslim magistrate Justice Dimaampao has since been appointed to the High Court. It is hoped that with such appointment, significant improvements in Muslim jurisprudence are forthcoming.

In addition to having a Muslim member, the Supreme Court justices themselves can obtain some "baseline education" in Muslim law and jurisprudence through formal trainings or seminars.³²⁹ Another solution is fully operationalizing the *Shari'ah* court system by organizing all of the existing *Shari'ah* courts, appointing magistrates and the necessary personnel

323. See Bentley, *supra* note 5, at 47.

324. See Chiarella, *supra* note 5, at 249–50.

325. Anshari P. Ali, *The Legal Impediments to the Application of Islamic Family Law in the Philippines*, 27 J. MUSLIM MINORITY AFF. 93, 110 (2007).

326. Chiarella, *supra* note 5, at 248–50.

327. NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, pmbL, whereas cl. para. 3.

328. Chiarella, *supra* note 5, at 249.

329. *Id.*

therefor, and equipping the courts with facilities necessary for their effective operation.³³⁰ Finally, the Supreme Court can review the Special Rules and effect key amendments, taking into consideration the peculiarities of Islamic law and the present conditions of Muslim Filipinos.³³¹

To conclude, this Article is by no means exhaustive. There appears to be a multitude of factors stymying not only the review powers of the Supreme Court over Muslim law cases, but more critically the overall administration and enforcement of Muslim law in the Philippines.³³² These factors are vast and varying and should be the subject of future studies.

Nonetheless, instituting the changes needed to hurdle the specific obstacles identified in this Article could bring about significant improvement in the overall efficacy of the *Shari'ah* legal and judicial system. Given the nature of these challenges, reform rests on the shoulders of the highest court in the land, which has the exclusive power to amend the Special Rules and to catalyze the functioning of the *Shari'ah* courts.³³³ Not only does it have administrative supervision over the JBC, but the Chief Justice likewise serves as its *ex officio* Chairman.³³⁴ To recall, the JBC has the exclusive power to recommend appointees to the *Shari'ah* courts and to prescribe specific metrics for the general qualification of “proven competence[.]”³³⁵

Although the laws intended to address the Muslim-Filipino struggle for self-determination are comprehensive, their provisions, especially on the Muslim justice system, remain largely symbolic.³³⁶ While there has been codification of Muslim law in the Philippines, a large section of the Civil Code has been rendered inapplicable to Muslims with no functional

330. *Id.* at 246.

331. *Id.* at 245.

332. These factors include the national government’s lack of political support, the low degree of awareness by the Muslim public about Muslim law, the lack of *Shari'ah* courts in areas outside of Muslim Mindanao with a significant Muslim population, and even the low priority given to the administration of justice by the leadership of Muslim Mindanao itself, against the backdrop of poverty, violent conflict, and illiteracy. There is likewise the problem of the content and substance of the CMPL itself, which many Muslim religious scholars (*ulamas*) reject for “being non-Islamic.” Stephens, *supra* note 2, at 15-24.

333. PHIL. CONST. art. VIII, § 5 (5).

334. PHIL. CONST. art. VIII, § 8 (1).

335. PHIL. CONST. art. VIII, § 7 (3).

336. Chiarella, *supra* note 5, at 253.

machinery to enforce its new provisions.³³⁷ Unless the Supreme Court and the government as a whole take real steps towards their implementation, it is unlikely that Muslims in the Philippines will fully trust the State to determine their fate as Filipinos, bearing in mind their historic experiences of injustice, neglect, and discrimination over the past centuries.

The BOL's preamble embodies the oft-declared intention of the State to recognize and affirm

the aspirations of the Bangsamoro people and other inhabitants in the autonomous region in Muslim Mindanao to establish an enduring peace on the basis of justice, balanced society[,] and asserting their right to conserve and develop their patrimony, reflective of their system of life as prescribed by their faith, in harmony with their customary laws, cultures[,] and traditions, within the framework of the Constitution and the national sovereignty[,] as well as territorial integrity of the Republic of the Philippines, and the accepted principles of human rights, liberty, justice, democracy, and the norms and standards of international law, and affirming their distinct historical identity and birthright to their ancestral homeland and their right to chart their political future through a democratic process that will secure their identity and posterity, and allow genuine and meaningful self-governance[.]³³⁸

It is ardently hoped that this mouthful be met with real, tangible action, for it is the only way to truly solve the "Muslim problem." While the State's lip-service has successfully quelled armed conflicts in the past, the history of Mindanao has proven these measures to be temporary and costly. The true solution is to focus not on what must be said for temporary appeasement. Rather, the emphasis should be on what must be done to achieve genuine respect for, and recognition of, the distinct identity of Muslim Filipinos within the framework of the Philippine Constitution.

337. See generally Michael O. Mastura, *Legal Pluralism in the Philippines*, 28 L. & SOC'Y SOUTHEAST ASIA 461, 462-63 & 470 (1994).

338. Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, pmbi.