

# **FEDERALISM AS A BANGSAMORO OPTION**

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## **The Federal Option**

There are various options espoused in respond to the Bangsamoro People's quest for freedom and self-determination. One of them is federalism which is gaining ground as a "lasting solution to separatism" and as a final option in dealing with Filipino diversity. They argue that federalism will end unequal distribution of wealth by the national government. The most active advocate is Lihok Pideral (Federal Movement), a non-governmental organization that is spearheading the federalization proposal.

Under the proposed federal constitution, there will be a shift in the structure of government from the unitary system to a federal system and from a presidential type to a parliamentary form of government. There will be consolidation of the local governments in the existing 16 administrative regions, Metro Manila and the Autonomous Region of Muslim Mindanao into 11 states or autonomous regional governments. One of the component states or regional government is Bangsamoro.

According to the advocates of the federal constitution, the unitary system where there is more emphasis on national integration and assimilation rather than unity in diversity and pluralism have alienated the Bangsamoro People and other ethnic and cultural communities. They feel that they are neglected and discriminated by the national government which is dominated by the Christian Filipino majority.

The proponents also argue that the ineffective and irresponsible unitary system and the weakness of the rule of law have allowed political warlords and corrupt politicians and public employees to exist and prosper. These warlords and abusive leaders feel that they are above the law. They violate and often get away with it. They further observe that the same factors plus mass poverty, economic inequality and social injustice are the reasons why the communist and the Moro rebellion persist to the present. Whereas progressive countries like Singapore, Malaysia and Thailand have long solved the Communist insurgency.

They also claim that the Moro rebellion and secessionism coupled by government corruption have been aggravated by unresponsive and unaccountable governance under the present unitary system and presidential government. What is needed in response to this problem is by reforming political parties, strengthening the rule of law, empowering the people, improving governance, and holding leaders accountable. The federal system and parliamentary government will displace local warlords and reduce corruption in government.

There are many more pros and cons in the unitary and federal system, but we shall deal more on the Bangsamoro option. The federal alternative is a national alternative and not an exclusive Mindanao concern or advocacy. Mere decentralization, including the ARMM model is found to be inadequate. Thus, "Running an autonomy within a unitary and centralized presidential system apparently still limit that autonomy." The previous attempts to resolve the conflict between the Bangsamoro people and the Philippine state by offering autonomy for Muslim Mindanao have failed, largely because of the inadequate powers assigned to the autonomous government.

There are two essential things for Bangsamoro autonomy, namely: the capability to be adequately self-sustaining, not dependent on the central government; and some degree of compensatory justice for Muslims. The ARMM has only limited autonomy, mainly over the economic development of the region. The central government remains in control of defense, [mancial and foreign policies. Senator Aquilino Pimentel is quoted to have said that "unless the Philippine Constitution is drastically changed or amended, it is impossible to grant genuine autonomy to the Bangsamoro people."

### **Other Bangsamoro Options**

During a committee hearing in the Senate presided over by ~r Senator Mariam Defensor Santiago two years ago when the Organic Act for the expanded ARMM was being deliberated, Senator John Osmena proposed the establishment of a Commonwealth of Moro Sultanates. Senators Biazon and Emile who were present concurred with the idea of Senator OSInena. There was no follow up of this proposal by the Senators present.

Why not? The Sultanate of Sulu and the Mindanao principalities were deemed protectorates of the United States of America under the Kiram Bates Treaty of August 20, 1899. Regrettably, the US President unilaterally abrogated the said treaty in 1904 thereby prompting protest from the Sultan of Sulu. The abrogation of the Kiram- Bates treaty by USA according to some legal scholars had the effect of restoring to the Sulu Sultan his *de jure* sovereignty over the Sulu dominion and its dependencies.

The restoration of the Bangsamoro sovereign statehood is well supported by historical records. It has historical and legal basis under the so-called Moro treaties. While the Philippine state make use of the Moro treaties for its claim over Sabah, it denies any historical right to the Bangsamoro people its claim for statehood over its ancestral territories or homeland. Far more ironic is the fact that while the Treaty of Paris of 1898 disregarded Philippine independence under the Malolos Constitution, it is used by an independent Philippines to justify its illegal inclusion of the Bangsamoro territories in the Philippine national territory.

On the other hand, the restoration of the date of Philippine independence on June 12, 1898 reaffirms President Emilio Aguinaldo's recognition of Bangsamoro sovereign status at the time the first Philippine Republic was proclaimed. As an unincorporated territory of the United States of America, the Bangsamoro people could well fall under the decolonization principle of the United Nations as a colonized people or nation.

On December 14, 1960, the United Nations General Assembly proclaimed the Declaration on the Granting of Independence to Colonial Countries and Peoples under resolution 1514 (XV). Also in 1960, the UN General Assembly approved resolution 1541, defining free association with an Independent State, integration into an independent State, or independence as the three legitimate options offering full self-government.

Under the first option, Gilles Fireagle proposed an Associated Free State of Mindanao (Philippine Star, June 13, 2002). Initially, he proposes that the Republic of the Philippines will give up sovereignty over the islands of Tawi-Tawi, Sulu and Basilan. The inhabitants of these islands will be free to create their own country. The only limitation is that the new country will have to be associated to the Republic of the Philippines. It will be self-

governing in all respects, except that it cannot declare war against the Republic of the Philippines. The Free State of Mindanao as conceptualized will exist for 15 years. On its 16<sup>th</sup> year, it must conduct a referendum among its citizens on whether or not to continue as an associated free state or return to the folds of the Republic of the Philippines. At the same time, a referendum will also be held, open to all administrative/political units, including the ARMM to determine if any additional citizens would vote to join the free state. Should 50 percent or more elect to join the Free State, then the new state will become an independent nation.

There are many models of free state association. An early model of association is that of the North American Indians who are considered dependent nations under treaty relations with the US Federal Government. Based on American Jurisprudence, "the settled doctrine of law of nations (e.g., the Cherokee Nation) is that a weaker power does not surrender its independence - its right to self-government, by associating with the stronger and taking its protection (through a treaty)." (Worcester v. The State of Georgia, 483,501 (1832).

The Treaty of 1878 between Spain and the Sultanate of Sulu recognized the Sulu realm as a protectorate rather than as a territorial possession of Spanish colonial administration. This was officially adopted as a policy by the United States of America in the Instruction of President William Mckinley to the First Philippine Commission of 1900. Thus, the Congress of the United States regarded the Moro Nation as dependent nation similar to the North American Indians under treaty relations with the US Federal Government. The Treaty entered into between Sultan Jamalul Kiram II of Sulu and General John C. Bates of the United States Army confirmed the protectorate status of the Sulu Sultanate under the Spanish Treaty of 1878. '

There are many models of free state association according to Fireagle. The most familiar model known to Filipinos was the former Commonwealth of the Philippines. Other examples are the Estado Libre Asociado de Puerto Rico, the British Commonwealth countries of Australia, New Zealand, Canada, and Zimbabwe. The more recent trust territories of the Pacific islands that became self-governing in free state association with USA in 1990 are the Federated States of Micronesia, Republic of Marshall Islands and the Commonwealth of the Northern Marianas Islands. Another Pacific

Island, Palau became fully self-governing in free association with the USA in 1994.

## **Referendum and De-colonization**

The East Timor experience which achieved independence through the 1999 referendum under the supervision of the United Nations has inspired many as a peaceful and democratic option to settling political conflict.

In an interview of Moro Islamic Liberation Front (MILF) Chairman Salamat Hashim by Noli de Castro at Camp Abubakar on February 16, 1999, he declared that "we want a civilized solution to the problem through a UN supervised referendum." He said that the Bangsamoro people should be given the opportunity to decide their political status similar to that in East Timor. MILF Vice Chair for Political Affairs Ghazali Jaafar similarly called for a UN sponsored referendum. He said that "the most effective formula" to end the Bangsamoro struggle is to ask them to express their political will on four (4) options through a referendum, either: (1) remain part of the Philippine state; (2) to establish a federal form of government; (3) pursue an autonomous government; and (4) set up an independent Bangsamoro state.

Moro National Liberation Front (MILF) Chairman Nur Misuari has similarly called for a UN sponsored referendum. In his speech before the 27<sup>th</sup> Islamic Conference of Foreign Ministers (ICFM) in May 2000 in Jeddah, he also expressed intention to follow the examples of East Timor and the independence movement of Quebec.

The clamor for Bangsamoro independence has gained support from the Bangsamoro masses and civil society. During the first Bangsamoro People's Consultative Assembly (BPCA) held on December 3-5, 1996 in Sultan Kudarat, Maguindanao, the delegates numbering about 1,070,697 were unanimous in calling for the reestablishment of the Bangsamoro state and government.

During the rallies for Peace and Justice attended by thousands of Moro participants held in Cotabato City and Davao City on October 24, 1999 and in Isabela, Basilan on December 7, 1999, they issued a manifesto declaring: "we believe that the only just, viable and lasting solution to the problem of our turbulent relationship with the Philippine government is the

restoration of our freedom, liberty and independence which were illegally and immorally usurped from us, and that we be given a chance to establish a government in accordance with our political culture, religious beliefs and social norms." (Abhoud Seyed M. Lingga, "Democratic Approach to Pursue the Bangsamoro People's Right to Self-Determination," July 17, 2002).

Traditional Bangsamoro leaders have equally expressed support of the Bangsamoro strong desire to regain their usurped independence. During a meeting of Moro leaders headed by Sultan Abdul Aziz Guiwan Mastura Kudraty IV of Maguindanao on January 28, 2001, they issued a petition which have been earlier circulated for signatures among the Bangsamoro People in October 2000 addressed to the US President and the Congress of the United States calling for a referendum on Bangsamoro independence. This document is known as the "Declaration of Intent and Manifestation of Direct Political Act" (DIMDP A). The declaration states:

"As sovereign individuals, we believe that the Bangsamoro people's political life, as matters stand, call for an OIC - sponsored or UN supervised referendum in the interest of political justice to decide once and for all:

- To remain as an autonomous region
- To form a state of federated union
- To become an independent state."

The Bangsamoro people have remained faithful in their political aspiration to be a free nation. They have never waived that right starting from the American regime up to the present as evidenced by the following historical documents issued by their leaders:

1. The Cotabato Memorial of Datus and important persons of 1916 acknowledging the benefits of the establishment of the new Government of Mindanao, including the right "to perform part of the work of the Government" and "to take part in the making of laws for us" (Bangsamoro).
2. The Petition of the People of Sulu of 1921 to the President of the United States, expressing their desire to be a separate territory for the failure of the Philippine Legislature to pass laws for their benefit and protesting their filipinization and militarization.

3. The Dansalan Declaration of 1935, protesting the inclusion of the Moro Nation (Bangsamoro) in the grant of Philippine independence, and citing the discriminatory acts of the Filipinos under the Constitution of the Philippine Commonwealth, where there was "no provision whatsoever is made that would operate for the welfare of the Moros", and in the event the American People decide "to grant Philippine independence to the Philippine Islands, the Islands of Mindanao and Sulu should not be included in such independence."
4. The Zamboanga Declaration of 1924 of Moro leaders, concerning their rights and purposes addressed to the Congress of the United States of America, calling for a plebiscite to be held in the unorganized territories of Mindanao, Sulu and Palawan, fifty (50) years after the grant of Philippine independence on July 4, 1946, to decide by vote whether the proposed territory will be incorporated in the islands of Luzon and Visayas, or remain as a territory of the United State of America, or become an independent nation to be known as "Moro Nation" (Bangsamoro).

The right of the Bangsamoro people to self-determination matured in 1996, the year the Final Peace Agreement was signed between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF). The MILF did not take part in the signing of the said final-agreement and instead started to assert and call for a referendum.

5. On May 1, 1968, the Mindanao Independence Movement (MIM), founded by former Governor of Cotabato Datu U dtog Matalam, issued a Manifesto calling for the establishment of the Republic of Mindanao and Sulu. Copy of the Manifesto was forwarded to U.N. Secretary-General U Thant who officially acknowledged receipt of the same.

Other independent movements seeking to decolonize Sulu and Maguindanao through the affirmation of UN Resolutions recognizing indigenous nations have been initiated. They include Datu Amir Baraguir, an heir to the Maguindanao Sultanate and Prof. Limpasan Ijirani who authored the Sulu Archipelago Decolonization Movement (SADEM). The latter drafted a petition to the UN ahead of DIMDPA.

In 1971 shortly before the declaration of Martial law, Moro leaders met and came up with a consensus of unity, serving notice that no redress was possible under the prevailing genocidal campaign of the regime of former President Marcos on the Bangsamoro people. They pledged to preserve their community and land. They declared that to continue within the Philippine Nation State will be tantamount to condemning and debasing the very identity of the Bangsamoro people and other indigenous peoples of Mindanao, Sulu and Palawan. Towards this end, the Moro delegates to the 1971 Constitutional Convention reiterated the call for a referendum under C.R. No. 5830.

### **Prospects of Resolving the Mindanao Conflict.**

As an aftermath of the "all-out-war" declared by former President Joseph Estrada against the MILF and the Bangsamoro people and the EDSA II People's Power that caused his downfall then Vice President Gloria Macapagal-Arroyo was installed as the new President. Upon her assumption to Office, one of her national policy was "all-out-peace". She talked to Malaysian Prime Minister Mohamed Mahathir to persuade the MILF leadership to return to the peace negotiating table. The Prime Minister immediately dispatched emissaries to see Chairman Salamat Hashim. On March 24, 2001, representatives from the Philippine Government and the MILF met in Kuala Lumpur, Malaysia and signed the Agreement on the General Framework for the Resumption of Peace Talks between the GRP and the MILF. In the opening preamble of the agreement the parties declared:

"Recognizing the need to resume their stalled peace talks in order to end the armed hostilities between them and achieve a negotiated political settlement of the conflict in Mindanao and of the Bangsamoro problem, thereby promoting peace and stability in this part of the world."

The preamble further declared "the need to create an atmosphere conducive to the resumption of the peace negotiation through the normalization of the situation ... " in the conflict affected areas; "to pursue a solution to the Bangsamoro problem with honor, justice and dignity for all concern(ed);" "Acknowledging the ascendancy of moral and spiritual development as the primary foundation of socio-economic and political development of all people in Mindanao;" and "Holding a common belief that the resumption of the peace negotiation should go hand in hand with relief, rehabilitation and development efforts in the areas affected by the armed conflict."

The foregoing preamble of the Kuala Lumpur Agreement of 2001 served as the terms of reference in the succeeding peace talks that were held in Tripoli, Libya and in Kuala Lumpur, Malaysia. The Agreement on Peace between the parties signed in Tripoli, Libya during the opening of the peace

talks on June 22, 2001 served as the mother agreement. The succeeding peace talks held in Kuala Lumpur, Malaysia came up with Guidelines providing the details of the Tripoli Accord. Two subsequent agreements on implementing guidelines were signed in the resumption of talks in Kuala Lumpur from 2001 to 2002, One was the Guidelines on Security Aspect and the second on Humanitarian, Rehabilitation and Developments Aspects. The Ancestral Domain Aspect was deferred for succeeding talks in view of its implications on the political aspect of the talks.

The parties are supposed to meet for the resumption of the peace talks by the last week of February 2003. (2003)1- We can only hope that the eruption of hostilities between the Bangsamoro Islamic Armed Forces (BIAF) and the Armed Forces of the Philippines (AFP) last February 11, 2003 will not affect the resumption of the peace talks between the GRP and the MILF.

## **Federalism and Bangsamoro Statehood**

Federalism presupposes the establishment of component states or selfgoverning regional governments comprising the federal union. It is not necessarily incompatible with the political aspiration of the Bangsamoro people for statehood. The basis of Bangsamoro "statehood is the administration of the Sultanate governments in Mindanao and Sulu, which entered into treaties with nations like Spain, Britain and the Dutch East India

Company." ("Political Options for Mindanao", MTC Peace Summit, September 10-12, 2002).

The establishment of Bangsamoro statehood will be a forward step towards the advocacy for a Federal Constitution. The Bangsamoro Nation may opt to federate with the Philippine state or enter into a free state association (or better known as Commonwealth like that of Puerto Rico, a self-governing commonwealth associated with the USA). The Bangsamoro state may enter into a treaty with the Philippine state to form a federal union like that of the State of Texas which federated with the American Union via treaty.

The Mindanao conflict cannot await the amendment of the Philippine Constitution restructuring the Philippine Islands into eleven (11) component states under a federal constitution. The timetable of the Federal Movement advocacy to amend the Philippine Constitution to shift from a unitary to a federal system is by the year 2010. The Mindanao conflict is one of urgency that would need immediate political solution. We have laid down the various options to resolve the Bangsamoro problem.

Under modern contemporary international law, a treaty device is one of the legal modalities in the resolution of political disputes. Another procedure in through decolonization and the conduct of referendum similar to the East Timor experience. The East Timorese have earlier declared their independence from Portugal being its former colony. But after Indonesia annexed their territory as one of the province of Indonesia, the East Timorese opted to withdraw their declaration of independence and sought for inclusion as trust territory for decolonization under the United Nation. The peaceful political settlement of the Bangsamoro problem will be to the best interest of both the Filipino Nation and the Bangsamoro People. The military option will not put an end to the Bangsamoro problem. Even if all the Moro fronts are vanquished today, there will always be new generation of Moros who will assert the right to self-determination. The Philippine Government have been spending billions of pesos for the pacification of the Moro rebellion. This is not to mention the loss of innocent lives and destruction of property. The Philippines has the highest rate of poverty in the world. What is uselessly spent for military campaign should instead be spent for the alleviation of poverty of poor Filipinos.

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