

Bangsamoro: Fulfillment or Denial Anew?

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I. Duterte Peace Roadmap

One major plank in the platform of presidential candidate Rodrigo R. Duterte was peace with the Moro and the Communist rebels. He planned a two-prong approach – implement all agreements with the Moro rebel groups and continue the negotiation with the NDFP (National Democratic Front of the Philippines), the umbrella of the Communist rebel forces.

These are now the two roads in the Duterte peace roadmap. This he enunciated in his inaugural address: “*On the domestic front, my administration is committed to implement all signed peace agreements in step with constitutional and legal reforms.*” While his two paragraphs immediately following suggested reference to the Moro rebels alone, viewed from his later statement in his State of the Nation Address, he must also be referring to the Communist insurgents.

Even before he formally assumed office, Duterte and his peace teams held exploratory talks with the MILF (Moro Islamic Liberation Front) on the Bangsamoro issues and with the NDFP for the resumption of the stalled negotiations. During a cabinet meeting on July 18, 2016, he approved the roadmap to peace for the implementation of all peace agreements with the Moro rebels.

Peace and Development

No official copy was released immediately; none until now; and none has been posted in the websites of the OPAPP (Office of the Presidential Assistant on the Peace Processes) or of *The Official Gazette* under the Office of the President. However, Peace Secretary Jesus Dureza, who prepared the roadmap, has *optimistically* said much about it in his press interviews and statements published in *MindaNews (MN)*, *Philippine Daily Inquirer (PDI)*, *The Philippine Star (Star)*, *Rappler (R)*, and other media outlets.

Incidentally, we received from a friend who begged to remain anonymous what appeared to be a guide in a briefing for the government and the Moro rebel peace teams entitled, “**The Bangsamoro Peace and Development Roadmap**”. It corroborates official statements in the media. We attach to it the same authenticity as the matrix of MILF demands that we received in 2001 under the same circumstance and subsequently proven authentic. We will refer to the *BPDR* as the “*authentic Duterte roadmap*”.

From Secretary Dureza, it is inferred that the Bangsamoro roadmap is not only about peace but also development, for he has repeatedly said that for him signing many peace agreements would mean nothing without the massive development of the Bangsamoro. From the peace secretary's pronouncements – echoing the President's SONA (Paragraphs 34, 35) – may be inferred the *essential features* or *elements* of this “**Bangsamoro Peace and Development Roadmap**”.

Implementation

Negotiations with the Moro rebels are over. Hence, the peace process will focus on the implementation of the agreements. The government and MILF negotiating panels have been reconstituted into implementing panels. They will meet in the Philippines, no longer in Kuala Lumpur, except when third-party facilitation is necessary..

Dureza (*Star*, 7/20/16) said that a new enabling law will be drafted to implement the CAB (Comprehensive Agreement on Bangsamoro) and the 1996 Final Peace Agreement of the government and the MNLF under the leadership of Chairman Nur Misuari.

Stated in other reports, for more inclusivity pertinent provisions of the ARMM law (R.A. No. 9054) and of IPRA (Indigenous Peoples Rights Act) will be included in the enabling law to complement the CAB and the 1996 FPA. The inclusion of the IPRA will address the concerns of the Lumads or IPs.

The convergence of the CAB, FPA, and R.A. No. 9054 will implement all agreements with the Moros since 1976. The CAB contains all agreements between the government and MILF from 1997 to 2014. The 1996 FPA is dubbed the final implementation of the 1976 Tripoli Agreement and related accords between the government and the MNLF; it was used to amend R.A. No. 6734 into R.A. 9054.

R.A. No. 9054, the original Organic Act that established the Autonomous Region in Muslim Mindanao, was drafted in 1988 by the Mindanao Regional Consultative Commission composed of 50 members -- **25** Muslims, **17** Christians and **8** Lumads – created by President Corazon C. Aquino.

Two Simultaneous Tracks

The implementation process will follow the legislative and the federalism tracks. As reported in the OPAPP website and cited by *MindaNews*, the enactment of the the new proposed Bangsamoro enabling law “*will be done simultaneously with the moves to shift to a federal set-up, the latter expected to come later under the planned timeline.*”

Dureza, in his text-message to *MindaNews*, reiterated: “*Simultaneous but enabling law obviously ahead. Bangsamoro governance unit can be a test bed for future federal states.*” (MN 7/19/16) It seemed to clarify the somewhat confusing “*the latter expected*”-clause in the OPAPP report.

What does the clarification mean? The expanded BTC (Bangsamoro Transition Commission) once reconstituted will start immediately to draft the new enabling law and within six months submit the draft to the Congress. By that time, the amendment of the 1987 Constitution to shift to the federal system could be in progress at the Constitutional Assembly. While awaiting the ConAss draft before constituting itself into a constitutional assembly, the Congress would be tackling the Bangsamoro enabling law.

That the “*Bangsamoro governance unit can be a test bed for future federal states*” implies the intent to pass the enabling law ***immediately*** – as President Duterte has assured the Moros (MN, 7/23/16) – and to establish the Bangsamoro while the ConAss is still working on the federal constitution so it can use Bangsamoro as the model of the federal states. The proposed federalization timeline is to finish the constitutional amendments in 2017 and submit it to a plebiscite in the midterm election of 2019.

Convergence and Inclusivity

In a meeting with MILF Central Committee, Dureza assured Chairman Al Haj Murad Ebrahim, “*We will continue the process. We are not reinventing here. We will build on what has already been gained.*” Murad affirmed the MILF commitment to “*preserve all the past agreements.*” (PDI, 7/21/16) This also means that unless changes are necessary, the same visions, parameters, objectives, mechanisms and modalities already in place will remain as guide and in use.

Convergence and inclusivity are critical concerns. This means that all – Moros (rebel factions and Sultanates), IPs and settlers – will be consulted, their concerns embodied in the enabling law and represented in the Bangsamoro government. The perceived lack of these in Draft BBL is among the reasons for its revision into the substitute bill BLBAR (Basic Law for the Bangsamoro Autonomous Region) and its eventual failure to be passed by the 16th Congress. The burden of convergence and inclusivity is on the BTC.

The implementing panels have agreed to expand the membership of CAB-based BTC to 21 – eleven, including the head, to be appointed by MILF and ten by Government. To make the new BTC truly inclusive, it is expected Government will tap representatives from the Misuari, Sema and Alonto MNLf factions, the Sultanates, other Bangsamoro representatives, the local governments and the IPs.

As already stated above, the BTC will draft a new Bangsamoro enabling law to replace Draft BBL out of the CAB and the 1996 FPA with pertinent provisions from R.A. No. 9054 and IPRA and to submit the proposed enabling law to the Congress six months after its constitution. Dureza (MN, 7/19/16) said the new BTC “*will also be mandated to propose amendments to the Philippine Constitution that are pertinent to the Bangsamoro as inputs towards eventual federalism in the land*”.

In BPDR, the “*New BTC will call for an inclusive ALL-Moro Assembly to approve the new draft*” before submitting it to the Congress “*by July 2017*”. It is also mandated to “[s]pearhead the dialogue and conversation of people in Mindanao on the Bangsamoro peace process”. These are the ultimate quests for inclusivity.

Economic Development

Dureza said that the government will also implement “*massive development on the ground*” while the passage of a Bangsamoro enabling law and the shift to federalism are being done simultaneously (MN, 7/19/16). This development refers to the Autonomous Region in Muslim Mindanao that will become the Bangsamoro.

Other than in general statements, Dureza has not mentioned specific details and timeline about the economic component of the peace process in the Duterte peace roadmap. None appeared in the apparent briefing guide that has been anonymously sent to us. But this is not a new element in the Mindanao peace process.

This is Paragraph 6, Third Part, of the 1976 Tripoli Agreement: “*The authorities of the autonomy in the South of the Philippines shall have their own economic and financial system. The relationship between this system and the economic and financial system of the State shall be discussed later.*”

The above provision of the 1976 Tripoli Agreement was fleshed out in Part “III.D” of the 1996 Final Peace Agreement, Paragraphs 126 to 151, with the sub-title “**The Economic and Financial System, Mines and Minerals**”. The FPA, as stated in its Paragraph 153, “*is the full implementation of the Tripoli Agreement*”.

For the interim, from a month after the signing of the FPA in 1996 until the ratification of R.A. No. 9054 in 2001, President Fidel V. Ramos created by Executive Order No. 371 the SPCPD (Southern Philippines Council for Peace and Development, CA (Consultative Assembly and SZOPAD (Special Zone of Peace and Development), the transition mechanism – instead of the Provisional Government -- of the autonomy under the FPA. The National Economic and Development Authority formulated the “**Integrated Development Framework and Investment Program 1997-1999**” for SZOPAD.

One of the three aspects of the 2001 Tripoli Agreement on Peace is “**Rehabilitation**”. It was fleshed out in an agreement signed on May 7, 2002 the Article V of which provides

how rehabilitation and development projects are to be implemented through “**a project implementation body**”. This body was later created as BDA (Bangsamoro Development Authority) that according to MILF’s *Luwaran* reports has performed well its task within the means available from the government, foreign countries and international agencies.

The negotiations between Government and MILF under the Arroyo and Aquino III administrations were repeatedly stalled by contentious issues – not only political but also economic. The failure of Draft BBL to pass the 16th Congress was a denial of meaningful economic concessions granted to the Moros, as much as a rejection of political provisions perceived as unconstitutional.

The Peace Commission of President Corazon C. Aquino, tasked to tackle peace problems in the country, deemed “*economic development*” as one of the foundations of “*full and lasting peace*” together with “*social justice*” and “*political stability*”. To acknowledge, the 1976 Tripoli Agreement, it explained, the 1987 Constitution mandated the creation of autonomous regions (Article X, Sections 1, 15 to 21). Section 20 provides that the autonomous regions must have legislative powers over the “*Creation of sources of revenues (2)*” and “*Ancestral domain resources (3)*”.

In the Six Paths of Peace, the peacemaking guide under President Ramos, the economy was one of the three concerns in the **first path**: “***a. Pursuit of Social, Economic and Political Reforms: This component involves the vigorous implementation of various policies, reforms, programs and projects aimed at addressing the root causes of internal armed conflicts and social unrest. This may require administrative action, new legislation or even constitutional amendments.***”

In all administrations from 1976 to the half of 2016, economic development had been a key component of the peace process – ***clearly formulated, signed and promulgated***. But this was half-heartedly implemented or not at all. ***Will fulfillment come under Duterte?*** As stated to the media, it is a major part of the Duterte peace roadmap. However, there is no way to know the details and timeline of this economic development initiative since no official copy of the roadmap has been released to media or made accessible on-line.

However, here’s a report from government news sources in relation to Dureza’s espousal of “massive economic development”: “*President Duterte forthwith directed that the executive order of the peace office be amended to enable it to oversee all development projects and at the same time empower it to implement projects that are related to peace. (OPAPP Website, PIA: 7/19/16)*”

Imperatives and Options

The establishment of the Bangsamoro is keyed to federalism. The Congress is sure to push through federalism; but if the people reject it at the plebiscite, the Bangsamoro will

still be established according to the approved enabling law. This is President Duterte's assurance to MILF and the Moros in his *Harirayah* speech and State of the Nation Address last July 8 and 25 respectively.

In his SONA, he stated: ***“We will strive to have a permanent and lasting peace before my term ends. That is my goal; that is my dream.”*** This is a reiteration of what he declared in his *Harirayah* speech: *“I foresee that towards the end of the year, we'd be able to come up with the framework, kung paano gawin ang federalism (how to set up federalism). But, if the Filipino nation and a plebiscite would not want it, then I am ready to concede whatever is there in the BBL Law.”*

We surmise that in his *rumbings* and *fumbings* in *Tagbilish* (a mixture of Tagalog in Bisaya word and sentence constructions and English) in his SONA, he wanted to say that his proposal of lasting peace needs the acceptance of MNLF leaders Nur Misuari and Muslimen Sema and the political leaders of Mindanao. This proposal can be traced back to the first peace talk between Misuari and President Marcos.

What did he propose addressing the Congress? Pass the BBL “*minus the things that you do not want*” – the constitutionally controversial and other contentious provisions. These will be included in the package of proposed amendments to the 1987 Constitution for the establishment of federalism and later reintegrated into the BBL. He exhorted: *“That is the solution for Mindanao. Nothing else. Believe me. Nothing else will do. Please sleep on it, ponder on it, because that's the only way to proceed.”*

This was reported by *Rappler* (7/25/16). He laid out the same proposal in his *Harirayah* speech, before the military in Camp Siongco in Awang, Datu Odin Sinsuat, Maguindanao (*Star*, 7/23/16), and in his talk to Moro local government officials and plantation workers in Buluan, Maguindano (*MN*, /23/16).

What did he tell the Moro officials and workers in his Buluan speech? Just referring to “*the enabling law*”, he said he wanted this passed and implemented “*bukas kaagad*” or “*immediately tomorrow*” but it would be “*minus the provisions where constitutionality issues are being raised*”. His audience must have understood the reference to be “BBL”; they applauded his declaration, although with some fearing that the law would be like the watered down BLBAR’

To allay the fears, he said: *“Then maybe someday, if we go federal, eh yun na idagdag, ibalik doon sa Constitution ng federal, ibalik na natin yung .. ayaw ng gobyerno tapos yung gusto ninyo (let's add those, let's incorporate them into the Federal Constitution, let's restore what government does not like but what you like (into the new Constitution).”*

However, in his *Harirayah* speech, the lyric of his peace tune was different: *“Let us build a nation that will be founded on peace and understanding. Ang tingin ko, with the grace of Allah, I might be able to do this within six years. It will not come overnight. Certainly, it will not come next year. Probably, it will be something about two to three years from now. but I assure you that something will change before I end my term.”*

By “BBL”, he could be referring to the “enabling law” or “BEL” which the new BTC is mandated to submit to the Congress by July 2017. Since it must be CAB-compliant; it is expected to contain the contentious and constitutionally controversial provisions as in Draft BBL. Considering that it will go through the legislative mill simultaneously with federalization, the “*bukas kaagad*” will be indeterminate.

He mentioned in his *Harirayah* speech his idea of reconfiguring the Bangsamoro territory or the ARMM area with the consent of “*my MILF brothers and Nur Misuari of the MN*” and “*everybody in Mindanao*”. He believed that “*... in fairness to Nur, we might also configure his territory of the Tausug nation*”.

He explained the reconfiguration -- setting up a “*Tausug nation*” – to be not adverse to the unity of Mindanaons. “*Then, we will have a new boundaries (sic) and these boundaries does (sic) not really intend to separate our brother Moro from the Christian. Rather, it is intended only to delineate territories. But, that should not keep us apart from being Mindanaoans. For you know, you must realize that most of the Christians here in Mindanao, your brother Christians, are supporting the federalism and the BBL.*”

Inference

These imperatives and options complete the peace roadmap spoken of by Dureza in his briefings to the peace implementing panels and in his press interviews and various conferences. Let us summarize the **key points** of the Duterte Peace Roadmap inferred from the pronouncements of the President and the Peace Secretary and, in some cases affirmed by MILF or the Government and MILF implementing panels.

Implementation: The peace process is now in the implementing phase. The negotiations over, the Government and MILF implementing panels will direct the implementation of the CAB, the 1996 FPA and other laws, coordinating the mechanisms and modalities already in place. The panels will hold their planning sessions in the Philippines but the “*formal documents like the term of reference for the Panels would still have to be signed in Kuala Lumpur (Iqbal, Luwaran: 9/3/16)*”. These were firmed up in the August 13-14 Government-MILF meeting.

Drafting of the Bangsamoro Enabling Law: A new enabling law – to be referred to as Bangsamoro Enabling Law (BEL) “*to avoid confusion and to unload the baggage attached to*

the initials (Santiago, MN: 9/1/16) – will be drafted by the new BTC to replace BBL and to be submitted to the Congress by July 2017.

Convergence and Inclusivity: The BEL will be the consolidation of the CAB, the 1996 FPA and some relevant provisions of IPRA, and R.A. No. 9054. All stakeholders – MILF, MNLF factions, the IPs, the Sultanates and LGUs – will be represented in the BTC to insure the desired convergence. An All-Moro Assembly will approve BEL before its submission to the Congress.

Simultaneous Tracks: The legislative processes to establish the Bangsamoro and to shift from the unitary to the federal form of government will be simultaneously done although the Bangsamoro will be established ahead of the Federal Government.

The Congress will pass the BEL, minus constitutionally controversial and contentious provisions in 2017. Once the BEL is ratified in the plebiscite, the BTA (Bangsamoro Transition Authority) will run the provisional government -- the Bangsamoro regular officials to be elected in 2019. The objectionable provisions of BEL will be considered as proposed constitutional amendments to be included in the deliberations ConAss to amend the 1987 Constitution.

With the Bangsamoro as model for federal states, the federal constitution will be submitted to a plebiscite during the 2019 election. If approved, the transitory federal government will be set up, the regular federal government to be elected in 2022.

Establishment of the Bangsamoro: The establishment of the Bangsamoro is a must, not an option, President Duterte declared. Even if federalization is rejected by the people, the Bangsamoro will be set up as the only way to bring about lasting peace.

Massive Economic Development: An integral part of autonomy, this is not an option. As Dureza emphasized, *"I can sign a hundred peace agreements but if those on the ground do not immediately feel the dividends of peace, those agreements will not be sustainable."* In the August 13-14 Kuala Lumpur meeting, they agreed to continue the *"implementation of deliverables under the Program for Normalization, including the Bangsamoro Normalization Trust Fund and was agreed upon"*.

Reconfiguration of Bangsamoro Area: This has not been mentioned as part of the peace roadmap. But since it is the idea of President Duterte -- *besides appearing to be the realistic solution to the evident disunity between the Sulu-based and mainland Mindanao-based Moro fronts and constituents* -- it may be considered in the configuration of the federal states. Or, the Implementing Panels can suggest to the BTC to give it a second thought.

Dr. Julkipli Wadi, professor of Islamic Studies at the University of the Philippines aptly observed in his article, **“Du30, Peace Process, and the Moro Struggle”**: “...*the Bangsamoro peace process has long become a “narrative of tragedies” where the beginning of the term of certain administration often starts with so high a promise of peace only to deteriorate at the middle or end of its term*” (MN: 7/14/16),

In all peace agreements and legislations to address the Mindanao Problem, the Moros were made happy with hope for ultimate deliverance from injustices and realization of their long-time aspirations only to be denied eventually, each time, of the promise of life in peace, prosperity, contentment and human dignity. Will President Duterte’s peace roadmap end differently -- *in fulfillment*?

II. BBL to BEL

What will happen to Draft BBL? The question appears simple; but, for Bangsamoro, it is destiny-bound – to paraphrase a classical question, ***Bangsamoro, quo vadis?***

Media reports quoting or citing Dureza said that BBL will be **“junked”**. Lead paragraphs of two national newspapers online state:

INQUIRER.net, July 19, 2016: “President Duterte has **junked** the Bangsamoro Basic Law (BBL) and approved an inclusive peace road map where an all-Moro body would be tasked to draft ‘a new enabling law’ to replace the BBL (*Duterte’s peace road map to clear way for federalism – Dureza, by Nestor Corrales*.)

The Philippine Star, July 20, 2016: “The Duterte administration has **junked** the proposed Bangsamoro Basic Law (BBL) as the President approved a ‘Roadmap for Peace’ on Monday evening. (*Duterte junks BBL, approves ‘Roadmap for Peace’, by Christina Mendez and Jose Rodel Clapano*)”

It should be noted, however, that **“junked”** is not in the agreements of the two parties in Kuala Lumpur; neither is it in Duterte’s ***Bangsamoro Peace and Development Roadmap***. Is the word just mere media usage or that of Dureza in his media interviews but not in his other briefings?

Yet it should be asked: ***Does drafting a new enabling law mean “junking” the BBL?***

Complicating Questions

The enabling law must be CAB-compliant. Draft BBL is CAB-compliant. What will be junked? ***Will it be the title “BBL” and the entire content, or, just the title and enhance the content as MILF Chairman Murad Ebrahim would want it?***

The enabling law must be the convergence of the CAB, 1996 FPA, R.A. No. 9054, IPRA and relevant provisions of other laws and agreements. Draft BBL has incorporated significant provisions of R.A. No. 9054 which are essentially provisions of the FPA; CAB has the same principles of ***ancestral domain*** as those in IPRA. ***Will Draft BBL be completely junked and craft BEL starting from clean slate or will it keep the BBL content to be enriched through convergence?***

These issues can complicate the transition of BBL to BEL, delay its submission to the Congress and upset the timetable for the establishment of Bangsamoro. Another setback in the fulfillment of the Bangsamoro dream will be too disenchanting for the Moros.

Time Constraint

The transition of BBL to BEL is now facing time constraint. More complications will enhance the constraint. According to the roadmap as cited in media reports, BEL must be submitted to the Congress by July 2017. That will allow less than a year to pass BEL and to have it ratified so that the BTA (Bangsamoro Transition Authority) can have one year to entrench Bangsamoro before the election of its regular officials in the May 2019.

The burden is on the BTC. With the July 2017 time target, BTC has six months to craft BEL, counting from January 2017. President Duterte signed the EO creating the new 21-member BTC. ***Can it start real work in December?*** If it can start the convergence and drafting processes in December, it will have, at the longest, seven months to finish crafting BEL.

Tall order! It took the first BTC 16 months to draft the original BBL even if in drafting, it only had to transform the agreements and annexes in the CAB into legal form and style – in some instances, according to the BTC chairman, copy-pasting CAB provisions on the draft. It took another four months for the Office of the President, the Peace Panels and BTC to review, revise and refine the original BBL into Draft BBL for approval of the President and the MILF Chairman.

How can the new BTC beat the time constraint? Can there be more constraint?

Ironic Necessity

Convergence and inclusivity are deemed necessary and imperative for the BEL to be fully acceptable. Ironically, however, they are sources of conflicts and complications since inclusivity will bring in divergent parties and personalities with divergent agenda that can complicate and disorient convergence to delay the crafting of the BEL.

Is Draft BBL truly lacking in convergence and inclusivity? The truth lies in an objective scrutiny of the composition of the BTC that drafted it and of the agreements and annexes on which it is based. Consider also the conduct of the negotiations and of the efforts to reach out and involve all stakeholders. And, finally, read closely Draft BBL. Whatever lack there is may not justify its “***junking***”.

It should be asked: ***Are ethnic pride, biases, jealousies and prejudices together with traditional sensitivities and political interests not making a mountain of the molehill lack of convergence and inclusivity perceived in Draft BBL?***

Crafting the BEL

How will BEL be made more convergent and inclusive than BBL as now planned?

First, involve together with MILF the MNLF factions, the IPs, Sultanates, the ARMM and the local governments. This means their having representatives in the new BTC or their being closely consulted in the crafting of the BEL.

Second, quoting from the BPDR, “[c]onsolidate and converge all peace agreements (CAB) and legislations (e.g. 1996 FPA with MNLF, 1995 IPRA Law for IPs; RA 9054 or ARMM law)” into BEL. The same has been published in media. **Implicitly**, minus IPRA, BEL will be ultimately the full implementation of the 1976 Tripoli Agreement.

How will this complicate the crafting of BEL? Let us clarify some points.

Concerning the “First”: The prevailing perception is that “minority” Moro groups – referring to MNLF factions, the Sultanates and traditional leaders in the ARMM and the local governments -- have been left out in the peace negotiation. The perception is inaccurate if not entirely false.

Government-MILF peace process records submitted to the Senate hearing showed that all the above parties had been consulted – MNLF Chair Nur Misuari and the sultans of Sulu among them -- even if only MILF negotiated. However, they must have been dissatisfied with the consultations.

Inclusivity is embodied in the Preamble, VI.5 re-Council of Leaders, VII.5(3) and 6 reserved seats for non-Moro IPs and settlers, etc. in Draft BBL. MILF has made it clear that Bangsamoro is not for MILF. After the transition period, the regular Bangsamoro government will be formed through popular election. With their political parties, MILF, MNLF, traditional leaders and IPs will be on the same footing in seeking mandate from the Bangsamoro electorate.

Only the Tedurays in Maguindanao among the IPs in the country are actually concerned about their fear of losing under Bangsamoro the economic, political and cultural benefits guaranteed in IPRA. IPs in other parts of Mindanao are outside of the ARMM that will become the Bangsamoro territory. The traditional leaders including those from the Sultanates have no known serious issues with Government.

The perception alluded to was true in GRP-MNLF negotiations. MNLF had negotiated with Government for 20 years, 1976 to 1996 when the FPA was signed.

During the 20-year off-and-on GRP-MNLF negotiations, MILF and all others were left out; neither were they consulted. In the Jakarta peace talk, according to a report, MILF was interested to participate but MNLF rejected it. President Ramos invited MILF to a negotiation in 1996 immediately after the signing of the FPA. The GRP/GPH-MILF had been continuous until the consolidation of all agreements into the CAB which was signed on March 27, 2014 – now on its 21st year and in its implementation phase.

Concerning the “Second”: By the mandate “*consolidate and converge all*” there is no clear presumption of CAB as the primary agreement to which all others will be consolidated. That BEL will be crafted on clean slate, not Draft BBL enhanced, is not a remote possibility.

Secretary Dureza’s and Chairman Al Haj Murad Ebrahim’s understanding to “*preserve all the past agreements*”, to “*continue the process*” -- not to reinvent but to “*build on what has already been gained*” (PDI, 7/21/16) -- will probably not be binding to all involved in the convergence process. This understanding means BEL is the enhanced Draft BBL.

Will the MNLF factions go along with the Dureza-Murad understanding and just continue what has been started – converging to Draft BBL? The Misuari group will not (we will discuss the implications of this in Part IV).

Essentially Convergent

Convergence of the FPA to the CAB has been done in Draft BBL. **Article V, Section 4** re-“**Other Exclusive Powers**” of Draft BBL adopted 19 “powers and competencies previously granted to the Autonomous Region in Muslim Mindanao (ARMM) under R.A. No. 6734 as amended by R.A. No. 9054” which were “transferred to the Bangsamoro as part of its exclusive powers”. This is convergence -- the FPA to the CAB, the origins of R.A. No. 9054 and Draft BBL, respectively.

In reality, the CAB and FPA are *essentially* convergent. The nine substantive provisions of the Third Part of the 1976 Tripoli Agreement “*to be discussed later*” were the subjects of the Jakarta peace negotiation (FPA is also called Jakarta Agreement). The 2001 matrix of demands of MILF expanded those nine provisions of the 1976 Tripoli Agreement. ***But the CAB is the more meaningful implementation of the 1976 Tripoli Agreement.***

For instance, Paragraph (Provision) 9 of the Tripoli Agreement calls for a “Legislative Assembly and an Executive Council” as the two main structures of the Autonomous Government. This was granted in the FPA (Paragraphs 21 to 61), exactly the same as that in Presidential Decree No. 1618 that created Regional Autonomous Governments IX and XII in 1979. However, in R.A. No. 9054 (VI.7) the five-member Executive Council is the advisory body to the Regional Governor on whom executive power is vested.

In the CAB, as drafted in Draft BBL, the federal type of Bangsamoro autonomy -- its powers exclusive from and concurrent with those of the Central Government listed -- is how Paragraph 9 has been fleshed out. On top of that, more comprehensive, meaningful and autonomous concessions pertaining to ancestral domain, economic and fiscal systems and security have been granted to MILF in the CAB than to MNLF in the FPA.

Unbelievable but true, we would hardly call RA 9054 an amendment of RA 6734 for the FPA was just rehashed from RA 6734. We will show this later in another article.

Not Much of a Problem

What in IPRA can be converged to Draft BBL?

The socioeconomic benefits guaranteed under IPRA are not diminished under the Local Government Code of 1991. Why fear that these will be diminished or denied the IPs in the Bangsamoro? The formation of “Tribal Barangay (IPRA VI.18) is the one guaranteed under R.A. No. 8371, not a regional autonomy; the IPs will continue to enjoy this in Bangsamoro. IPRA does not allow the creation of regional autonomous government. It was under the 1987 Constitution that the Cordillera Administrative Region was created.

Draft BBL (Article IX), guarantees the respect, protection and development of the social, cultural, and economic rights of the IPs – a *de facto* convergence.

The IPs with their IPRA will not pose much problem. Unless the sultans of Sulu will interpose their Sabah claim, the Sultanates will not cause much complication except, perhaps, the revival of some lost prestige and traditions. The LGUs will be concerned with powers, perks and privileges they enjoy under the Local Government Code of 1991 – a false concern.

Most Difficult

How to converge the GRP/GPH-MILF and GRP-MNLF Agreements will be most difficult. While the CAB and the FPA are essentially *convergent*, in matter and form they are actually *divergent*. Misuari will not abide by the Dureza-Murad understanding which necessarily means “*to craft BEL enhance Draft BBL*”. Will the other MNLF factions do? The diverse personalities and agenda of Moro leaders including their ethnic and tribal pride and animosities will always be potential sources of problems.

Chairman Murad told *MindaNews* (6/25/16) that Draft BBL submitted to Congress in 2014 will be “improved” through a convergence of the 2014 CAB and the 1996 FPA before it is presented to the 17th Congress. The same MILF position has been revealed in editorials and official statements in *Luwaran*, the website of MILF Central Committee. In a nutshell: ***CAB-compliant BBL enhanced by the 1996 FPA.***

Murad expects the “convergence” to be done through BCF (Bangsamoro Coordination Forum which the OIC (Organization of Islamic Cooperation) initiated in 2010 to reunite the MNLF and MILF leaders. While this position looks simple and practical, two hard questions are worrisome: ***How reunited are the MNLF and MILF leaders in BCF? How compatible are the CAB and the FPA?***

Of the first question: it is still a puzzle. Of the second: it is open to serious scrutiny. Let's take a look into the CAB and the FPA.

What the CAB Is

The CAB is a compendium of five *landmark* GRP-MILF Agreements under Presidents Fidel V. Ramos, Joseph Estrada and Gloria Macapagal-Arroyo and seven *substantive* GPH-MILF Agreements under President Benigno Simeon C. Aquino III. From it, Draft BBL was crafted as the enabling law for the establishment of Bangsamoro. Draft BBL, or any other enabling law by another name, is the implementation of the CAB -- hence, it must be ***CAB-compliant***.

The seven substantive agreements are basically the CAB. They define the principles on which Bangsamoro autonomy stands and set the parameters, mechanisms and modalities by which it functions. MILF bargained hard to satisfy the Moro aspirations; Government conceded what it could within the 1987 Constitution, particularly Article X, Sections 1, 15 to 21, to achieve genuine and lasting peace in Mindanao..

In the seven substantive agreements, the same proposals agreed in principles in the 1976 Tripoli Agreement "*to be discussed later*" were ***defined*** and ***fleshed out*** in *GPH-MILF Decision-Points on Principles* and in *Framework Agreement on the Bangsamoro*; then ***more comprehensively so*** in the Annexes on *Transitional Arrangement and Modalities*, on *Revenue Generation and Wealth-Sharing*, on *Power-Sharing*, on *Normalization* and in the *Addendum on the Bangsamoro Watershed and Zones of Joint Cooperation*.

Until a Bangsamoro basic or enabling law is passed and ratified, the CAB will be the only parameter for the enactment of a law to establish the Bangsamoro agreed by Government and MILF as the political settlement of the Moro Question. After that the CAB will be archived, its letter and spirit enshrined in the enabling Bangsamoro law.

What the 1996 FPA Is

The short title of the agreement is "*Peace Agreement*". The common and popularly used "*1996 Final Peace Agreement*" is derived from its introductory paragraph, "*The final agreement on the implementation of the 1976 Tripoli Agreement ...*". And, in its Paragraph 152, FPA is referred to as "*the full implementation of the 1976 Tripoli Agreement*".

The phrases "*final agreement*" and "*full implementation*" are the keys to "*what the 1996 FPA is*" in reference to the 1976 Tripoli Agreement and how compatible FPA and the CAB are.

The 1976 Tripoli Agreement, an agreement in principles to be fully “*discussed later*” and fleshed out, was *not immediately implementable*. The *full* details of the seven substantive provisions, *Paragraphs 4 to 10*, had to be first *agreed* in subsequent negotiation before the Agreement could be implemented to establish the Muslim “*Autonomy in the Southern Philippines*” declared in the “*First*” Part.

Paragraph 11 called for a GRP-MNLF “*mixed Committee*” to meet in Tripoli, Libya, February 5 to March 3, 1977, to thresh out the full details.

Paragraph 13 called for a GRP-MNLF joint meeting in Jeddah, Kingdom of Saudi Arabia in the “*first week*” of March to initial the *finalized* Agreement. This “*final Agreement*” would be signed in Manila (*Paragraph 14*).

“*Immediately after*” the Manila signing, “*a Provisional Government*” appointed by the Philippine President “*shall be established*” to prepare “*for the election of the Legislative Assembly*” and to “*administer the area of autonomy ... until a Government is formed by the elected Legislative Assembly*” (*Paragraph 15*).

But the mixed Committee failed to finalize the Agreement. The domino-effect: There was no final agreement to initial and sign; there was no Provisional Government established according to Paragraph 15.

Libya President Muammar Gaddafi (variation: *Khadaffy*) tried to conciliate – obviously with the consent of the OIC and MNLF Chair Misuari – by convincing President Marcos through “*wire diplomacy*”—a three-day (if we recall correctly) exchange of wires on how to implement the Tripoli Agreement. President Marcos agreed and established a two-region “*Regional Autonomous Government*” according to his own interpretation of *Paragraph 16* of the Tripoli Agreement.

Gaddafi protested. Misuari and the OIC rejected the Marcos option. All negotiations and peace talks after that until the Jakarta peace talk failed in the attempt to **finalize** the 1976 Tripoli Agreement by **agreeing on the full details of** its seven substantive provisions. Only in the 1996 FPA was this realized.

Ironically, however, the reference to the 1996 FPA as “*the final agreement*” and the “*full implementation of the 1976 Tripoli Agreement*” raises thorny questions. **First:** *If the FPA was the last GRP-MNLF peace agreement, was it a satisfactory political settlement of the Moro Question?* **Second:** *Were the proposals agreed in principle in the seven substantive provisions more fully fleshed out than the same in the CAB?* **Third:** *Is the Bangsamoro autonomy envisioned in the FPA more meaningful and genuine than that in the CAB?*

FPA Unlike CAB

Acceptance of the status quo: Unlike the CAB, the FPA, judging from its provisions, was not meant to abolish the existing ARMM established in 1989 under R.A. No. 6734 and replace it with a more meaningful and genuine autonomy under a new enabling law or *Organic Act*. It was only meant to enhance the ARMM by amending or repealing R.A. No. 6734. This is clearly seen in **Parts I** and **II** of the FPA.

In amending or repealing R.A. No. 6734, given to the Congress was this option, “*The bill shall include **the pertinent provisions** of the final Peace Agreement and the expansion of the present ARMM area of autonomy [I.2(a)]*” ; and to GRP the obligation to recommend, “*Accordingly, these provisions **shall be recommended** by the GRP to Congress for incorporation in the amendatory or repealing law [III (Phase 2)]*”. (Bold text supplied)

In the CAB, it is mandatory for BBL to be CAB-compliant and for the ARMM to be abolished outright upon the ratification of the BBL to be replaced by the Bangsamoro. This is **Point 2** in the “*Decision Points on Principles*”, **Part I, Paragraph 1** of the FAB, and the subject of Draft BBL adopted as HB No. 4994 and SB No. 2408.

In accepting the status quo, MNLF settled for enhanced ARMM as the political settlement of the Moro Problem. The same was offered to MILF – each time firmly rejected – in June 2000, June 2001, February 2003 and January 2010 under President Arroyo; under President Aquino, this was offered in August 2011 as the GPH counter-proposal, the “*3 in 1 Approach*”.

A rehash: Coupled with the lack of mandatory provisions, the FPA is a rehash of RA 6734 – **the FPA adopting much of the RA**. In Chapter VII of our book, **What Ails Muslim Autonomy?**, (1998), we compared closely how the FPA and the RA fleshed out the substantive paragraphs of the 1976 Tripoli Agreement and found their provisions to be respectively “*identical, basically similar, complementary or supplementary*”.

The FPA has no detailed agreements of the demands agreed in principle in the 1976 Tripoli Agreement “*to be discussed later*”; **it is really a proposed enabling law to amend an existing organic act that it has rehashed**. The CAB is a compendium of detailed agreements. The FPA is its own enabling law, **unlike the CAB**. After the Congress had amended RA 6734, the FPA became RA 9054. The counterpart of the FPA is Draft BBL, not the CAB. This can complicate convergence to craft BEL.

Under Review

With questionable circumstances in the background, the Arroyo government agreed with the OIC in 2006 to review the full implementation of the FPA as petitioned by MNLF. The OIC-GRP-MNLF Tripartite Review with OIC presiding – **not just facilitating** – began in 2007. The fifth and final Tripartite Meeting was in Jeddah, Kingdom of Saudi Arabia on January 25-26, 2016 (*OPAPP Website, January 27, 2016*).

MNLF complained that R.A. No. 9054 was passed without its participation and that the Congress had not fully implemented the FPA. It asked the OIC – not the Congress –to have the implementation reviewed and to amend R.A. No. 9054 accordingly. From the official reports, it is evident that **“full implementation”** referred to how the FPA – by **phraseology** -- was transformed into R.A. 9054, **not to how the RA**, as **FPA** in substance, was implemented.

Within 22 months after the Third Tripartite Meeting (March 11-13, 2009) **36 issues** or concerns were identified. At the Fourth Tripartite Meeting (February 22, 2011), OPAPP Secretary Teresita Quintos-Deles remarked that **15 issues** had been resolved, referred to as **“consensus points”**. Nine issues must have been added later since Deles revealed on September 21, 2013 during a **“Q and A”** session on the status of the Review that **42 consensus points** had been achieved with **three more concerns** to resolve.

By the Fifth and Final Tripartite Meeting the same status stood. A bill to amend R.A. No. 9054 with the 42 consensus points to **“fully”** implement the FPA was deferred. Misuari objected to its submission to the Congress until the three remaining issues were resolved to his satisfaction – rendering the eight-year Review **inutile**. Deles explained the three issues were not within the purview of the review either for **not being** in the FPA or for **having been already** complied with.

What now is the status of the FPA? How does this affect the status of R.A. No. 9054? What are their implications to their proposed convergence –especially the FPA -- to BBL?

Defer to CAB and BBL

Since Misuari is counted out, should the other MNLF leaders finally join the convergence process to craft the BEL will they defer to the CAB as the better negotiated agreement and the BBL as the better enabling law than the FPA or R.A. 9054? They must ***if they sincerely desire a truly Moro-centered political settlement of the Moro Question.***

There is no more need – in fact it is no longer possible -- to amend R.A. 9054 with the 42 consensus points of the Tripartite Review to **“fully implement”** the FPA in order to **“fully implement”** the 1976 Tripoli Agreement which has been comprehensively fleshed out in the CAB. Matters pertaining to the 42 consensus points must have been integrated in the BBL together with the relevant provisions of R.A. 9054 already adopted into the BBL.

The three issues that Misuari insisted to be resolved to his satisfaction were adequately addressed in the CAB and BBL or earlier -- although, perhaps, not as MNLF and Misuari would want it. Misuari wanted the issues resolved ***strictly according to the letter of the 1976 Tripoli Agreement which had already been overtaken by events and time.***

What are these issues and how have they been addressed?

First, hold a plebiscite to determine and establish the territory of Muslim Autonomous Region.

Disregarding the rigged plebiscite of 1977 under Marcos, plebiscites were held in 1989 under Cory Aquino and in 2001 under Arroyo. In 1989, four Moro provinces and no city voted **YES** (Moro province Basilan and city Marawi voted **NO**.) In 2001, Basilan and Marawi voted **YES** to expand the 1989 four-province ARMM. Obviously, Misuari wanted the exercise repeated over and over until all the 13 provinces (now 15) and their included cities in Part II of the Tripoli Agreement would vote to be in the Autonomy.

In the CAB, MILF accepted the 2001 ARMM as the core territory of the Bangsamoro plus the six municipalities of Lanao Norte and 39 barangays from six municipalities in North Cotabato that voted **YES** in the 2001 plebiscite. It further provided how Moro-dominated geographical areas of contiguous provinces may join the Bangsamoro. Most notably, MILF respected the will of the non-Moro majority not to join.

Of Note: The inclusion of the above-mentioned municipalities and barangays was provided in Part I, Paragraph 2(b) of the FPA and in the second paragraph of Article II, Section 1 of R.A. 9054. Since the Congress did not pass an implementing law as “*understood*”, they were not added to the ARMM. MNLF should have included this as an issue for the Tripartite Review. That it did not revealed its questionable order of priorities.

Second, set up a provisional government to first administer the area of autonomy.

This was not provided in the FPA. Creating a provisional government through a decree according to the 1976 Tripoli Agreement would have been unconstitutional. Misuari, as an alternative, accepted the creation by an executive order of the SZOPAD out of the now 15-province area of autonomy with the SPCPD and the CA the “*transitory mechanism*”.

Seeing how the substantive provisions of the FPA are “*identical, basically similar, complementary and supplementary*” to those of R.A. No. 6734, we can speculate that Misuari and the MNLF had been outtalked to accept the ARMM which, for 20 years, they had vehemently rejected. As a bonus, Misuari was offered the governorship of the ARMM, which he accepted.

As ARMM governor and chair of the “transitory mechanism”, Misuari had vast powers. However, despite these vast powers, he failed to bring the non-Moro provinces and their included cities into the ARMM.

Third issue, on the “sharing of strategic minerals”, refers to the same exception clause in Paragraphs 146 and 147 of the FPA stating “*except strategic minerals which will be defined later*”. These paragraphs were intended to amend Section 2 of Article XVIII of R.A. No. 6734 which defines by enumeration the strategic minerals. In R.A. 9054, the

Congress ignored the FPA provision while it retained that of R.A. No. 6734 and provided the sharing scheme.

Relevant to this issue, take note that under Paragraph 10 of the 1976 Tripoli Agreement “*mines and mineral resources are within the competence of the Central Government*”; but the government of the area of autonomy was entitled to a “*reasonable percentage*” share of the revenues from minerals which was to be “*fixed*” later. In R.A. 6734, the Congress amended “*competence*” with a deceptive “*exception clause*”.

As revealed by former Secretary Deles, the Government and MNLF had an interim agreement on this issue during the first formal meeting of the Ad Hoc High Level Group in Solo, Indonesia on June 20-22, 2011. She considered the issue as having been complied with.

Government and MILF addressed this issue more comprehensively leaving nothing to be “*fixed*” later. An agreement to “*fix*” or “*discuss*” substantive issues “*later*” is one just to manage the crisis not to solve the problem.

More comprehensively than in RA 9054 (IX.9 and XII.5.a.b) and FPA (D.146.147), the FAB (IV.4) defined the issue in general; Annex on Revenue Generation and Wealth-Sharing (VII.3) classified “*minerals and mineral resources*” into three, namely: (1) non-metallic, (2) metallic, and (3) fossil fuels and uranium subject to review; Draft BBL (XII.33.a) specified the revenue sharing: of “**(1)**”, 100% to Bangsamoro; of “**(2)**”, 75-25 in favor of Bangsamoro; and of “**(3)**”, 50-50.

To top all the above, Draft BBL (XIII.8) affirms the right and authority of Bangsamoro to explore and develop its natural resources, nature reserves and protected areas. That CAB and Draft BBL are more comprehensive than FPA and R.A. No. 9054 are manifested in their provisions. In crafting BEL, the FPA and R.A. 9054 may be further examined to possibly enhance the BBL.

To sum up, deference to CAB and Draft BBL will simplify convergence and hasten with ease the crafting of BEL. CAB, Draft BBL, FPA, R.A. No. 9054 and R.A. No. 6734 must be scrutinized with reference to Paragraphs 4 to 10 of the 1976 Tripoli Agreement to determine what more to enhance Draft BBL as BEL. It should be noted that Draft BBL has already adopted provisions from the two RAs and other relevant laws.

Needless to emphasize, through the GPH and MILF implementing panels, the BTC and the representatives of MILF and non-Misuari MNLF factions must have ***the necessary*** working and inter-personal relations in order to facilitate rather than complicate the convergence process so as to expedite the crafting of BEL. As already stated, all must focus on Bangsamoro as the solution to the Moro Question, subordinating to it tribal pride and animosities, divergent interests as well as personal superiority complex.

III. BEL Minus “BBL Objectionables” and Time

Crafting a convergent BEL, the correct solution to the Moro Problem and acceptable to all Moros and IPs, is only half the challenge met. The uncertainties posed by time and the acceptability to MILF of a BEL without the “*BBL objectionables*”, the *must*-option in the Duterte plan are the other half.

President Duterte assured the Moros he would implement the GPH-MILF agreements converged with the GRP-MNLF agreements and other relevant laws simultaneously with the plan to shift the government to federalism. The Bangsamoro is to be established upon the election of its regular officials in 2019; federalism in 2021.

To meet the 2019 timeline, BEL must be submitted to the Congress by July 2017 in order to have it passed during the Second Regular Session of the 17th Congress; have it ratified by July 2018 so the BTA (Bangsamoro Transition Authority) can have one year to set up the ministerial system of the Bangsamoro government. The timeline is tight; the new BTC to craft BEL was created on November 7, 2016. ***Can it submit BEL to the Congress on time?***

To expedite the passage of BEL, President Duterte proposed the BEL must be shorn of the “*BBL objectionables*” – those provisions objected to as unconstitutional, contrary to law and politically unacceptable that blocked its passage in the 16th Congress. These provisions will be considered in the amendment of the Constitution to shift government to federalism and, ***if favorably considered***, they will be integrated into the BEL.

BEL minus “*BBL objectionables*” will practically be the same as the BLBAR (Basic Law of the Bangsamoro Autonomous Region), the drastically watered-down Draft BBL vehemently objected to by MILF and their allies. ***Will they take the must-option?*** What, if the “*objectionables*” are not favorably considered?

This will put the Moros in a dilemma: ***Reject BEL minus “BBL objectionables”, there will be no Bangsamoro; accept it, the Moro Problem will remain unsolved.***

Is there a way to skirt the *must*-option and avoid the dilemma?

Why the *Must*-Option?

BEL as enhanced BBL – still CAB-compliant – will contain most, if not all, the objected provisions of Draft BBL, originally adopted as HB No. 4994 and SB No. 2408. President Duterte was right in foreseeing the same difficulty such BEL will have in getting the nod of the Congress. Most members of the 16th Congress are back in the 17th Congress. Don’t expect the new members to differ much from the old.

President Duterte is telling MILF and the other Moro leaders to be practical. In crafting BEL, just adopt the BLBAR for enhancement through convergence. Let the BTC submit the “objectionables” to the Congress for inclusion among the proposed amendments to the Constitution. In this option, the odds are high that the Bangsamoro will be established by 2019 with a one-year transition period.

This is asking MILF and the other Moro leaders to accept the *must*-option and tackle the dilemma later.

Is the *Must*-Option Justifiable?

The *must*-option is actually for political convenience. President Duterte has promised the Moros to establish Bangsamoro soon. To avoid the obstacles ahead, cater to the temper of the members of the Congress – *arrogance*. It was *arrogance* laced with anti-Moro biases and prejudices not “*objectionables*” that compelled the drastic revision of Draft BBL into BLBAR – according to MILF, by more than 40 percent. There could have been no “*objectionables*” had there been no *arrogance*.

What are these “objectionables”?

These are provisions seen as contrary to the 1987 Constitution and some laws; viewed to diminish powers of existing national agencies; and deemed by local government leaders as diminishing their jurisdiction and in conflict with their political interests.

How did arrogance figure in?

Draft BBL was a special measure from Malacañang that transcribed the peace agreements in the CAB negotiated by the government with MILF for 14 years to solve the centuries old Moro Problem or Question. Government had the obligation to enact Draft BBL in order to establish the Bangsamoro – the political embodiment of the negotiated settlement -- *as agreed*. Hence, Draft BBL had to be CAB-compliant.

Under our Constitution, the Executive Branch led by the President is solely empowered to negotiate peace; the Congress or Legislative Branch, to enact laws. Since the GPH-MILF peace agreement called for an enabling law to fully implement it, the Congress had the responsibility to enact Draft BBL into an enabling law to establish the Bangsamoro. By that the Congress was equally responsible as the President to have a BBL enacted that would solve the Moro Problem *as agreed in the CAB*.

The Congress did the opposite. Revising Draft BBL, it proposed to enact BLBAR to establish a Bangsamoro according to its members’ perceptions of the Moro Problem *in radical disagreement with the CAB*,

Besides seeing Draft BBL as full of “*objectionables*”, the Congress considered the GPH-MILF peace negotiation *virtually illegal* for having not been authorized by a resolution of the Congress. *This was arrogance.*

Yet, the Congress was oblivious of its concurrence. The President created the BTC through an executive order which was supported with resolutions from the Senate and the House of Representatives as provided in the CAB. While drafting the BBL, on several occasions, the BTC consulted leaders of both Houses. Why concur then denounce?

The President submitted Draft BBL to the Senate President and the House Speaker during a brief ceremony in the Palace on September 10, 2014. Three months before that, the Draft was thoroughly reviewed, revised and refined to ensure its constitutionality, legality and compliance with the CAB.

According to official reports, this was done by the Office of the President together with the Chief Presidential Counsel, the Solicitor General and the Department of Justice; the Philippine National Police Commission, the Commission on Audit, the Civil Service Commission and the Commission on Elections were consulted regarding the creation of their regional offices in the Bangsamoro and their comments were adopted. The OPS closely consulted the GPH and MILF peace negotiating panels and the BTC.

Yet, in the Congress, Draft BBL was declared full of unconstitutionality and illegality. Considering how thoroughly the OPS had reviewed, revised and refined Draft BBL, the “*objectionables*” showed *arrogance*; the “*must-option*” is *unjustifiable*.

Inter-Branch Courtesy

This did not mean that Draft BBL was perfect – without errors and “*questionables*”. But the Congress, in keeping with inter-branch courtesy, should not have arrogated unto itself the power to reverse the constitutionality and legality of Draft BBL as ensured by the Office of the President and the legal authorities of the Executive Department. In matters of constitutional and legal controversies, the opinion of the Legislative is as good as that of the Executive; the Supreme Court of the Judiciary is the final arbiter.

In keeping with inter-branch courtesy, the constitutional and legal defects of Draft BBL seen by the legislators should have been the subject of *clarification* at the committee hearings in the Senate and the House. The Office of the President together with those who helped review, revise and refine Draft BBL should have been invited to clarify. The clarified version of Draft BBL should have been passed subject to the final judgement of the Supreme Court should the constitutionality and legality of BBL be challenged.

But the contrary was done. The committee chairs and members heeded the opinions of anti-BBL resource persons that sustained their objections, doubts, biases, prejudices and fears. The findings and opinions of special study groups and the surviving members of

the 1987 Constitutional Commission that Draft BBL was in keeping with the intentions of the Constitution were ignored. At the Senate, the Committee Chair, to sustain his charge that the stakeholders had not been consulted, rejected the report of the GPH peace panel showing otherwise – *three years of extensive and comprehensive consultations*.

In short, Draft BBL was viewed as full of “*objectionables*” then sustained with hostile opinions at the committee hearings. Draft BBL *was deemed not the solution* to the Moro Problem contrary to the conclusions of Government and MILF after their comprehensive, diligent, frank, and contentious discussions of the Problem; so, the committees changed BBL to BLBAR *arbitrarily. Arrogance instead of inter-branch courtesy prevailed.*

The Ultimate Option

The ultimate option is Draft BBL with all the “*objectionables*” enhanced as BEL through convergence. With due respect to the President, this ultimate option, not BEL minus the “*objectionables*”, will establish the Bangsamoro that will solve the centuries-old Moro Problem or Question. The Duterte *must*-option will only retain ARMM *re-named Bangsamoro*.

The “*objectionables*” will not be swept under the rug. After the inter-branch clarification at the congressional committee level, these will be retained in the BEL bill. After its enactment, the BEL can be challenged at the Supreme Court. Provisions which the Court would rule as unconstitutional, contrary to law, against national interests, or seriously flawed on other grounds will be expunged from the BEL. However, if the Constitution can be amended in favor of these “*expunged*” provisions, they can be restored in the BEL through amendment.

We think the “ultimate option” is more CAB-friendly than the “must-option”.

IV. BEL: Roadmap and Road Blocks

*[Author's Note: Parts I, II and III of this article were written before the issuance by President Duterte of **Executive Order No. 08** on November 7, 2016 mandating the BTC “to draft the proposed Bangsamoro Basic Law ...” or BBL. EO No. 08 only amended EO No. 120, s. 2012 as amended by EO No. 187, s. 2015 of President Aquino III and did not change “BBL” to “BEL” (Bangsamoro Enabling Law). Peace Secretary Dureza in his media interviews, as well the President in his public statements, had said that “BBL” would be “junked” and replaced with a new enabling law according to Duterte’s **Bangsamoro Peace and Development Roadmap (BPDR)**. In digressing from BPDR, EO No. 08 has ironically abetted instead of clearing the roadblocks. – PPD]*

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At their first meeting in Kuala Lumpur last August 13-14, the government and MILF peace panels agreed that negotiations had been completed with the agreements embodied in the CAB; what remained to be done was the implementation of the CAB. This is what the Duterte Peace Roadmap which Peace Secretary Jesus Dureza handed to the MILF panel is all about.

MILF accepted the Roadmap drawn unilaterally by Secretary Dureza and approved by President Duterte – unlike the Roadmap for the implementation of the FAB in 2012 which was agreed by the GPH and MILF peace negotiation panels. No official copy of the Roadmap has been published in the media. We can only figure it out from Secretary Dureza’ media interviews, the statements of the GPH and MILF panel chairs and the President, that BPDR anonymously sent to us and MILF Chairman Murad’s position given to media.

From these we can discern how BEL will be crafted through convergence according to the BPDR to establish the CAB-compliant Bangsamoro. However, BEL’s path will not be strewn with roses. There are difficulties that we have already discussed. More road blocks ahead can derail, detour, delay or even abort the implementation.

Let us restate the steps in the published implementation process: **1st**: convergence; **2nd**: crafting the BEL; **3rd**: enacting the BEL; **4th**: ratification of the BEL; **5th**: Bangsamoro transition; **6th**: Bangsamoro entrenched upon the election of its regular officials in 2019. Each step has a timeline, the preceding a prerequisite of the succeeding. Each step has to be done on time in order to inaugurate the Bangsamoro after the 2019 election.

Convergence and Crafting

Ideally, convergence must be done first to make the crafting of BEL without unnecessary complication. But this will take time. It may be imperative to do the *first* and the *second* simultaneously with the BTC steering the process. This scenario presumes the FPA, etc.

will be converged *to* the CAB and the BTC will only enhance Draft BBL into BEL through convergence – article by article following Draft BBL.

This scenario will be the fastest and most suitable to the July 2017 *must*-timeline for the submission of the BEL to the Congress -- six months starting January 2017. Yet, this is far from snag-free. The members of new BTC created on November 7, 2016 are still to be appointed. Can the BTC start the drafting in late November or December?

Convergence will mostly involve the CAB, FPA and R.A. No. 9054. MILF Panel Chair Mohagher Iqbal said this about the FPA and the CAB in his opening statement at the 40th GPH-MILF Exploratory Talks in Kuala Lumpur, September 10-15, 2012: “*The best of what is in the GRP-MNLF FPA are already subsumed or entrenched even in the GPH-MILF Framework Agreement on the Bangsamoro (FAB). Many more will be captured or fleshed out once the MILF and GPH sign the Comprehensive Agreement ...*”

That the FPA and R.A. No. 9054 are already virtually converged to the CAB can be easily verified in Draft BBL. As we have discussed earlier, the 1976 Tripoli Agreement had been fleshed out more comprehensively in the CAB than in the FPA. Will Misuari and the other MNLF leaders agree?

If all parties will defer to the CAB and to the BTC to steer the convergence process using Draft BBL as the mold – crafting while converging -- the BEL *can most probably* be in the Congress by July 2017 *IF* the process can start at the latest in January. *Will MNLF, the IPs, the Sultanates, Moro traditional and LGU leaders agree?*

The Rest of the Way

With the BEL in the Congress by July 2017, the burden of meeting the 2019 timeline to entrench the Bangsamoro will shift to the leadership in the Senate and the House and to President Duterte. If they can treat BEL as a special legislation, subject to inter-branch courtesy – *being a Government-MILF agreed political settlement of the Moro Problem or Question* – the organic law can be signed by the President and ratified by July 2018. That will allow the BTA one year to prepare the Bangsamoro for entrenchment in 2019.

The Bangsamoro could have been inaugurated last June 30 or earlier. But the leaders of the Congress and President Aquino III lacked the political will to back up their repeated assurances to pass the BBL.

Unless the reports of *Luwaran*, the website of the MILF Central Committee, are mere propaganda, the BLMI (Bangsamoro Leadership and Management Institute) has been training Moro leaders in political, economic and social aspects of leadership with moral, funding and technical assistance from foreign governments and agencies, the United Nations and international banks. In short, MILF is prepared to staff the BTA.

Will the Bangsamoro be finally realized on the Duterte peace roadmap? Why not? The way is there. But, ironically, some good proposals and good intentions can pose problems and block the way.

Murad's suggestion

MILF Chairman Al Haj Murad Ebrahim told *MindaNews* on June 25, 2016 that Draft BBL, submitted to Congress in 2014, would be “improved” through a convergence of the 2014 CAB and the 1996 FPA before presenting it to the 17th Congress again. This converged version is what is now referred to in BPDR as BEL.

He suggests the “convergence” can better be done through the Bangsamoro Coordination Forum (BCF) that the 57-nation Organization of Islamic Cooperation (OIC) initiated in 2010 and which OIC Secretary General Iyad Ameen Madani strengthened during his visit in Davao City in April last year.

How practicable is this?

As we have shown earlier, the CAB, FPA and R.A. No. 9054 amending R.A. No. 6734 are *virtually* converged in Draft BBL. The Murad suggestion – the MNLF and MILF doing the converging as members of the BCF under the auspices of the OIC – will allow them to study more closely the three documents, see their *common, complementary* and *supplementary* provisions, and determine what more to converge into Draft BBL to come up with the most meaningful Bangsamoro-centered BEL.

On January 20, 2015, during hearing of the House Ad Hoc Committee, Muslimen Sema and Abul Khayr Alonto, chairmen of their respective MNLF factions, supported the peaceful solution of the Moro Problems; but they differed in their views of the CAB as the solution – Alonto endorsing the Bangsamoro with some reservations, Sema fearing the loss of “*all that we have gained in the last 40 years*”. They both called for the Moros to unite. (*GMA News, 1/20/15; Inquirer.net, 1/20/15; The Philippine Star, 1/21/15*)

On November 12, 2014, during the BCF meeting in Makati, the MILF and MNLF exchanged position papers on the Moro Problem – that of the MNLF anchored on “*MNLF's humble contribution on how the autonomous set up should look like in the Bangsamoro Basic Law*”. (MILF's Mohagher Iqbal in his “*Opening Statement*”)

On December 12, 2015, the MNLF (Sema and Alonto factions) and MILF leaders held their “*unification and reconciliation meeting in Sultan Kudarat, Maguindanao*”; they “*expressed their hope and optimism*” for the passage of Draft BBL.

The three events bode well for Murad's suggestion and convergence in Duterte's BPDR. With the help of the OIC, they will be able to assess the gains under the MNLF and see

whether under the CAB these gains could be lost as feared or preserved and enhanced as MILF has assured. The OIC must have the moral suasion to open blocked minds and temper animosities and distrusts.

But there are disturbing questions:

1. How long will it take them to finish the converging? This can hold up the BTC and upset its timeline ending July 2017.
2. Murad has hinted that the MNLF-MILF output would be submitted to the OIC ICFM (Islamic Conference of Foreign Ministers) which only meets annually. This will further upset the BTC timeline.
3. The MNLF-Misuari faction did not attend the House Ad Hoc Committee hearing and the BCF meetings in Makati and Sultan Kudarat. The ***“BIG Question Mark”*** then hanging over the prospects of MNLF-MILF unity through BCF under the auspices of the OIC turned out to be a ***“BIG NO”*** after the temporary release of Misuari.

Of **Questions “1” and “2”**, the OIC can ease anxieties. It should give the assurance it will only mediate and facilitate. After the convergence has been done, it will disengage letting the MNLF, MILF, BTC and Government follow the BPDR.

The challenge of Question “3” looms. Can the OIC and President Duterte solve the Enigma named Misuari?

Misuari: Solution or Problem

President Duterte, by his own admission to the media, ordered the court – and the court obliged – to suspend the arrest warrant pending against Misuari, thus, freezing the rebellion case and freeing him. Except for two conditions (*MN 11/3/16: Misuari is...*), he is almost absolutely free: (1) the suspension is for six months *“unless sooner lifted”*; (2) when the peace talk is outside the country he or OPAPP should seek court permission and report to the Philippine embassy there. Otherwise, according to Secretary Dureza, he can go wherever and do whatever he likes (*GMA News 11/3/16*)

Misuari will always be center of media attention – and, an enigma, too. At the time that President Duterte was in Malaysia for a state visit, *philstar.com (11/9/16: Duterte eyes ...)*, reported he had flown to Abu Dhabi – perhaps, a case of bad reporting. December 5, *philstar.com (Court junks Misuri’s motion to travel abroad)*, reported the Pasig Regional Trial Court reiterated that he can leave the country only in *“connection with the peace process”*. On December 14, three Manila media reported he flew to Saudi Arabia to confer with Islamic heads of state regarding the peace talks with PH Government.

Misuari's release is considered necessary for peace in Mindanao. *Will the suspension of his case be automatically extended should the peace talk with him drag on and on?*

Key to the Solution: Media reports on November 3, when Misuari was specially flown in to Malacanang to meet for two hours President Duterte and the press, to two or three days after portrayed Misuari as *the key to the solution of the Mindanao peace problem*.

Mutual confidence: The President and he embraced like “long-lost brothers” – indeed addressing each other “*Brother*” – expressing their mutual trust and confidence to each other. Duterte thanked Misuari for accepting his invitation; Misuari thanked Duterte for inviting him and “*restoring my freedom*”.

Working for Peace: Misuari vowed to work for peace; Duterte assured him his place and role in the peace process – obviously, in the BTC and BTA -- as planned in the Roadmap (BPDR).

On Track: OPAPP, Secretary Dureza's Office, hailed as “*an unprecedented and historic development*” the participation of both the MILF and the “*Misuari MNLF on board*” in the search of peace (*PDI 11/5/16:Peace process ...*) – some of its members to be appointed to the BTC. Dureza dubbed Misuari as “*one of the key players in our efforts for sustainable and comprehensive peace*” for having “*played a key role in the pursuit of peace*”.

The President and Dureza must have spoken out their elation and optimism a day too early which reactive media were just too obliging to play up in their headlines. Either they presumed Misuari would go along the BPDR convergence track; or, knowing the contrary, they were hoping for a miraculous change. They were disguising Misuari the *Problem* as the *Solution*. It's naïve to believe they did not know they were doing so!

The Contrary

On the morrow and the days after, media stories played different tunes. Misuari was ready to talk peace with the government pursuant to the “*full implementation of the 1996 FPA*” not along the BPDR track. He wants the involvement of the OIC – in other words, the resumption of the GRP(GPH)-MNLF-OIC Tripartite Review.

He had rejected the GPH-MILF negotiations and agreements as illegal, in violation of the 1996 FPA. In his press statement at the Palace, he called the Sema-MNLF and the MILF traitors, “*repeating lies and lies and lies*” in their propaganda against his MNLF faction and him. He lashed at “*some media people*” for calling his MNLF a “*spent force*”. He was as belligerent and combative as ever.

Dureza, sensing it, told *MindaNews* (11/4/16 and 11/9/16) Misuari was to “*organize a five-person panel that government will engage with*”. He “*doesn't want to get involved*”

with the MILF at all ... doesn't want to be subsumed in the BTC There is still a very deep division, in principle, between the two groups. You cannot wish that out immediately so we will have to develop an environment that they can eventually maybe better understand and accept each other." Will the separate tracks create that environment?

Five days after his dramatic meeting with Misuari at the Palace, President Duterte must have realized the futility of hoping that Misuari would go along the BPDR track. He considered "*holding separate talks with ... Misuari, who has been critical*" of the GPH-MILF peace talks. (*philstar.com 11/9/16*).

No miraculous change. He is true to what past-OPAPP Secretary Teresita Quintos-Deles had observed of him: "***What he wants is perpetual entitlement to the leadership of the ARMM.***" (*OPAPP Q&A, 10/21/13*). Evidently, he is now getting what he wants.

Dureza Confirms

MindaNews, on November 5, reported Secretary Dureza had confirmed ***as final*** that the Misuari-MNLF faction would not join the Sema-MNLF faction as part of the GPH panel in the MILF-led BTC. Instead, its five-member peace implementing panel would deal with another government panel separately from the BPDR track.

Dureza elaborated this after the issuance of EO No. 08 s. 2016. Evidently, to suit Misuari, the single-track process based on the BPDR to be followed by the new BTC under the oversight of the GPH-MILF implementing panels was revised.

Two-track: The revised plan involves two tracks. Let's call the ***first*** the MILF-led BTC track and the ***second*** Misuari-MNLF track. They converge in the Congress.

On the ***first track***, the 21-member BTC – 11 MILF appointees and 10 GPH with three from the Sema-MNLF, as mandated by EO No. 08 s. 2016 (Section 3a), will "*draft proposals for a Bangsamoro Basic Law, which shall be submitted to the Office of the President for submission to Congress*".

EO No. 08 s. 2016 is silent. But from media reports, it is understood that the first track is the modified BPDR track under the present GPH-MILF implementing panel and that it will converge or consolidate the CAB, 1996 FPA, R.A. No. 9054 and other relevant laws in drafting the BEL.

On the second track, the five-member MNLF panel will deal with a separate GPH panel to pursue the review of the 1996 FPA for its "*full implementation*" – a revival of the MNLF-GRP-OIC Tripartite Review, November 2007 to January 2016. The agreement of the MNLF and GPH panels will be submitted to the Congress to amend R.A. No. 9054.

It is the Congress that will consolidate the BTC “proposals” and the GPH-MNLF panels’ agreed amendment of R.A. No. 9054 into the BEL *that will hopefully satisfy all parties*. The “*that-clause*” in bold (*ours*) acknowledges with apprehension the many difficult problems that lie on the two tracks.

Will Bangsamoro surmount these problems and survive?

Talking Plan and Position

Unknown to the media, on November 5 two days after meeting the President, Misuari coursed through PAPP Secretary Jesus Dureza a letter to the President naming the members of his MNLF faction’s five-member implementing panel led by his man-Friday Lawyer Randolph Parcasio. *MindNews (December 2: 5-member Misuari panel named)* learned this from Parcasio when he presented the MNLF-Misuari position and plan at the Kusog Mindanaw conference on federalism in Davao City last November 30.

The MNLF-Misuari talking plan:

[1] The MNLF-Misuari panel will work on a new autonomy law that would adhere to the letter and spirit of the 1996 FPA with the following as points of reference: (a) the 1976 Tripoli Agreement; (b) the 1996 FPA; (c) the executive summary during the proceedings (of the peace negotiations) from 1993 to 1996; and, (d) RA 9054.

[2] No explicit reference was made to the MNLF-GRP-OIC Tripartite (Organization of Islamic Cooperation) Review but by Parcasio’s recapitulation of the Review, the GPH-MNLF-Misuari talks will most likely be a revival of the Review. Parcasio recapitulated:

- The Tripartite Review had found 46 infirmities in R.A. No. 9054, the law that amended R.A. No. 6734, the Organic Act creating the ARMM. As an amendatory law, R.A. No. 9054 -- an “expanded” ARMM law -- was supposed to incorporate the 1996 FPA into it.
- The GPH panel refers to the 42 provisions of R.A. 9054 that need to be revised as “42 consensus points”; but there was a consensus to delete four other provisions in R.A. No. 9054 that did not adhere to the 1996 FPA – hence 46 infirmities.
- Thirty-two consensus points were agreed upon under the Arroyo administration; 14 under the Aquino administration. (NOTE: *President Arroyo agreed to call for the Tripartite Review in in June 2006 but the first meeting was held in November 2007. Parcasio’s figures differ from the official reports we have on file; they are contradictory.*)

- Three issues have yet to be resolved: territory in reference to the plebiscite that would be held to ratify the law; the transition mechanism which is similar to the Bangsamoro Transition Authority of the Moro Islamic Liberation Front (MILF) but “ours was the 1976 (Tripoli Agreement) version with some points coming from the 1996 (FPA) transitional mechanism; and revenue-sharing on strategic minerals or energy-based minerals.

[3] The MNLF-Misuari panel, referred to as “committee”, will sit with the government’s peace implementing panel “to draft a new autonomy law”, work on the executive doables as agreed upon during the Tripartite Review, and establish the Bangsamoro Development Assistance Fund that will be headed by the MNLF chair, among others.

[4] The draft bill will be submitted to the President who will then submit it to Congress.

[5] The MNLF has “agreed to a federal republic with five rich and big states” – Mindanao, Visayas, Southern Luzon, National Capital, and Northern Luzon.

[6] The Bangsamoro Autonomous Government (BAG) which shall be governed by the new autonomy law shall be approved before the ratification of the constitution of the Federal Republic. The BAG “shall be part of the Regional State Government of Mindanao.”

It can be inferred from Parcasio’s presentation of the MNLF-Misuari talking plan that the *Bangsamoro is in grave peril*.

The OIC will facilitate, he told *ABS-CBN News* before taking off last December 14. In the 10-year Review, the OIC did not just facilitate but it controlled of the proceedings. This may happen again. And the inputs were submitted to the OIC ICFM. Misuari said he wants the negotiation to be quick. But gauging from the Review, the “**quick**” will not be *that quick*.

There was a draft bill with the 42 consensus points amending R.A. 9054, the submission of which to the Congress Misuari vetoed pending the resolution of the three contentious issues deemed not within the purview of the Review, according to then PAPP Secretary Deles. The adoption of the draft, even if revised, will save time; but the negotiation on the three contentious issues can upset the timeline for the submission of the MNLF-Misuari draft to the Congress.

The MILF-led BTC may be able to submit its draft bill to the Congress on or before July 2016. However, legislative action has to wait for the MNLF-Misuari draft bill.

But here's the bombshell! Parcasio stated the MNLF-Misuari position: Letting Congress do the convergence of the draft laws of the MNLF and MILF ***would be a disaster***. He knew that the MNLF-Misuari draft and that of the MILF-led BTC with MNLF-Sema, MNLF-Alonto, IPs and LGUs would have conflicting provisions. Even if the Congress would try to consolidate the two drafts, the law will be unacceptable to both parties.

He told the conference participants of his wishing for the moon. There must be “one common proposal of the MNLF and MILF” but how that can be done, “*yan dapat natin pag-isipan*” (that we should think about).

He is asking Allah for a miracle of mixing oil and water. ***“Let us pray to Allah that the MNLF and MILF will come up with a common proposal.”***

Can the OIC and Mr. Duterte do what Allah is being implored to do? But for forty years the OIC has failed to unite the MNLF and MILF. After the signing of the 1996 FPA, the MNLF splintered into several factions. Misuari has snubbed the BCF which the OIC intended to unite the Moro Fronts. ***And, Mr. Duterte?*** He failed to make EO No. 08 unite MNLF-Misuari, other MNLF factions and the MILF in one track according to his BPDR – ***imperiling the more the Bangsamoro***.

EO No. 08 s. 2016

We expected EO No. 08 s. 2016 to be a new executive order. However, that it turned out as amending EO No. 120 s. 2012 as amended by EO No. 187 s. 2015 is understandable. It is only expanding the membership of the BTC created under EO No. 120 and mandating it to draft a new enabling law for the Bangsamoro more inclusive than Draft BBL through convergence. The amendments were expected to adopt the BPDR provisions.

But contrary to expectation, EO No. 08 lacks the force ***necessary*** to ensure the inclusivity and convergence for drafting the desired BEL. It is silent on how the BPDR is to become the guide or map in the drafting of BEL and has no timeline set for the submission of the BEL draft to the Congress contrary to the specific provisions of the BPDR. The lack and the silence are disturbing.

EO No. 08 s. 2016 and BPDR: EO No. 08's **third** “*Whereas-clause*” states that during their first meeting in Kuala Lumpur, the GPH and MILF “*reached a consensus on the substantive aspects of the new Peace and Development Roadmap for the implementation of the signed agreements*”. That only gave the BPDR a semblance of joint GPH-MILF authorship. Drawn by Secretary Dureza and approved by President Duterte, the GPH and MILF panel had no option but to adopt it. That was what they did in Kuala Lumpur,

But the adoption strengthens the authority of the GPH-MILF implementing panels that will coordinate with the BTC the drafting of the BEL. Officially on record, the BPDR is a joint GPH-MILF Agreement. But the *question* is: *What now is the relevance of the BPDR to the drafting of the BEL when EO No. 08 is silent on it?*

On BTC Membership, Inclusivity and Convergence: EO No.08's **fifth** "Whereas-clause" states "a need to expand the membership and functions" of the BTC "to ensure inclusivity in the Bangsamoro peace process" as the BPDR provides and to "bring about wider participation in the implementation of the signed agreements".

How does the EO spell this out?

The EO did not specify how the ten BTC members allotted to GPH are to be apportioned among the MNLF factions, the IPs and LGUs. **Section 2 on Composition** only provides "broad and diverse composition", referring to the expanded composition from 15 to 21. The BPDR is specific. The EO, *instead of changing the specific to the general*, should have gone a step farther by specifying the numbers for each specific party.

It did not set firmly the **parameters of convergence** for the drafting of the BEL; this can be seen clearly in **Section 3 on Functions**. This section should have elaborated the BPDR's provisions on convergence; it did not.

On the contrary, *nowhere in Section 3* or in the other sections and the "Whereas-clauses" are "BEL" and "convergence" mentioned or referred to.

Section 3a states the primary function of the expanded BTC: "To draft proposals for a Bangsamoro Basic Law ..." without specifying the basic reference for the drafting. This, in effect, scraps the BPDR provisions on the crafting of "the New Enabling Law for the Bangsamoro" (BEL). Does this also imply **the silent junking** of the BPDR?

This amends **Section 2a** of EO No. 120 s. 2012 which provides: "To draft the proposed Bangsamoro Basic Law ..." clearly specifying the basic reference "... with provisions consistent with the 2012 Framework Agreement on the Bangsamoro" that in EO No. 187 s. 2015 has amended to "Comprehensive Agreement on the Bangsamoro".

This raises two questions: **[1]** Is there a difference between "To draft proposals for a Bangsamoro Basic Law" in EO No. 08 and "To draft the proposed Bangsamoro Basic Law" in EO No. 120? **[2]** Is the specific basic reference (EO 120) or the lack of any (EO 08) for the drafting significant?

On Question [1]: In EO 08, the BTC will only draft "**proposals**" for a BBL. It connotes unstructured proposals and **any** BBL as denoted by the indefinite article "**a**". In reference

to “**Question [2]**”, since EO 08 has no specific basic reference, the proposals may be from random sources and, later, to be adopted or rejected while drafting *a* BBL.

In EO 120, the BTC will draft “*the proposed*” BBL in legal form – not just *any* BBL but that definitely agreed, as denoted by the definite article “**the**”, in the FAB. In reference to “**Question [2]**”, its provisions (*structured proposals*) are restricted to the FAB and its four Annexes.

Like **EO 120** that it amended, **EO 08** should have been specific. It should have qualified in its **Section 2** the BTC to be composed of the MILF and Misuari, Sema and Alonto factions of the MNLF, In its **Section 3a**, it should have mandated the BTC *to draft the proposed Bangsamoro Enabling Law* with the BPDR as specifically the basic reference – meaning, the convergence of the CAB, 1996 FPA, R.A. No. 9054 and the IPRA with the necessary elaboration of the mandate in the other sub-sections of Section 3.

Had this been done, what would be submitted to the Congress is Draft BEL, *the common proposal* of the MILF, all MNLF factions, the IPs and LGUs. The legislators will confine their deliberations on the draft bill.

Misuari’s November 5 letter to the President undid a good plan. Now, two autonomy bills will be submitted to the Congress. The Senate and the House will consider the two bills “*proposals*” for them to consolidate. As the President and Secretary Dureza have stated to media, the Congress will do the convergence, no longer the BTC. There will be two consolidated versions which will later be reconciled at the Bi-Cameral Conference Committee.

The fate of Bangsamoro is wrapped in uncertainty. Will the two bills be submitted in July 2017? Will the Congress consolidate the two bills when to MNLF-Misuari “*convergence is disaster*”? How can the 17th Congress enact the basic law for Bangsamoro acceptable to all?

The buck will pass back to President Duterte. He could – *and should* – have mandated in EO No. 08 s. 2016 the unification of the MILF and all the MNLF factions and the BTC to draft the BEL bill on *a single track* according to the BPDR. But he abandoned his good plan to allow Nur Misuari to follow *a second track*. *Why? Because he cannot displease or offend his good friend?*

Arbitrary Accommodation

In allowing Misuari to deal separately with another GPH implementing panel, President Duterte replicated the arbitrary accommodation that President Gloria Macapagal-Arroyo granted Misuari. However, Duterte’s accommodation can imperil the Bangsamoro.

In 2006, President Macapagal-Arroyo agreed to have the full implementation of the 1996 FPA reviewed under the supervision and control of the OIC. Known as MNLF-GRP-OIC Tripartite Review, President Benigno C. Aquino III continued it until its termination in January 2016 – with Misuari’s protestation, *inconclusively*.

President Arroyo could have ignored Misuari’s complaints but she could not refuse the ICFM Resolution No. 2/33-MMs in 2006 calling for the review. Evidently, the OIC’s call was also an arbitrary accommodation of Misuari if the facts are taken objectively.

[1] **Paragraph 12** of the FPA requested the OIC “*to continue to extend its assistance and good offices in monitoring the full implementation of the agreement*” but **only** “*during the transitional period until the regular autonomous government is fully established*”.

[2] This transitory provision was no longer in effect in 2006: (a) R.A. No. 9054 was ratified in 2001. (b) The first election under the new law was held in the same year, electing MNLF Parouk Hussein as governor and other MNLF officials as majority members of the Regional Legislative Assembly. (c) That firmly established the regular autonomous government under FPA embodied in R.A. No. 9054.

[3] The OIC was inconsistent in supporting the MNLF’s rejection of R.A. No. 9054 and the plebiscite. In 2004 and 2005, the ICFM recognized the plebiscite as a “*significant*” development “*in the development of the 1996 Peace Agreement*”. In 2003, the 10th Islamic Summit extended the same recognition including the November 2001 election.

[4] As stated in “[2]” above, the MNLF took part in the November 2001 election winning the governorship and the majority membership in the Regional Legislative Assembly – ***an act of recognition of the plebiscite and R.A, 9054.***

[5] Misuari accused the Congress of enacting R.A. No. 9054 without his participation and that of the MNLF. But to amend or repeal R.A. No. 6734, the FPA provided these options for the Congress:

In Part I, Paragraph 2(a): “*The bill shall include **the pertinent provisions** of the final Peace Agreement and the expansion of the present ARMM area of autonomy*” (Bold text supplied). ***Why fault the Congress for exercising the options so authorized?***

In Part III (Phase II): Referring to provisions of the FPA for implementation after the ratification of R.A. No. 9054 and to GRP’s obligation to recommend their inclusion in the bill, “*Accordingly, these provisions **shall be recommended** by the GRP to Congress for incorporation in the amendatory or repealing law*”. (Bold text supplied). ***Why did the FPA not specifically mandate the inclusion as compulsory instead of obliging GRP to recommend?***

[6] The Review was for the amendment of R.A. No. 9054 in accordance with the FPA. There is no provision in the FPA allowing this mode of amendment with the intercession of the OIC. This is not among the modes provided in Sections 1 and 2 of Article XVII on Amendments of R.A. No. 9054.

The OIC could have said “**NO**” to Misuari, but did not. Arroyo could not refuse OIC’s call. Aquino III finished the Review on its 10th year but *did not accommodate Misuari* by rejecting *three issues* that according to then PAPP Secretary Deles were not within the purview of the Review *for valid reasons*. Without the three rejected issues, Misuari vetoed the proposed bill containing the 42 consensus points to amend R.A. No. 9054 in accordance with the FPA. In chess parlance, the Review ended in a stalemate.

Stalemate to Roadblock

Duterte should not have accommodated Misuari; but, as a friend, *if they are true friends*, he should have convinced him to join the one-track implementing process according to the BPDR. The 1976 Tripoli Agreement has been fleshed out more comprehensively in the FAB and the Annexes. Significant provisions of R.A. No. 9054 have been adopted into Draft BBL. By joining the new BTC, Misuari could help draft a more inclusive and convergent BEL, the new BBL.

Misuari’s misgivings with R.A. No. 9054 and the 2001 plebiscite and ARMM election drove him back to arms. The Review, intended to mend the rift, turned out to be the last straw. Duterte’s accommodation is understandable – to break the stalemate and remove an impediment to peace in Mindanao. But under the present state of the peace process, it’s ironic -- the accommodation can become a formidable roadblock.

As revealed by Parcasio, the autonomy law that MNL-Misuari will work out with the GPH implementing panel will be the basic law to govern the BAG (Bangsamoro Autonomous Government) – meaning, R.A. No. 9054 will be amended and the ARMM renamed.

Evidently, the new autonomy law will contain the 42 Review consensus points and the three rejected issues together with other matters from the four references Parcasio has specified subject to negotiations. The new autonomy law will not be converged with the new BBL or BEL of the MILF-led BTC. The inevitable complications will form the formidable roadblock to the establishment of the Bangsamoro.

First, the timeline: The MILF-led BTC, most probably, can meet the July 2017 timeline for submission to the Congress. This is improbable for the MNLF-Misuari autonomy bill. The negotiation for the three rejected issues and other new matters will take time; gauged

from past negotiations including the Review, it can take years. *The Congress will defer action indefinitely.*

Second, the convergence feasibility: The Bangsamoro under the BTC bill is ministerial-parliamentary; the BAG under the amended R.A. 9054 will still be presidential-unitary. How can the two be converged and come out with the basic law acceptable to all?

What can be converged are the BTC bill and the amended R.A. 9054. The latter is wrapped in uncertainty since the amendment will take time and the Act will have to be ratified. Can the plebiscite be held with the 2019 election? If ratified, convergence can take place during the 18th Congress.

Third, no convergence: But Misuari will not allow convergence. Parcasio called it “*a disaster*”. If the amended R.A. 9054 is ratified, will Duterte accommodate Misuari and implement the autonomy law to install the BAG ignoring the BTC bill waiting in the Congress? *That will not remove the formidable roadblock to peace in Mindanao.*

Is there a way to clear the road?

Reconfiguration

Speaking to the Muslims during *Harirayah* celebration in Davao City last July 8, Duterte talked about “*reconfiguration*”. In his rambling speech, he did not elaborate. However, from what he said, we might be able to figure out his idea:

*“... if I succeed in convincing everybody in Mindanao, if I can convince my MILF brothers and Nur Misuari of the MN there will be a **reconfiguration of the territory** ... x x x x x ... in fairness to Nur, we might also **configure his territory of the Tausug nation** ...”* (Bold supplied)

What did he mean by “*the territory*”? Was he referring to the entire Mindanao? If so, he was only telling what was expected. Mindanao and Sulu will be reconfigured into federal states with the ARMM as one state should federalization become a reality.

Was he referring to the ARMM? It has been a distinct autonomous region since 1977 when President Marcos proclaimed the autonomy of 13 provinces and included cities according to the 1976 Tripoli Agreement – reduced into two regions of five provinces each in the 1977 plebiscite, finalized into the ARMM in the 1989 and 2001 plebiscites.

What did he mean by *in fairness to Nur, we might also configure his territory of the Tausug nation ...*? Create Basilan, Sulu and Tawi-tawi into a region for Misuari?

Whatever he really meant, he gave a clue to the puzzle.

Misuari, MILF and the Lanao-Maguindanao MNLF factions are like oil and water that will not mix. Let the 1996 FPA be the enabling law for the Basilan-Sulu-Tawi-Tawi Autonomy where Misuari's leadership is unopposed – naming it as it suits Misuari. Let the CAB-FPA-R.A. No. 9054 convergent BEL be the enabling law of the Lanao-Maguindanao Autonomy named Bangsamoro. Passing separate organic acts might be easier for the Congress.

Reconfiguring the ARMM can easily be done as part of the federalization process. But both the MILF and MNLF-Misuari want the Bangsamoro basic law passed before the shift to the federal system which will not happen before 2019, the projected time for the plebiscite on the anticipated federal constitution. And, federalization is still a long shot that can miss the mark.

Can “configuration of a Misuari territory” or the creation of two autonomous regions out of the ARMM be done without violating the 1987 Constitution and the 1976 Tripoli Agreement?

President Marcos created two regional autonomous governments – RAG IX and RAG XII – he reasoned, according to the will the people expressed in the 1977 plebiscite. In that plebiscite, South Cotabato, Davao del Sur and Palawan opted out of the proposed 13-province autonomy. The ten other provinces preferred to maintain the existing Region IX and Region XII set up. Of course, the plebiscite result was rigged.

The one-region ARMM was established by President Corazon C. Aquino pursuant to Article X, Sections 1, 15 to 21 of the 1987 Constitution in recognition of the 1976 Tripoli Agreement, said the Peace Commission under President Corazon C. Aquino. President Marcos justified the two-region Muslim autonomy as being the will of the people and in accordance with Paragraph 16 of the Tripoli Agreement.

Can Duterte make good his *Harirayah* proposition -- “convince my MILF brothers and Nur Misuari of the MN” then hold a referendum to validate his proposition and make it constitutional? Reconfiguration, if approved by the people, will be constitutional and in accordance with Paragraph 16 of the Tripoli Agreement.

A big BUT even if done: Will they who cannot unite accept their separation?

The Only Option

The only option that will give the Bangsamoro basic law bill a good chance to be filed in the Congress in July 2017 is the revision of Draft BBL into BEL through convergence as

proposed in the BPDR. Let the 21-member BTC do this – the 10 GPH nominees to come from all MNLF factions including Misuari’s and the LGU from the ARMM. The IPs will be nominated by the MILF – the same set up as in the 15-member BTC with two IPs in the MILF side.

To do this, President Duterte has to amend EO No. 08 to revise and specify clearly the BTC membership, including MNLF-Misuari, and to set definitely the parameters of convergence following the BPDR with Draft BBL as the mold. This also means the President must convince Misuari accept the one-track BPDR convergence process. This is not asking him to sacrifice *anything* but only to *see reason* and *accept realities*.

The OIC must help convincing Misuari -- to prove sincerity in its statements supporting the BBL and, lately, the convergence of the BBL and the FPA. We believe Misuari is still the OIC’s “*niño bonito*” as he is the President’s “*Brother Nur*” and “*friend*”.

Misuari should be made to realize that under the talking plan that Parcasio presented, it may take a year or more to negotiate the three issues left out in the Tripartite Review. And, more matters may be brought out. With the OIC participating as facilitator, the Tripartite Review mode of negotiation will most likely be adopted. Has the GPH panel been organized? There has been no report in the media. When can the negotiation start?

Misuari should be made to see the reason behind the one-track BPDR convergence process. The all-Moro (except two IPs, perhaps) MNLF and MILF BTC can deliberate well on how to converge the CAB, Draft BBL, FPA, R.A. No. 9054, etc. “*in fairness*” (to quote Duterte) to the Bangsamoro and the Moros – not to any single Moro Front leader or group.

Contentious issues must be carefully, calmly, wisely deliberated – *putting away heavy chips on shoulders, axes and grinding stones* -- to reconcile conflicts and seek solutions fair to the Bangsamoro, the Moros and other people of the Bangsamoro. There are many such issues between the Moros and Government, between MNLF and MILF, among the MNLF factions strewn in the provisions of the agreements and laws to be converged..

For instance, as reported, Misuari wants the letter of the 1976 Tripoli Agreement strictly followed – particularly Paragraph 15 on the establishment of a provisional government for the original 13-province area of autonomy. Evidently, he wants to hold a plebiscite to affirm the composition of the Muslim Autonomy as provided in the “**Second**” part of the Agreement. This is setting time to forty years back. The provisional government is no longer practicable.

To avert the collapse of the GRP-MNLF Jakarta Peace Talks over this issue, President Ramos provided in the FPA the creation of the SPCPD (Southern Philippines Council for

Peace and Development), the CA (Consultative Assembly) and the SZOPAD (Special Zone of Peace and Development) with a plebiscite over the last. Even with Misuari at the helm, the SPCPD did not work; it was not workable *ab initio*. Another plebiscite – the third since 1989 -- will not change the minds of the Christian majority.

Let us cite more instances of provisions to reconcile:

[1] In forming the government of the Autonomy for the Muslims, the Tripoli Agreement (**Part III, Paragraph 9**) provides for the election of “*A Legislative Assembly*” that will appoint “*an Executive Council*”.

In Draft BBL, the Parliament is elected by popular vote. On its inaugural session, it elects from among its members the Chief Minister as chief executive officer; he will appoint the other executive officers or ministers -- the deputy minister from among the members of the Parliament.

In R.A. No. 9054, the executive branch is headed by the governor who is elected by popular vote together with the vice governor; the legislative branch is the Legislative Assembly with members elected by popular vote. These are in accordance with Part III (Phase II) Paragraphs 21, 23 and 24 of the FPA.

[2] In **Part III, Paragraph 10** of the Tripoli Agreement, “*Mines and mineral resources fall within the competence of the Central Government, and a reasonable percentage deriving from the revenues of the mines and minerals be fixed for the benefit of the areas of the autonomy.*” This is among the three unresolved issues of the Review.

In the **FPA (Paragraphs 146 and 147)**, “*strategic minerals*” was made an exception and was to be defined later. In R.A. No. 9054, “*strategic minerals*” was defined and the fees fixed including the sharing between the Central Government and the ARMM.

In **Draft BBL**, as agreed in *Annex on Revenue Generation and Wealth-Sharing*, the “*competence*” is transferred to Bangsamoro, the “*mineral resources*” classified and defined into “*non-metallic*”, “*metallic*” and “*strategic*” – the fees and sharing fixed, the Bangsamoro getting 100 percent of the fees on non-metallic minerals.

The instances above are the contentious issues between Government and MNLF; they are provided differently in the FPA and R.A. 9054 on one hand and in Draft BBL and the CAB on the other. ***There are more instances.*** The MILF study group had presented to the House and the Senate more than 40 objections to the revision and deletion of Draft BBL provisions. These issues might have been differently provided in the FPA and R.A. No. 9054 or not at all.

The bottom line is: If the convergence process will be done on the single BPDR track by the BTC with members from the MILF and ***all*** MNLF factions, the basic enabling law for the

Bangsamoro will be – as Parcasio was praying for – **common to all**, is the just and lasting solution to the Moro Problem; and the proposed bill will have a good chance of meeting the July 17, 2017 timeline for submission to the Congress, That is the only option.

Sad Notes

But sad notes mar the “only option”. The odds are stacked against **“the only option”**. Misuari has opted out; he will have separate track of the peace process with a **“no convergence”** caveat. This track is the **“talking plan and position”** Parcasio presented at the Kusog Mindanaw conference on federalism in Davao City last November 30 and elaborated in a two-part article in the MNLF Website (10/18/16 and 11/28/16) entitled **“Roadmap to MNLF-Duterte Government Peace Talks”**

In the article, the Moro Problem is blamed on the Americans and Philippine presidents particularly Manuel L. Quezon, Elpidio Quirino, Ferdinand E. Marcos, Corazon C. Aquino, Joseph E. Estrada, Gloria Macapagal-Arroyo and Benigno Simeon C. Aquino III. The MILF and the non-Misuari MNLF factions are called traitors. Only Misuari and the peace process following the 1976 Tripoli Agreement and the FPA with the full support of President Duterte are the hopes for the **“liberation”** of the Moros.

The article portrays Misuari as carrying heavy **“chips on his shoulders”** and constantly **“grinding his axes”** This explains Dureza’s reason for the separate talks of the Duterte government and Misuari: *“We are separately handling the Misuari faction in another track. There is still a very deep division, in principle, between the two groups”*, referring to MILF and other MNLF factions. (MindaNews, 11/ 9/16: *BA needs P136 billion for Bangsamoro Development Plan*))

Last December 14 (ABS-CBN News and GMA Newww), Misuari flew to Jeddah, Kingdom of Saudi Arabia. In a pre-departure interview, he said he would have a meeting with the OIC to (1) finalize the details of negotiations with the government; (2) know who will mediate during the talks and when that person will go to the MNLF camp. He said “the government agreed that the talks will take place at the group’s camp, similar to how it was done in former president Fidel V. Ramos' time”.

The inference: The OIC will facilitate and determine the details or mode of negotiation. Why not finalize the details of the negotiation with the Philippine government panel? The talks will be held at the MNLF camp in Sulu.

Misuari also wants to know from the OIC which of the FPA and the CAB it will recognize. To Misuari, the Jakarta accord is more binding since it is an **international**

treaty”, MNLF spokesman Absalom Cerveza said, “*As far as the OIC is concerned they will only honor the Jakarta peace accord.*”

These, too, are sad notes. They see only their own shadows; they listen only to their own voices. *First*, they see the FPA as *an internationalized treaty* but not the CAB and the mode of the Government-MILF negotiations which have been *internationalized ten times more* than the FPA. *Second*, they ignore what the OIC Secretary General has said a number of times that the OIC wanted the MILF and all MNLF factions to unite and consolidate all their agreements with the Philippine government.

The latest OIC statement was on November 8, 2016 on the release of Misuari. The statement came out in full in the OIC website – not in any newspaper. The following are the paragraphs emphasizing the OIC position:

“The Organization of Islamic Cooperation (OIC) welcomes the decision of the President of the Republic of the Philippines, H. E. Mr Rodrigo Duterte, to lift the warrant of arrest against Prof. Nur Misuari, Chairman of the Moro National Liberation Front (MNLF) and to reinstate his freedom.

“The OIC received this information with great satisfaction and considers it another manifestation of the positive approach of the current administration towards the long-standing problem of the Bangsamoro people.

“The OIC Special Envoy for Peace in the Southern Philippines, Ambassador Sayed El-Masry, reiterated the long standing position of the OIC, that Chairman Nur Misuari is an indispensable factor to the peace process; being the founder of the MNLF and the historical leader of the Bangsamoro people.

“The OIC also takes this opportunity to reiterate its support for the Moro Islamic Liberation Front (MILF) and its leader, Chairman Hajj Murad as well as for the Comprehensive Agreement on the Bangsamoro (CAB), which should be embodied undiluted in the new enabling law.

“The OIC believes that it is now time to proceed steadfastly to close the ranks between the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation front (MILF) in order to coordinate efforts to merge the two peace tracks and maintain all the gains contained in all the peace treaties namely: the 1976 Tripoli Agreement, the 1996 Jakarta Agreement and the Comprehensive Agreement on Bangsamoro (CAB).

“The OIC maintains its position that it does not favour one Moro faction over another, but that it is in full support of the inalienable rights of the Bangsamoro people to determine their future and seek peace and prosperity in their homeland.”

The OIC's four-point position is clear:

- Misuari is indispensable to the peace process for being the founder of the MNLF and historical leader of the Moros.
- It supports the MILF, its Chairman /al Hajj Murad and the CAB.
- It wants the MNLF and MILF to close ranks, merge the two peace tracks and converge all the gains in all peace treaties.
- It does not favor either the MNLF or the MILF; above all, *“it is in full support of the inalienable rights of the Bangsamoro people to determine their future and seek peace and prosperity in their homeland.”*

We await Misuari's return from Jeddah. If the OIC is true to its November 8 statement, it would advise Misuari to take the “Only Option”. President Duterte, taking a cue from the OIC statement, should convince Misuari to join the single MILF-led BTC track.

So much is at stake. Not only the Moros are in suspense; but also – perhaps, more so -- are the international leaders, agencies and foreign governments that have helped sustain the peace and the 16-year Government-MILF negotiations. Ultimately, history will be categorical in its verdict. Either, ***Bangsamoro: fulfillment at last***; or, ***Bangsamoro: denial as ever***.

END

Bangsamoro: Fulfillment or Denial Anew?

I Duterte Peace Roadmap

II BBL to BEL

III BEL Minus “BBL Objectionables” and Time

IV BEL: Roadmap and Road Blocks

December 22, 2016

