

# Philippines: Imagining a consti amendment for a Moro “sub-state”

Monday 29 August 2011, by [SANTOS Soliman, Jr](#) (Date first published: 29 August 2011).

Is this not putting the cart before the horse? Why not wait for the Comprehensive Compact outcome of the GPH-MILF peace negotiations first? For all we know, constitutional amendments may not be necessary. But actually, we already know that they will be necessary if there is to be an enabling core framework that would be qualitative better in terms of self-governance than the existing constitutional provisions Article X, Sections 15-21 on autonomous regions. We already know from existing drafts and statements of the MILF that the form of self-determination that they seek has been expressed through catch words like notably “sub-state juridical entity,” “asymmetrical state-substate relationship,” “asymmetrical structure through compact of free association,” “free association of state or union,” “associative relationship,” “free associated state,” “associated free state” and the like which are unfortunately not readily understandable.

What is really important is not these catch words but the actual structural power and sovereign relationship between the state and “sub-state” (or by whatever term the “beast” is called) as would be detailed in the Comprehensive Compact. Although there are several models of free association or associated states, including the U.S.-sponsored 1935-46 Commonwealth of the Philippines (which was preparation for independence), whatever Bangsamoro “sub-state” to be created, will perforce have its own unique configuration arising mainly from the present-day Philippine context. In any case, all indications are, from the MILF drafts, that they envision a high degree of self-governance short of independence — certainly much higher than the low intensity and failed autonomy of the Autonomous Region in Muslim Mindanao (ARMM), which has a structural level that ultimately limits whatever reforms and new officials are put into place.

It therefore makes some sense to try to imagine how the Bangsamoro “sub-state” might look when articulated as a part of the Constitution of its “parent” Philippine state. This is an attempt to answer in a more substantive and constructive way rather than an argumentative and rhetorical way the valid question “Substate, what’s this beast?” If we try to answer this in more readily understandable terms, such as in the form and language of a proposed constitutional amendment (which is what it will take for the “beast” to be born, if ever), then perhaps it becomes clearer what this “sub-state” it. And for this purpose, our proposed constitutional amendment deliberately avoids using the aforesaid catchwords.

Be that as it may, our proposed constitutional amendment is guided mainly by the content of several MILF drafts in order to attempt to capture the essence of their envisioned “asymmetrical state-substate (associative) relationship.” But our proposed constitutional amendment is also guided by several GRP/GPH drafts and established parameters and positions, most definitely that the “sub-state” must not be “on its way to independence.” Finally, our proposed constitutional amendment likewise draws from the work of various independent civil society peace advocates and academics, including that of the author. The latter takes full responsibility though for the balancing, choices, formulations, nuances, omissions and own ideas that he has worked into the proposed constitutional amendment, based on his understanding of MILF, GPH and civil society perspectives.

More important than just answering “Substate, what’s this beast?,” our proposed constitutional amendment is offered as an input in aid of the peace negotiations. One idea in putting this proposed constitutional amendment “cart” before the Comprehensive Compact “horse” is to help simplify the increasingly complicated and difficult discussions on the Comprehensive Compact subject matter, including the MILF’s long and complexly-worded draft amendatory Article on “Bangsamoro State” to the Constitution. There may be a need in the negotiations to focus on finding the mutually acceptable core framework for a negotiated political settlement that would likely also entail a negotiated constitutional settlement. Without usurping constituent powers, the two peace panels must necessarily engage in discussions of a constitutional nature since what is really involved here is restructuring the power or sovereign relationship between the Philippine republic and the Bangsamoro people within its polity. It thus deals with the constitutional association between two nations or peoples within one country. In other words, it partakes of no less than re-defining the Philippine State, re-imagining the Filipino nation, and re-writing a new Filipino-Moro social compact.

Finding that mutually acceptable core framework is like cutting the proverbial Gordian knot of an increasingly complicated and difficult process and substance of negotiations. The core framework mutually agreed to be worked on until its entrenchment as a constitutional amendment would be like the key link in that whole process, facilitating whatever remaining necessary legislative, executive, administrative and even judicial measures. Otherwise, the tendency in the process, especially on the part of the GPH, would be to often piecemeal address specific MILF proposals in its draft Comprehensive Compact through the prism of the Constitution and national laws. And often enough, the latter constitute blockages to those proposals because of the different frameworks they are respectively coming from, including the constitutional ARMM framework on the GPH side. In fact, supposedly implementing legislation of peace agreements, without first “effecting the necessary changes to the legal framework,” may end up putting in place measures that are not really aligned to the right core framework, and which may have to be undone, thus further complicating the process. The same might be said regarding unduly cumbersome transitional arrangements and an unduly long interim period, as proposed by the MILF. Simplify, don’t complicate, the already complicated. Time is flying.

Our proposed constitutional amendment is offered as an independent civil society initiative for both parties. More of this sort of initiative, including an independent civil society draft Comprehensive Compact and draft Bangsamoro Basic Law, may be necessary to help break impasses where both panels insist on their own drafts to be the “working draft” because of strong attachment to its framing, concepts and even language. The MILF has proposed an amendatory Article on “Bangsamoro State” to be appended as an Ordinance to the Constitution, similar to the first (1939) and second (1947) ordinances appended to the 1935 Philippine Constitution which dealt with transitory U.S.-Philippine relations, including the infamous Parity Amendment. That could be one possible form, although it has been commented that such form may be more suitable for only transitory arrangements. Our proposed constitutional amendment is instead an Article X-A to be inserted right after the existing Article X, Sections 15-21 on Autonomous Regions. This indicates better the constitutional-historical sequence or segue from the ARMM to what we call generically the “Bangsamoro self-governing region” (BSR, for those who are acronym-conscious). The reader may find the following proposed Article X-A on the verbose side. Better for a draft to err on the side of verbosity, elucidation and clarity. As it is, certain terms are defined and, most importantly, certain rationales for the proposed new region are stated. In any case, the draft can be pared down, as desired, aside from further refinement. Or, it could even be added to where there may have been significant omissions. It is definitely not perfect but here it is, gratis et amore:

## **ARTICLE X-A**

### **BANGSAMORO SELF-GOVERNING REGION**

### **Section 1. [ *Basic Concept of the Region and Nature of its Relationship with the Republic.*]**

In lieu of but building on the existing and reformed Autonomous Region in Muslim Mindanao (ARMM), there shall be created a Bangsamoro self-governing region, to meet the aspiration for a system of life and governance suitable and acceptable to the Bangsamoro people. This region shall exercise a high degree of self-rule short of independence and not leading to it, exercising its own legislative, executive and judicial powers, subject to this Article X-A. There shall be in this region a fair and just balancing of the national sovereignty and territorial integrity of the Republic of the Philippines, on one hand, and the Bangsamoro people's right of self-determination, on the other.

The national territory shall remain intact, with this region as an integral part of it. The national sovereignty in this region shall reside in and be shared by both the Filipino and Bangsamoro peoples through their respective levels of government authority in accordance with the sharing of government powers provided in this Article X-A. The Bangsamoro people have the right to self-government in matters relating to their internal and local affairs, as well as ways and means for financing their self-governing functions. The object of such self-government is to secure the Bangsamoro identity and way of life, protect their homeland and its resources, and establish a system of governance as a people possessing a unique history and culture.

**Sec. 2. [ *Identity, Nationality and Citizenship* .]** The Bangsamoro people are the collective nation of the largely Islamized thirteen ethno-linguistic groups of the Maranaw, Maguindanao, Tausug, Samal, Yakan, Sangil, Palawani, Badjao, Kalibugan, Jama-Mapun, Iranun, Kalagan, and Molbog in the Southwestern Philippines, as well as those who choose to identify themselves as Bangsamoro. They are a historically and culturally significant and distinct nation and portion of the entire population of the Philippine State. This Bangsamoro nationality is recognized even while retaining their Philippine citizenship. Their historic pre-colonial sultanates and subsequent role in the resistance to colonialism are likewise recognized, as well as their historical and systematic marginalization and minoritization in their ancestral homeland in the Mindanao, Sulu and Palawan islands. Social justice calls for the acknowledgement and correction of the historical injustices against the Bangsamoro people, in particular the injustices to the territorial integrity of their ancestral homeland, as well as to their identity, political sovereignty and integral development consistent with their distinct Moro Islamic way of life.

The creation herein of a Bangsamoro self-governing region is itself a measure of social justice which redresses those legitimate and core Moro grievances by restructuring the power or sovereign relationship between the Philippine republic and the Bangsamoro people within its polity, as the key measure towards enhancing the totality of relationships, including between the Filipino and Bangsamoro peoples and among the tri-peoples of Mindanao. Their relationships shall be based on parity of esteem, full equality, and mutual recognition, respect, amity, cooperation and assistance.

**Sec. 3. [ *Political Territory, Accession Thereto, and Homeland* .]** The core or initial territory of the Bangsamoro self-governing region shall be the present geographic area of the ARMM, plus the municipalities of Baloi, Munai, Nunungan, Pantar, Tagaloan and Tangkal in the province of Lanao del Norte that voted for inclusion in the ARMM during the 2001 plebiscite, and the cities of Cotabato and Isabela in the provinces of Maguindanao and Basilan, respectively, which are already part of the ARMM.

There shall be developed jointly, by the appropriate government authorities both of the republic and of the region, a democratic process for the accession to this region of additional geographic areas, including barangays, of predominantly Muslim or ethnic Moro population, preferably but not necessarily always contiguous to the region. Similar authorities of both the republic and the region shall likewise determine the demarcation and status of territorial waters of the region based mainly on the archipelagic principle.

The Bangsamoro homeland is the historical and traditional territory in the Mindanao, Sulu and Palawan islands that had been inhabited, occupied and ruled by the Bangsamoro people particularly during the time of their pre-colonial sultanates and principalities. This historic homeland or ancestral territoriality constitutes a basis for Bangsamoro self-governance, but such historical sovereignty over these geographical areas, while an important territorial criterion for possible expansion of the region, shall now have to be subject to the free and genuine expression of the will of their contemporary inhabitants.

**Sec. 4. [ *Legislative Powers: Exclusive, Concurrent, and Residual* .]** Within its political territory or territorial jurisdiction and subject to this Article X-A, the Bangsamoro self-governing region shall have legislative powers over all matters except the following reserved exclusively for the National Government: Defense and external security; Foreign relations and policy; Territorial integrity; Citizenship and naturalization; Coinage and monetary policy; Postal system; and Common market and global trade.

There shall be concurrent legislative powers between the Congress and the region's legislature on the following matters: Public welfare and humanitarian institutions; Social welfare, charities and charitable trusts; Public health and social services; Education and skills training; Registration of births, deaths, marriages and divorces; Registration of changes of residence; Cadastral land surveys; Land registration and distribution and water regime; Agriculture and forest management; Inland waterways and coastal shipping; Inland fisheries and coastal preservation; Aqua culture and marine matters; Protection regarding the marketing of food, drink and tobacco; Transport planning and infrastructure; Tourism development; Ports, harbors and foreshores; Coast guards and border patrols; Urban and rural development; Regional economic structures; Nature conservation and preservation of historical and cultural sites; Waste disposal and noise abatement; and the equitable sharing of common wealth.

All powers, functions, and responsibilities not otherwise granted exclusively or concurrently in this Article X-A to the National Government shall be vested in the region. Notwithstanding the aforesaid limitation on the legislative powers of the region, it may enact laws that promote the general welfare of the Bangsamoro people.

**Sec. 5. [ *Legal Regime, Human Rights, and Legal Pluralism* .]** The legal regime in the Bangsamoro self-governing region shall be governed principally by the following legal sources: this Article X-A; the Bangsamoro Basic Law as organic act to be drafted by a constituent assembly of the Bangsamoro people; by international human rights law and generally accepted principles of international law which are both deemed adopted as part of the law of the region; and the Bill of Rights of the Philippine Constitution. The other Articles of the Constitution as well as national laws shall apply in a suppletory capacity insofar as they are not inconsistent herewith. The constitutional principle of separation of Church and State, and the related non-establishment of religion clause, in particular shall not be applicable to a Moro Islamic system as may be established in the region.

The protection and respect of human rights, shall be guaranteed in the region, especially the following international human rights treated in a unified way: the right to equality and non-discrimination; the right of minorities to preserve their own culture, religion and language; the right of indigenous populations to preserve their traditions, as well as their special rights to land and its natural resources; and the right of peoples to self-determination. Among others, civil liberties, religious freedom, women's rights, vested property rights, and the rights to self-determination and ancestral domain of indigenous highlander tribes, as well as their freedom of choice, shall be recognized and respected, including as provided in the Indigenous Peoples' Rights Act, the United Nations Declaration on the Rights of Indigenous Peoples, and the Mamalu-Tabunaway Pact between the Teduray and Maguindanaon tribes.

While the Bangsamoro Basic Law shall be the main governing law in the region, the legal regime therein shall allow for a measure of legal pluralism or a plural legal order in which diverse co-existing legal regimes are superimposed, interpenetrated, and mixed. These include Philippine law, international law, shari'ah or Islamic law, customary adat law, and indigenous tribal customary law. The regional legislature may adopt, in whole or in part, national laws as well as Muslim Mindanao Autonomy Acts of the ARMM Regional Legislative Assembly, without necessarily thereby impliedly adopting their constitutional and legal bases. The appropriate authorities both of the republic and of the region, as well as of the concerned indigenous highlander tribes within the region, shall develop jointly internal conflict-of-laws mechanisms for situations or disputes where both Bangsamoro nationals and non-nationals are involved, with international human rights as main common ground and normative standard for conflict resolution.

**Sec. 6. [ *Institutions and Structures of Governance, Co-Relation with and Representation in the National Government* .]** The Bangsamoro self-governing region shall be empowered to build, develop and maintain its own institutions of governance, inclusive of legislative, civil service, electoral, legal, judicial, police and internal security, correctional, educational, economic, financial and banking institutions, necessary for a progressive and modern Bangsamoro society, including in co-relation with national institutions of governance within the Philippine polity. The structure of the regional legislature, executive and judiciary may be different from that of the National Government. Local governments shall be governed by the legal regime in the region which shall provide for appropriate mechanisms for their representation in and consultation by the regional government. The latter through its legislature may provide for an appropriate structure and configuration for the more effective and viable governance of the two (2) main geographical parts, i.e. the central mainland part and the southwestern islands part, of the region, even as the latter level shall remain the center of gravity for self-governance.

The appropriate government authorities both of the republic and of the region shall develop jointly the mechanisms for coordination, adjustments and conflict resolution such as where there may be overlapping jurisdictions, especially in the matters of administration of justice and of local government units. Among the major such mechanisms shall be representation in the National Government and veto-type mechanisms in case of national measures that would unduly prejudice the self-governance and welfare of the region. The representation mechanisms shall include two (2) additional Senate seats and three (3) additional House seats for the region with the concerned Senators and Representatives to be voted at large only in the region. Any Congressional change in the configuration or status of the congressional districts and local government units in the region shall require the concurrence of the regional legislature. Other mechanisms of representation as well as of veto shall be provided by Congress, including in its internal rules, and by the appropriate measures of the executive, administrative and judicial departments of the National Government, in consultation and concurrence with the proper regional authorities.

**Sec. 7. [ *Ancestral Domain, Resource Utilization, and Wealth-Sharing* .]** The Bangsamoro ancestral domain does not form part of the public domain but encompasses ancestral, communal and customary lands, maritime, fluvial and alluvial domains as well as all natural resources therein that have inured or vested ancestral rights on the basis of native title to the Bangsamoro people in their historic homeland, established not only through occupation, possession and dominion since time immemorial but also by cultural bond, customary law, historic rights and legal titles. This special concept of ancestral domain shall apply only within the political territory or territorial jurisdiction of the Bangsamoro self-governing region. The region shall, among others, exercise power or authority over the natural resources, including subterranean natural resources and strategic minerals, within its territorial jurisdiction. The exploration, development, and utilization of these natural resources shall reinforce the region's economic self-sufficiency while safeguarding environmental security and

integrity for sustainable development. The general percentage ratio of wealth sharing between the region and the National Government shall be 75:25 in favor of the region.

The ownership and use of land as well as various forms of land tenure, rights, claims and reform shall be governed by the plural legal and property regime in the region, with due regard to vested property rights and legitimate private property. There shall be a thorough review of the public land acts and land tenure system as these have impacted on the region, with a view to more effectively accommodating customary and indigenous land rights and law as well as adopting modern international trends of best practices and systems here.

**Sec. 8. [ *Transitional Justice, Reparation, and Reconciliation* .]** The historic and legitimate grievances of the Bangsamoro people arising from unjust dispossession of their territorial, proprietary and tenurial rights, as well as from their systematic marginalization and minoritization, is acknowledged by the Philippine State. Where land restitution is no longer possible, the National Government shall take measures of adequate reparation or compensation collectively beneficial to the Bangsamoro people, in such quality, quantity and form to be determined mutually by the appropriate government authorities of both the region and the republic.

Transitional justice and reparation or compensation shall also be justly due to the civilian victims of war crimes and gross violations of human rights committed by both sides. There shall likewise be both substantive and symbolic measures of transitional and restorative justice as well as of national reconciliation to heal inter-people relationships and deep social, cultural and religious cleavages, including through special intervention of affirmative action for Muslims or ethnic Moros in diasporas outside the region and no less than a review, rewriting and re-teaching of Philippine and Mindanao history.

**Sec. 9. [ *Shared Security Arrangements* .]** The preservation of peace and order within the Bangsamoro self-governing region shall be its responsibility which shall be exercised through its police and internal security force. The external defense and security of the region shall be the responsibility of the National Government which shall exercise it through the Armed Forces of the Philippines which, as the protector of the people and the State, is also a protector of the Bangsamoro people, since the AFP exists to protect the human rights of every Filipino citizen. There shall be in the region an effective program for disarmament, demobilization and reintegration, or whatever it may be called, for the Moro liberation armed forces. This program shall also purposively deal with demilitarization and normalization, dismantling of paramilitary forces and private armies, and small arms and light weapons control. It shall co-relate with national and Mindanao-level efforts at security sector reform, as well as peace education and culture of peace efforts to address the “culture of the gun.”

**Sec. 10. [ *Mechanisms and Time Frame for Transition, and Future Amendments* .]** Within thirty (30) days from the ratification of this Article X-A in a plebiscite called for the purpose of voting on proposed constitutional amendments, a Bangsamoro constituent assembly, to draft the Bangsamoro Basic Law as the organic act of the Bangsamoro self-governing region, shall be convened pursuant to an executive order to be issued by the President, the groundwork for which would have been laid by the broad-based Mindanao peace process, including the peace negotiations and agreements with the two (2) main Moro liberation fronts. Within six (6) months from the time of organization of the Bangsamoro constituent assembly, it shall complete its work of drafting the Basangmoro Basic Law consistent with this Article X-A, and with the assistance and participation of adequate cross-community, multi-ethnic and multi-party stakeholder consultation mechanisms to be provided in the executive order.

Within forty-five (45) to sixty (60) days from the completion of the draft Bangsamoro Basic Law, it

shall be submitted to the Bangsamoro people for ratification or otherwise in a referendum/plebiscite called for the purpose in the core or initial territory indicated in Sec. 3 above, with the majority vote thereon to be reckoned on the basis of that whole territory. Upon such majority vote of approval, the Bangsamoro Basic Law shall come into force and effect, and the Bangsamoro self-governing region shall be deemed created. The existing Organic Act for the ARMM shall, however, continue to be in force and effect as the main governing law of the existing ARMM Regional Government which shall continue to function, albeit mainly to assist in the transition in support of transitional mechanisms and bodies to be provided in the executive order, until the election of the new Bangsamoro Regional Government under the Bangsamoro Basic Law. This election shall be conducted within another forty-five (45) to sixty (60) days from the ratification of the Bangsamoro Basic Law. Upon the election of and soonest assumption of office by the new Bangsamoro Regional Government, the existing ARMM Regional Government shall cease to function and the ARMM Organic Act shall be deemed repealed.

Any future amendments to this Article X-A shall require only the concurrence of Congress and the Bangsamoro self-governing region's legislature on a co-equal basis as the primary sovereign representative bodies of the sovereign Filipino and Bangsamoro peoples, respectively, in their herein provided shared sovereignty over the region.

### **Final Remarks**

Well, subject to refinements to this proposed constitutional amendment in the form of an Article X-A, the question to the Filipino majority who would have to ratify it, if ever, is this: Is this something we can live with? It clearly provides for a constitutional space, still within our republic and territory, for Bangsamoro minority to live out their distinct (from our) identity and way of life as well as their centuries-old longing for self-rule (even if not anymore their preferred original aspiration of independence, just like we had gained from Spain and the U.S.). If we can say yes to this constitutional space, which is also like reaching out to our Moro brothers and sisters, then we have given a great chance to ourselves and all concerned to finally see peace in Muslim Mindanao in our time, which is also for the sake of future generations of Filipinos and Moros. If both peoples can say yes and make it happen, we should in the process both come out better as we bring out the best in each other. We would show that Moro nation-building and "substate"-building need not undermine but can instead enhance Filipino nation-building and state-building.

**By Soliman M. Santos, Jr.,** Naga City, 21 August 2011

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### **P.S.**

\* SOLIMAN M. SANTOS, JR. has been a long-time Bicolano human rights and IHL lawyer; legislative consultant and legal scholar; peace advocate, researcher and writer esp. for and on the Mindanao peace process, with several books on this, inc. *The Moro Islamic Challenge: Constitutional Rethinking for the Mindanao Peace Process* (UP Press, 2001; with 2<sup>nd</sup> printing, 2009), where he has long made the first full argument for charter change for that peace process. He is presently Presiding Judge of the 9<sup>th</sup> Municipal Circuit Trial Court (MCTC) of Nabua-Bato, and Acting Presiding Judge of the Municipal Trial Court (MTC) of Balatan, both in Camarines Sur.