



Paglaum

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COMMENTS ON BANGSAMORO BASIC LAW



Nene Pimentel as one of the resource persons at the hearing of the Senate Committee on Local Government on Bangsamoro Basic Law issue (January 26).

By Nene Pimentel presented to the Senate Committee on Local Government on January 26, 2015

I. PREFATORY STATEMENT

1. The herein observations are based on the Senate Version of the Proposed Bangsamoro Basic Law (BBL).

2. The intent of the BBL - to bring peace, progress and development, primarily to Mindanao, and ultimately to the rest of the country - deserves the support of the people.

3. But, its intent - as borne out by its content - must conform to the Constitution.

Does it?

II. DISCUSSION

The comments deal with only two basic issues that are contained in the proposed BBL:

(A) the proposal under Article IV - General Principles and Policies to install a Bangsamoro Government that is "parliamentary" in form, and an electoral system "suitable to a ministerial form of government", and

(B) the limitation of the "reserved powers" of the Central Government to the following areas:

1. Defense and external security;
2. Foreign Policy;
3. Coinage and monetary policy;
4. Postal Service;
5. Citizenship and naturalization;
6. Immigration;
7. Customs and tariff (as qualified by Section 2 (10) of this Basic Law);

BE MISSIONARIES FOR CHRIST - POPE

By Jay Dejaresco

The Great Commission by Jesus Christ to His followers more than 2,000 years ago was audibly echoed by His Holiness Pope Francis to a throng of six million Filipino faithful at the Quirino grandstand, and millions of others watching via television in what was seen as the largest commissioning of Catholic Christians to proclaim the Lord's message of love to the rest of the world.

Pope Francis, who took the Philippines by storm in his first ever visit to

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Word from the Institute

The recent incident in Mamasapano, Maguindanao that snuffed out the lives of some 44 members of the Special Action Force of the National Police is a horrible reminder that we need peace more than ever in Muslim Mindanao.

The MILF and its allies in the area of the encounter assert that the SAF contingent did not "coordinate" with the rebel groups their entry into the "forbidden land".

But, the cops were sent on an official mission to capture a so-called inter-

national terrorist by the name of Marwan, and his cohort, a local one, known as Usman within the Republic.

In any case, whatever be the real circumstances that surrounded the incident, the thing is that it would not have happened if peace had already been established in the area.

And in hindsight, most of our people think that there is no justification for the carnage.

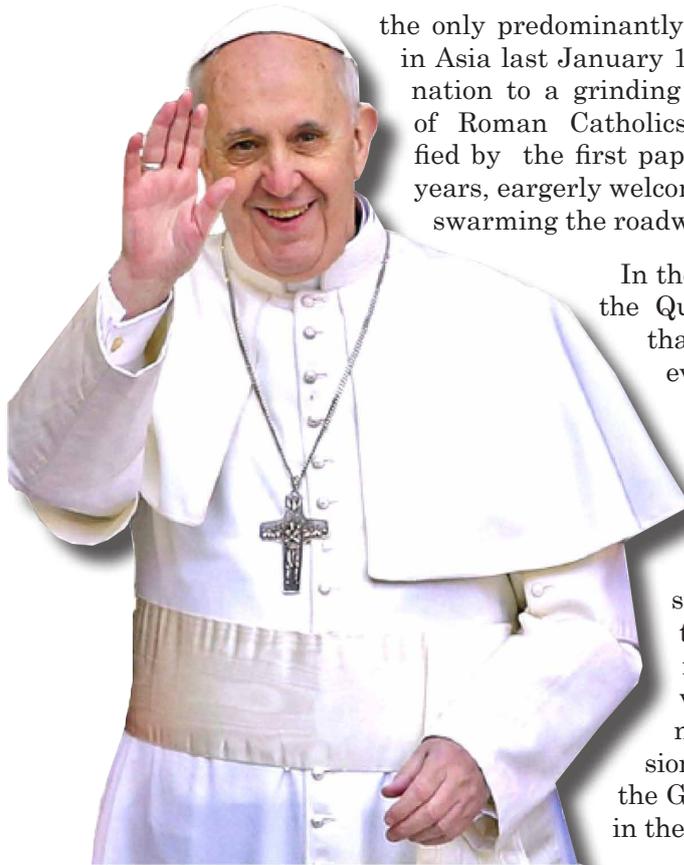
Thus, if the Rule of Law were to prevail in this be-

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Be Missionaries for Christ - Pope

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the only predominantly Christian nation in Asia last January 15-19, brought the nation to a grinding halt, as millions of Roman Catholics, visibly electrified by the first papal visit in twenty years, eagerly welcomed the Pontiff by swarming the roadways of his convoy.

In the Pope's homily at the Quirino grandstand that climaxed his eventful five-day pilgrimage Pope Francis said: "May the Lord Jesus continue to bless the Philippines and sustain the Christians of this great nation in their vocation to be witnesses and missionaries of the Joy of the Gospel in Asia and in the whole world."

In commissioning Filipinos as missionaries to the world, the Pope said: "My dear brothers and sisters, we received this light in baptism, and were entrusted to keep this light burning brightly. We were to spread this light when we were confirmed. Keep the flame of faith alive in our hearts. Walk away as children of the Light. This is the mission of every Christian, to spread the Light and to Tell the world of God's love."

At the Holy mass at the Quirino Grandstand which also commemorated the feast of the Sto. Nino (the child Jesus) Pope Francis sent a message to Filipinos: "I commend you to the Lord Jesus, who came among us as a child. May He enable all the beloved people of this country to work together, protecting one another, beginning with your families and communities, in building a world of justice, integrity and peace."

Wherever Pope Francis went, countless Filipinos trooped to the streets with that unique brand of Filipino hospitality.

The Pope did not fail to observe the genuine gestures that he saw among the crowds that greeted him.

From day one of his visit, the Pope was literally swarmed by an enthusiastic, but disciplined crowd wherever he went.

Word from the Institute

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nighted land, the culprits - both the ambushers and, at least, the surviving officers of the SAF team - must be brought before the bar of justice. Hopefully, truth will out, and those who are responsible for the bloody event will be sanctioned accordingly.

The thing is that the incident cannot just be ignored as an unfortunate wrinkle that mars the peace process which, among other things, proposes the ratification of the Bangsamoro Basic Law now awaiting legislative confirmation in both Houses of Congress.

The BBL might need an amendment of the Constitution. And that could take years to accomplish.

In the meantime, unless it is made clear to all concerned that the government would not tolerate a repetition of the bloody occurrence, hotheads and non-conformists in the ranks of the rebel groups could very well replicate - and escalate -

lawless violence not only in the proposed Bangsamoro entity, but elsewhere in the country.

The sooner our people realize that there is no valid justification whatsoever for us to continue killing one another, the better it will be for the nation.

Since the Moros of Mindanao adhere to Islam, a "Religion of Peace", and the majority of the leaders and the people of the country are followers of a "Religion of Love", that is Christianity, the question is relevant: why should they use violence to attain the objectives of their faith?

There are no easy answers. But, there is no question about it: the government and rebels must sit down and talk with things over in honesty and in good faith and agree on the reasonable way to attain peace in the country. Otherwise, more Mamasapano carnages will come our way, more blood will be spilled, and more lives will be lost.



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Comments on Bangsamoro Basic Law (BBL)

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8. Common market and global trade, provided the power to enter into economic agreements given to the ARRM under R.A. 9054 is hereby transferred to the Bangsamoro Government as provided in Article XII, Section 25 of this Basic Law, and

9. Intellectual property rights.

[Note: For purposes of style, it is suggested that since No. 7 and No. 8 are qualified by their very terms, as “reserved” powers, they should be included in another - more appropriate - Chapter of the BBL].



ON ISSUE (A)

Under the Constitution, the form of government that is ordained is presidential (Article VII, Philippine Constitution).

The same Constitution mandates in Section 1 of Article X on Local Government as a part of its *General Provisions* that: (i) “The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays”; and (ii) “There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.”

Of the two autonomous regions that the Constitution directs to be created, this paper deals only with the autonomous region of Muslim Mindanao as it is the area proposed to be covered by the BBL.

It is submitted that to allow a part of the country to be governed under a parliamentary form of government, when, the Constitution, itself, proclaims that the whole country has adopted the presidential form of government would be, to say the least, incongruous.

In Section 18 of the same Article, it is provided that “The organic act shall define the basic structure of government for the (autonomous region) consisting of the executive department AND legislative assembly, both of which shall be elective, and representative of the constituent political units.” (Section 18, Article X, Constitution; caps added)

As defined in the Section above cited, the basic structure of government of the autonomous region consists of (a) *the executive department* and (b) *the legislative assembly*.

The two branches of government: “the executive department, and the legislative assembly” are mentioned separately.

Moreover, the next clause of the same Section makes it abundantly clear, that the two branches of the autonomous government are meant to be distinct one from the other.

There, the Section directs that “both of which shall be elective and representative of the constituent political units.”

That is how the mandate of Section 1 of Article X on Local Government on the creation of the autonomous region in Muslim Mindanao “as hereinafter provided” is spelled out.

In any event, the intent of the framers of the Constitution to install a presidential form of government even in the Bangsamoro appears obvious from the way the above-mentioned Article and Section are worded.

Otherwise, if the intention was to allow a parliamentary form of government to be established in the Bangsamoro, among other things, the said Article and Section would have required the election only of the members of parliament. And from their ranks, the executive department would be constituted.

It is, thus, submitted that the above quoted Article and Section of the Constitution validate the thrust of this paper: that the autonomous region envisioned in the Constitution which the BBL intends to govern must follow the form of government provided for in the fundamental law, and that is, none other than the *presidential form of government*.

To repeat, had the national charter intended to allow the installation of a parliamentary form of government in the autonomous region of Muslim Mindanao, it would have worded the provisions pertaining thereto accordingly.

But it did not.

Furthermore, through no fault of the Muslim peoples, there does not seem to be any historical or cultural reason why the form of government sought to be established by the BBL should depart from what is now constitutionally mandated for the entire nation: the presidential form of government.

The use of the phrase “asymmetrical relationship” by which the BBL describes the link of the Bangsamoro entity to the national government merely enhances its incompatibility with the presidential form of government for the Republic mandated by the Constitution.

But, will the assertion of an “asymmetric relationship” suffice to justify the installation of a parliamentary form of government for the Bangsamoro in lieu of the presidential form?

That might need not only a judicial determination to settle, but a constitutional amendment.

Hence, to save the BBL from constitutional challenges that might be successful, it may be better for the nation if the proposed law is amended accordingly.

ON ISSUE (B)

What follows are general impressions regarding the so-called Powers Reserved to the National Government. The reservation of the nine powers stated earlier is probably intended to enable the Bangsamoro entity to open the door for its assumption of certain powers that used to be exercised by the national government exclusively.

Examples of these controversial powers include:

(1) In Section 9 of Article VII of the BBL, a “Bangsamoro Electoral Code” is adopted.

Specifically, the Code creates a “Bangsamoro Electoral Office which – in the words of the BBL - shall be a part of the Commission on Elections, and which shall perform the functions of the Commission in the Bangsamoro ...”

Whether or not the structure of the Comelec or its basic functions as specified by the Constitution may be modified in such a manner poses questions that might be best answered in the proposed law, itself.

(2) In Article IX of the BBL, the creation of a Human Rights Commission is also mentioned.

It might be necessary to make sure that the powers of the Human Rights Commission as envisioned in the Constitution are not in any way decreased or lessened.

The apprehension is heightened by the fact that freedom of the press is not among the basic rights that people are expressly entitled to enjoy in the Bangsamoro.

In this regard, what the BBL categorically assures the people in Bangsamoro is that they will enjoy “freedom speech” courtesy of its Article IX, Section 1 (d).

Probably, the framers of the BBL assume that freedom of speech includes freedom of the press.

In any case, to remove any doubts about it, it is suggested that the wording of Section 4, Article III of the Bill of Rights of the Constitution of the Republic be replicated in the BBL, to wit:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assembly and petition the government for redress of grievances.

Since these are fundamental freedoms guaranteed to the people in the Republic by the Constitution, they should also be enjoyed by the people in the Bangsamoro.

(3) The settlement of disputes through the Shariah should clearly spell out that when controversies involve Muslims vs. Christians; or Muslims vs. Lumads; or Lumads vs. Lumads; or Christians vs. Lumads or vice versa, national laws should prevail.

More particularly, it is recommended that decisions on petitions for declaration of absence or death or for change of names should not be considered final as provided by the BBL upon their being passed upon by Shariah Courts. Those rulings should be appealable to the Court of Appeals by any aggrieved party or by the government offices or agencies concerned.

(4) On the free and public education guaranteed by the BBL, there might be a need to spell out the fact that the basic curriculum followed by schools throughout the nation be likewise adopted in the Bangsamoro.

The reason is to enable students from the Bangsamoro schools to transfer to other schools in the nation without too much hassle. For instance, a grade five student in a Bangsamoro school should find no difficulty in transferring to the equivalent grade level in another school outside the Bangsamoro.

(5) Under Article IV of the BBL, Section 55 provides for the “Establishment of mechanisms for the empowerment of women and the marginalized sectors”, which are made subject to



future “consultations”.

It might be best that the rights of women (and the marginalized sectors) be spelled out now in the law in question.

(6) Under Section 57 of Article IV of the BBL, the Bangsamoro Parliament is empowered to create or divide “congressional districts”.

The requisites for the creation of con-

gressional districts as provided by the Constitution probably need to be categorically stated in the BBL.

(7) The creation of the Bangsamoro Police Commission, and the Bangsamoro Command of the Armed Forces of the Philippines by the BBL might need refinement to ensure that these units of the police and the armed forces are not used for means other than the protection of the population of the Bangsamoro entity and the interests of the Republic.

(8) It is also important that the functions of the Bangsamoro Commission on Audit and the Bangsamoro Civil Service Commission are clearly worded in a manner that they would not collide with, or, much less, diminish the rights and duties of the said Commissions as defined in the Constitution.

(9) Article XIV of the BBL deals with the rehabilitation of what may be euphemistically called “rebel returnees”.

By singling out the MILF, and the BIAF, the BBL proposal – aside from causing envy and resentment among the members of the other factions of the rebel groups in the autonomous region -may also run counter to the equal protection clause of the Constitution.

(10) In Article XVI of the BBL, the composition of the Bangsamoro Transition Authority is spelled out.

That the Article tilts in favor of the MILF partisans is understandable when viewed from the angle of gratitude of the administration for its having opted for a peaceful settlement of its rebellion in the Bangsamoro.

But, then, again, as worded, it might be subjected to a constitutional challenge in that it could violate the equal protection clause of the Constitution.

FINAL POINTS

As final points, we bring to the attention of the Committee two relevant issues: (1) the apprehension of His Excellency, the Sultan of Sulu, that in his view, the BBL does not clearly state whether or not the traditional jurisdiction of the Sultanate of Sulu over the Sulu Sea is recognized by the BBL; and (2) whether or not the Sultanate’s claim over Sabah is simply not a priority of the administration?

Some members of the House of Representatives have already spoken out against the inclusion of the Sabah claim on the ground that it might only unduly prolong the implementation of the BBL.

Maybe, they are right. But, the Sabah claim is well-documented, and the sooner it is tackled by the government, the better it will be for the nation.

End of presentation.