Republic of the Philippines
Supreme Court
Manila

EN BANC

PROVINCE OF SULU, duly represented by its Governor, ABDUSAKUR A. TAN II,
Petitioner,

PHILIPPINE ASSOCIATION OF ISLAMIC ACCOUNTANTS [PAIA], Inc., represented by its president, AMANODING D. ESMAIL, CPA, et al.; GOVERNOR ESMAEL G. MANGUDADATU, et al.; and ALGAMAR A. LATIPH, et al.,
Petitioners-in-Intervention;

-versus-

HON. SALVADOR C. MEDIALDEA, in his capacity as Executive Secretary; HONORABLE EDUARDO M. AÑO, in his capacity as Officer-in-Charge of the Department of Interior and Local Government; THE HONORABLE SENATE OF THE PHILIPPINES; THE HONORABLE HOUSE OF REPRESENTATIVES; THE HONORABLE COMMISSION ON ELECTIONS; HONORABLE JESUS G. DUREZA, in his capacity as Secretary of the Office of the Presidential Adviser on the Peace

G.R. No. 242255

Process; BANGSAMORO TRANSITION COMMISSION; and MORO ISLAMIC LIBERATION FRONT,
Respondents.

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PHILIPPINE CONSTITUTION ASSOCIATION [PHILCONSA],
Petitioner,

-versus-

SENATE OF THE PHILIPPINES, represented by SENATE PRESIDENT HONORABLE VICENTE SOTTO; HOUSE OF REPRESENTATIVES, represented by SPEAKER HONORABLE GLORIA MACAPAGAL ARROYO; and OFFICE OF THE PRESIDENT, represented by EXECUTIVE SECRETARY HONORABLE SALVADOR MEDIALDEA,
Respondents.

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CONG. ABDULLAH D. DIMAPORO and CONG. MOHAMAD KHALID Q. DIMAPORO,
Petitioners,

-versus-

COMMISSION ON ELECTIONS [COMELEC], as represented by

G.R. No. 243246

G.R. No. 243693

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH,* *JJ.*

* On leave.

HON. CHAIRPERSON SHERIFF ABAS,
Respondent.

Promulgated:
September 9, 2024

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DECISION

"Our [country's] only option right now, even in the future, is peace. But it must be accompanied by justice. Because peace is not only about the absence of fighting; it is more than that. Justice is needed."

Mohagher Iqbal,
Chief Negotiator
Moro Islamic Liberation Front[1]

LEONEN, *J.*:

Constituents of each of the provinces and cities composing the Autonomous Region in Muslim Mindanao (ARMM) must be given the freedom to exercise their rights to suffrage and local autonomy, as guaranteed by the Constitution.[2]

This Court resolves the consolidated Petitions for *Certiorari* and Prohibition with prayers for Temporary Restraining Orders and/or Preliminary Injunctions filed under Rule 65 of the Rules of Court, seeking to: (1) declare unconstitutional Republic Act No. 11054, otherwise known as the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (Bangsamoro Organic Law, for brevity); and (2) enjoin the conduct of a plebiscite for its ratification.

The struggle of the Bangsamoro people for self-determination can be traced as far back as the early days of imperialism.[3] However, it was the 1968 Jabidah Massacre, when young Tausug and Sama men were massacred by Philippine Army officers in the island of Corregidor, which sparked the armed conflict between the Philippine military forces and Muslim armed opposition groups. The Jabidah Massacre gave birth to the establishment of Moro

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1 Mohagher Iqbal, *BARMM at five: A long way to go, but we've come so far*, BANGSAMORO INFORMATION OFFICE, January 23, 2024, *available at* https://bangsamoro.gov.ph/news/latest-news/barmm-at-five-a-long-way-to-go-but-weve-come-a-long-way/ (last accessed on August 30, 2024).

2 *Rollo* (G.R. No. 242255), p. 33.

3 Thomas Mckenna, *The Origins of the Muslim Separatist Movement in the Philippines*, *available at* https://asiasociety.org/origins-muslim-separatist-movement-philippines (last accessed on June 5, 2024). *See also* ALAN TORMIS ORTIZ, TOWARDS A THEORY OF ETHNIC SEPARATISM: A CASE STUDY OF MUSLIMS IN THE PHILIPPINES (MORO, ISLAM, MINDANAO, SECESSION, REVOLUTION) (1986).

separatist groups such as the Moro Independence Movement, and eventually, the Moro National Liberation Front.[4]

The declaration of Martial Law in 1972 became a catalyst for the rebellion of the Moro National Liberation Front against the government. This took a political and financial toll on the administration of then President Ferdinand E. Marcos, Sr. (President Marcos), prompting it to pursue the 1976 Tripoli Agreement with the Moro National Liberation Front. The Agreement "provided the general principles for Muslim autonomy in the Philippine South."[5]

President Marcos immediately implemented the Tripoli Agreement. He issued Presidential Proclamation No. 1628, "Declaring Autonomy in Southern Philippines." A plebiscite was conducted in the provinces covered under the Tripoli Agreement. Further, the Legislative enacted Batas Pambansa Blg. 20, "Providing for the Organization of Sangguniang Pampook (Regional Legislative Assembly) in Each of Regions IX and XII." President Marcos then ordered the creation of Autonomous Region IX and XII.[6]

In April 1977, the peace talks between the government and the Moro National Liberation Front collapsed,[7] causing dissension and eventual split and the creation of a second separatist organization, the Moro Islamic Liberation Front (MILF).[8]

A ceasefire agreement between the government and the Moro National Liberation Front was signed on September 5, 1986 during the presidency of Corazon Cojuangco Aquino.[9] Thereafter, the people ratified the 1987 Constitution. It provided for the creation of the ARMM through an act of Congress. The ARMM was created through Republic Act No. 6734,[10] which took effect on August 1, 1989.[11]

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4 Angela Casauay, *Jabidah Massacre: Acknowledge 'Historical Injustice,'* RAPPLER, March 18, 2015, *available at* https://www.rappler.com/philippines/87266-jabidah-massacre-historical-injustice/ (last accessed on June 6, 2024).

5 Thomas Mckenna, *The Origins of the Muslim Separatist Movement in the Philippines*, *available at* https://asiasociety.org/origins-muslim-separatist-movement-philippines (last accessed on June 5, 2024), *citing* Cesar Adib Majul, The Contemporary Muslim Movement in the Philippines, Berkeley: Mizan Press (1985).

6 J. Puno, Separate Opinion in *Province of North Cotabato v. GRP*, 589 Phil. 387 (2008). [Per J. Carpio-Morales, *En Banc*].

7 *Id.*

8 Thomas Mckenna, *The Origins of the Muslim Separatist Movement in the Philippines*, *available at* https://asiasociety.org/origins-muslim-separatist-movement-philippines (last accessed on June 5, 2024) *citing* CESAR ADIB MAJUL, THE CONTEMPORARY MUSLIM MOVEMENT IN THE PHILIPPINES (1985).

9 University of Central Arkansas, *Dynamic Analysis of Dispute Management Project: Philippines/Moro National Liberation (1946-Present)*, University of Central Arkansas, *available at* https://uca.edu/politicalscience/home/research-projects/dadm-project/asiapacific-region/philippinesmoro-national-liberation-front-1968-present/ (last accessed on June 14, 2024).

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

11 J. Puno, Separate Opinion in *Province of North Cotabato v. GRP*, 589 Phil. 387, 551 (2008) [Per J. Carpio-Morales, *En Banc*].

On September 15, 1993, then President Fidel V. Ramos (President Ramos) issued Executive Order No. 125, which provided for a comprehensive, integrated, and holistic peace process with Muslim groups. Executive Order No. 125 created the Office of the Presidential Adviser on the Peace Process to give momentum to the peace talks with the Moro National Liberation Front.[12]

Then President Joseph Ejercito Estrada (President Estrada) continued the peace talks with the MILF during his term. The talks, however, were limited to cessation of hostilities. Both sides were given until December 1999 to conclude the peace process,[13] but they did not meet the deadline. In 2000, acts of violence escalated and the threats to the lives and security of civilians in Southern Mindanao increased. President Estrada then declared an "all-out war" against the MILF.[14]

Peace negotiations with the MILF resumed under the presidency of Gloria Macapagal Arroyo. On March 24, 2001, a General Framework for the Resumption of Peace Talks between the government and the MILF was signed. Republic Act No. 9054[15] was also enacted on March 31, 2001 and took effect on August 14, 2001, seeking to strengthen and expand the Organic Act for the ARMM. Through this, six municipalities in Lanao del Norte voted for their inclusion in the ARMM.

On August 5, 2008, the Arroyo administration drafted the Memorandum of Agreement on Ancestral Domain and pursued negotiations with the MILF. It outlined the creation of a Bangsamoro Juridical Entity, a proposed subdivision of the Philippines which would cover portions of Mindanao and Palawan. However, negotiations fell through on October 14, 2008 when this Court, in *Province of North Cotabato v. GRP*,[16] declared the Memorandum of Agreement on Ancestral Domain unconstitutional. This Court held that the treatment of the Bangsamoro Juridical Entity as an associative state is unconstitutional, as the Constitution recognizes only one state, that is the Philippine state.[17]

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12 *Id.* at 551–552.

13 *Id.*, *citing* MARITES DANGUILAN VITUG & GLENDA M. GLORIA, UNDER THE CRESCENT MOON: REBELLION IN MINDANAO 161 (2000).

14 Nathaniel R. Melican, *Estrada stands by all-out war strategy vs MILF*, PHIL. DAILY INQ., January 27, 2015, *available at* https://newsinfo.inquirer.net/668386/estrada-stands-by-all-out-war-strategy-vs-milf (last accessed on August 12, 2024).

15 Republic Act No. 9054 (2001), An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled 'An Act Providing for the Autonomous Region in Muslim Mindanao,' As Amended.

16 *Province of North Cotabato v. GRP*, 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*].

17 *Id.*

On October 15, 2012, the Philippine government, under then President Benigno S. Aquino III (President Aquino III), and the MILF executed the Framework Agreement on the Bangsamoro, which strengthened the dialogue between the two parties. On December 17, 2012, by virtue of Executive Order No. 120,[18] President Aquino III instituted the Bangsamoro Transition Commission to create a draft of the Bangsamoro Basic Law.[19] The attached documents of the Framework Agreement on the Bangsamoro were completed in January 2014.[20] On March 27, 2014, the government then signed the Comprehensive Agreement on the Bangsamoro, which consolidated and affirmed the understanding and commitment between the Philippine government and the MILF, including the agreements, guidelines, statements, and terms of reference signed and acknowledged from 1997 to 2014.

The culmination of the decades-long struggle, negotiations, and policy-making happened when Republic Act No. 11054[21] or the Bangsamoro Organic Law was signed into law by then President Rodrigo Roa Duterte (President Duterte) on July 27, 2018.[22] Pursuant to the Bangsamoro Organic Law, the Commission on Elections (COMELEC) issued Resolution No. 10425,[23] which set the rules on the conduct of a plebiscite for its ratification.

The Bangsamoro Organic Law provided for the establishment of a political entity for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) and its corresponding basic governmental structure. The law further provides for the Bangsamoro identity, territorial jurisdiction, government, basic rights, justice system, national defense and security, fiscal autonomy, and regional economy. It declares that the establishment of the Bangsamoro Autonomous Region and the determination of its territorial jurisdiction shall take effect upon the law's ratification by majority of the votes cast in a plebiscite.

On October 17, 2018, the Province of Sulu, represented by its Governor Abdusakur A. Tan II (Governor Tan), filed a Petition for *Certiorari* and Prohibition[24] with an Urgent Prayer for the Issuance of Temporary Restraining Order and/or writ of Preliminary Injunction before this Court. It urges this

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18 Executive Order No. 120 (2012), Constituting the Transition Commission and for Other Purposes.

19 Centre for Humanitarian Dialogue, *Primer on the proposed Bangsamoro Basic Law*, *available at* https://www.hdcentre.org/wp-content/uploads/2016/07/Primer-on-the-proposed-Bangsamoro-Basic-Law-December-2014.pdf (last accessed on August 12, 2024). Archived from the original (PDF) on September 24, 2015.

20 The Comprehensive Agreement on the Bangsamoro, March 27, 2014.

21 Republic Act No. 11054 (2018), An Act Providing for the Bangsamoro Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, titled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao" (Bangsamoro Organic Law).

22 It was published in the Official Gazette on August 6, 2018, *available at* https://www.officialgazette.gov.ph/2018/07/27/republic-act-no-11054/ (last accessed on August 12, 2024).

23 *Rollo* (G.R. No. 242255), pp. 270–294. Rules and Regulations Governing the Conduct of the Plebiscite to Ratify Republic Act No. 11054, otherwise known as the Organic Law for Bangsamoro Autonomous Region in Muslim Mindanao.

24 *Rollo* (G.R. No. 242255), pp. 3–56.

Court to declare unconstitutional the Bangsamoro Organic Law and to enjoin the conduct of the plebiscite for its ratification. This Petition was docketed as G.R. No. 242255.

The Province of Sulu argues that the Bangsamoro Organic Law violates several constitutional provisions when it: (1) abolished the ARMM, a constitutional creation which can be abolished only through constitutional amendment;[25] (2) provided for a parliamentary form of government in BARMM without an Executive or Legislative branch, wherein the chief minister is elected by the parliament and not the people;[26] (3) automatically included the present geographical area of ARMM in the territory of BARMM;[27] (4) denied the people of the Province of Sulu the option to join or not join BARMM;[28] (5) erased the autonomy and identity of the indigenous people in the Province of Sulu;[29] and (6) designated the MILF to lead the Bangsamoro Transition Authority, in violation of the equal protection clause.[30]

As a response to the Petition of the Province of Sulu, the League of Bangsamoro Organizations, Inc., represented by its president, Hashim B. Manticayan, sent a Letter[31] dated November 5, 2018 to this Court, asking that the Petition of the Province of Sulu be junked. It argues that the creation of BARMM is constitutional and essential for peace to flourish in Mindanao. This Court subsequently noted the Letter in its January 29, 2019 Resolution.[32]

In a November 6, 2018 Resolution, this Court required the respondents in G.R. No. 242255 to file a comment on the Province of Sulu's Petition within 10 days from notice thereof.[33]

On December 10, 2018, the Province of Sulu filed an Omnibus Motion[34] to set the case for oral arguments with a prayer for the immediate issuance of a temporary restraining order and/or preliminary injunction to stop the conduct of the plebiscite. However, this Court resolved to defer action on the Omnibus Motion until such time when the comment to the Petition has been filed.[35]

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25 CONST., art. X, secs. 18, 19.
26 CONST., art. X, sec. 18.
27 CONST., art. X, sec. 18.
28 CONST., art. X secs. 15, 18.
29 CONST., art. II, sec. 22; art. XII, sec. 5.
30 *Rollo* (G.R. No. 242255), pp. 12–13. *See* CONST. art. III, sec. 1.
31 *Id.* at 128–129.
32 *Id.* at 146-A.
33 *Id.* at 126.
34 *Id.* at 138–146.
35 *Id.* at 146A–146B.

On December 11, 2018, the Philippine Constitution Association (PHILCONSA) also filed a Petition for *Certiorari* and Prohibition with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[36] before this Court, assailing the constitutionality of the Bangsamoro Organic Law and praying that all "projects or activities grounded or emanating from [Republic Act No. 11054]" and Executive Order No. 120 be halted.[37] This Petition was docketed as G.R. No. 243246.

PHILCONSA mainly argues that the ARMM and the Cordilleras are the only autonomous regions recognized in the Constitution and the Congress, on its own, cannot make a new entity like BARMM.[38]

It also lists all other supposed constitutional infirmities found in the Bangsamoro Organic Law in that: (1) the establishment of BARMM is not supported by the Constitution; (2) the provisions of the Bangsamoro Organic Law unduly expanded the legislative powers of an autonomous region; (3) it infringes on the rights and identities of indigenous people by lumping together Lumads with the Bangsamoro people; (4) the Constitution does not allow the creation of special courts for commercial and criminal cases; (5) it gives the Bangsamoro government the power to declare nature reserves, aquatic parks, forests, watershed reservations, and other protected areas—a power which only belongs to the Congress; (6) it gives BARMM the capacity to enter into foreign trade relations even though this is solely a presidential function; (7) it unduly gives BARMM the power to have its own economy; (8) it allows BARMM to create a separate flag; (9) the BARMM parliament usurped the Congress' power to grant tax exemptions; (10) it also unduly gives the parliament the power to create government-owned and -controlled corporations; (11) it illegally allows that some of the national taxes be given to BARMM; and (12) it gives BARMM the power to contract foreign loans, a power solely vested in the president.[39]

On January 7, 2019, the Philippine Association of Islamic Accountants, Inc., represented by its president, Amanoding D. Esmail, filed a Motion for Leave to File Intervention[40] and attached its Answer-in-Intervention,[41] opposing the Province of Sulu's Petition in G.R. No. 242255.

The Philippine Association of Islamic Accountants, Inc. argues that: (1) the Constitution does not limit Congress from passing subsequent legislations establishing, strengthening, or abolishing the ARMM;[42] (2) the parliamentary government provided under the Bangsamoro Organic Law is

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36 *Rollo* (G.R. No. 243246), pp. 3–41.
37 *Id.* at 35–36.
38 *Id.* at 10–19.
39 *Id.* at 19–33.
40 *Rollo* (G.R. No. 242255), pp. 350–355.
41 *Id.* at 359–411.
42 *Id.* at 376.

part of the Philippine political order[43] and does not run afoul the separation of powers and checks and balances, since the Bangsamoro government would still be a subsidiary state of the Philippine government;[44] (3) the provision in the Bangsamoro Organic Law directing the ARMM to vote as one in the plebiscite conforms to the equal protection principle and does not discriminate against any province or city;[45] (4) the designation of the MILF as the lead in the Bangsamoro Transition Authority passed the test of the equal protection clause;[46] (5) the Bangsamoro Organic Law is designed to protect the religious minority and promote the general welfare of the Bangsamoro and the people of Muslim Mindanao;[47] (6) the Bangsamoro Organic Law is a social justice legislation made in compliance with the country's commitment to implement the 2007 United Nations Declaration for the Rights of the Indigenous Peoples;[48] and (7) petitioner Governor Tan of the Province of Sulu lacks legal standing since he failed to show personal or material interest that will be prejudiced or affected adversely by the passage of the law.[49]

On the same day, Algamar A. Latiph, Musa Malayang, and Pendatun B. Disimban (collectively, Latiph et al.) also filed an Urgent Motion[50] for this Court to admit their Comment-in-Intervention,[51] which also opposes the Province of Sulu's Petition. They pray that the constitutionality of the Bangsamoro Organic Law be upheld.

Latiph et al. argue that: (1) petitioner Province of Sulu mistakenly asserts that Congress can make only one Organic Act by virtue of the Bangsamoro Organic Law, since Republic Act No. 9054 or the Organic Act for the ARMM can be repealed by Congress;[52] (2) the doctrine of separation of powers applies only to coequal branches of government and not to the autonomous government;[53] (3) there is no deprivation of the right of suffrage since members of the parliament are elected by the constituent units under the system;[54] (4) assailing the constitutionality of the provision on reserved seats and sectoral representatives is premature;[55] (5) it is within the Congress' law-making power to define what constitutes "geographical areas;"[56] and (6) the plebiscite did not deprive the Province of Sulu of its right of suffrage and right to local autonomy.

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43 *Id.* at 390.
44 *Id.* at 380.
45 *Id.* at 391.
46 *Id.* at 394.
47 *Id.* at 400–401.
48 *Id.* at 401.
49 *Id.* at 404.
50 *Id.* at 412–414.
51 *Id.* at 415–438.
52 *Id.* at 420.
53 *Id.* at 425.
54 *Id.* at 427.
55 *Id.* at 428.
56 *Id.* at 430.

On January 8, 2019, this Court issued a Resolution consolidating the Petition of the Province of Sulu in G.R No. 242255 with the Petition of PHILCONSA in G.R. No. 243246. This Court also required the respondents in both cases to file their comments within 10 days after notice.[57]

On January 17, 2019, Congress members Abdullah Dimaporo and Mohamad Khalid Dimaporo (collectively, Dimaporos) filed a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court, seeking to annul, reverse, and set aside COMELEC Resolution No. 10469 dated December 13, 2018. They allege that the said Resolution, which set the conduct of the plebiscite on the ratification of the law on two separate dates, was issued by COMELEC with grave abuse of discretion amounting to lack or excess of jurisdiction.[58] They argue that the assailed Resolution was contrary to Article XV, Section 2 of the Bangsamoro Organic Law[59] and Article I, Section 4 of COMELEC Resolution No. 10425 when it scheduled the plebiscite beyond the prescribed period.[60] The Dimaporos' Petition was docketed as G.R. No. 243693.

In a January 22, 2019 Resolution,[61] the three Petitions, namely, G.R. No. 242255 (the Province of Sulu Petition), G.R. No. 243246 (the PHILCONSA Petition), and G.R. No. 243693 (the Dimaporo Petition) were consolidated. The adverse parties were also required to file their comment on the Petitions within 10 days from notice.[62]

Pursuant to COMELEC Resolution No. 10469, the plebiscite was conducted on January 21, 2019 and on February 6, 2019. The January 21, 2019 plebiscite covered the geographical areas of the then ARMM, Isabela City in Basilan, and Cotabato City, while the February 6, 2019 plebiscite involved the Province of Lanao del Norte, various municipalities in North Cotabato, and all other areas that petitioned for voluntary inclusion.

On January 25, 2019, the National Plebiscite Board of Canvassers (NPBOC) issued NPBOC Resolution No. 01-19. It revealed the results of the January 21, 2019 plebiscite, where majority of the votes cast were in favor of the Bangsamoro Organic Law.[63] The results of the plebiscite are shown below.

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57 *Rollo* (G.R. No. 243246), pp. 44–45.
58 *Rollo* (G.R. No. 243693), pp. 3–23.
59 Bangsamoro Organic Law, art. XV, sec. 2 provides:
SECTION 2. Period for Plebiscite. - The plebiscite herein mentioned shall be conducted not earlier than ninety (90) days nor later than one hundred fifty (150) days after the effectivity of this Organic Law.
60 *Rollo* (G.R. No. 243693), p. 4.
61 *Id.* at 82–83.
62 *Id.* at 82.
63 *Id.* at 281.

Area	"Yes" votes	"No" votes
City of Cotabato	36,682	29,994
ARMM	1,540,017	198,750
City of Isabela, Basilan	19,032	22,441
Province of Basilan	144,640	8,487

To reflect the casted votes, the National Plebiscite Board of Canvassers proclaimed that the City of Cotabato shall form part of BARMM. The results involving Isabela City in Basilan were worth noting: While the majority of votes cast for the Province of Basilan on the question "*Payag ba kayo na isama ang lungsod ng Isabela, Basilan, sa rehiyong awtonomo ng Bangsamoro?*" was in favor of Isabela City's inclusion in BARMM, the majority of the votes cast in Isabela City rejected this. Thus, the National Plebiscite Board of Canvassers proclaimed that the City of Isabela, Basilan shall not form part of BARMM.[64]

On February 6, 2019, Maguindanao Governor Esmael G. Mangudadatu (Governor Mangudadatu) and Mayor Freddie G. Mangudadatu (Mayor Mangudadatu) of the Municipality of Mangudadatu, Maguindanao filed a Motion for Leave of Court to Intervene,[65] praying that this Court admit their Comment-in-Intervention[66] opposing the Province of Sulu's Petition.

Governor Mangudadatu and Mayor Mangudadatu argue that: (1) this Court has no jurisdiction over the Petition of the Province of Sulu since the jurisdiction of this Court over issues involving the constitutionality of a statute is essentially appellate, not by *certiorari* or prohibition;[67] (2) the Bangsamoro Organic Law fulfills the mandate of creating an autonomous region in Muslim Mindanao[68] under Article X, Sections 18 and 19 of the 1987 Constitution;[69] (3) the Organic Act for the ARMM is a statute and may be amended or repealed by Congress;[70] (4) the authority to enact the Organic Act for the

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64 *Id.* at 282.

65 *Rollo* (G.R. No. 242255), pp. 439–448.

66 *Id.* at 449–530.

67 *Id.* at 458.

68 *Id.* at 465.

69 CONST., art. X, sec. 18 provides:
SECTION 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.
CONST., art. X, sec. 19 provides:
SECTION 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

70 *Rollo* (G.R. No. 242255), p. 465.

ARMM is not granted only to the first Congress elected under the Constitution;[71] (5) the adoption of a parliamentary system of government is not unconstitutional since the Constitution does not prescribe a specific form of government;[72] (6) BARMM may follow a parliamentary form of government since the 1987 Constitution does not prescribe a specific form of government for autonomous regions;[73] (7) the automatic inclusion of the ARMM in BARMM does not violate the right to vote for its inclusion in the autonomous region;[74] (8) treating provinces and cities of the ARMM as one geographical area for purposes of voting in the plebiscite ensures the preservation of the gains from the autonomy of the ARMM;[75] (9) the Bangsamoro Organic Law does not erase the identity of indigenous cultural communities in the Province of Sulu;[76] (10) the Bangsamoro Organic Law protects the vested rights of the indigenous peoples;[77] (11) the designation of the MILF as the lead in the Bangsamoro Transition Authority does not violate the equal protection clause since there is a valid distinction between the MILF and other rebel groups,[78] and the choice has become a political question;[79] and (12) the Bangsamoro Organic Law does not favor any single religion and simply aims to establish BARMM.[80]

On February 14, 2019, the National Plebiscite Board of Canvassers issued NPBOC Resolution No. 04-19, where it revealed the results of the February 6, 2019 plebiscite in the Province of Lanao del Norte and North Cotabato.

The National Plebiscite Board of Canvassers proclaimed that the Municipalities of Balo-i, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the Province of Lanao del Norte shall not form part of BARMM. While the majority of votes cast in each of these municipalities were in favor of their inclusion in BARMM, the votes from the Province of Lanao del Norte rejected their inclusion.[81]

On the other hand, the National Plebiscite Board of Canvassers proclaimed that the following barangays in North Cotabato shall form part of BARMM:

1. Dunguan, Aleosan
2. Tapodoc, Aleosan

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71 *Id.* at 469.
72 *Id.* at 470.
73 *Id.* at 472–473.
74 *Id.* at 477.
75 *Id.* at 478.
76 *Id.* at 494.
77 *Id.* at 502–503.
78 *Id.* at 506–507.
79 *Id.* at 515.
80 *Id.* at 518.
81 *Rollo* (G.R. No. 243693), p. 323.

3. Kibayao, Carmen
4. Kitulaan, Carmen
5. Langogan, Carmen
6. Manarapan, Carmen
7. Nasapian, Carmen
8. Pebpoloan, Carmen
9. Tupig, Carmen
10. Buluan, Kabacan
11. Nanga-an, Kabacan
12. Pedtad, Kabacan
13. Sanggadong, Kabacan
14. Simbuhay, Kabacan
15. Simone, Kabacan
16. Tamped, Kabacan
17. Damatulan, Midsayap
18. Kadigasan, Midsayap
19. Kadingilan, Midsayap
20. Kapinpilan, Midsayap
21. Kudarangan, Midsayap
22. Central Labas, Midsayap
23. Malingao, Midsayap
24. Mudseng, Midsayap
25. Nabalawag, Midsayap
26. Olandang, Midsayap
27. Sambulawan, Midsayap
28. Tugal, Midsayap
29. Tumbras, Midsayap
30. Lower Baguer, Pigkawayan
31. Balacayon, Pigkawayan
32. Buricain, Pigkawayan
33. Datu Binasing, Pigkawayan
34. Datu Mantil, Pigkawayan
35. Kadingilan, Pigkawayan
36. Libungan Torreta, Pigkawayan
37. Matilac, Pigkawayan
38. Lower Pangangkalan, Pigkawayan
39. Upper Pangangkalan, Pigkawayan
40. Patot, Pigkawayan
41. Simsiman, Pigkawayan
42. Bagoinged, Pikit
43. S. Balong, Pikit
44. S. Balongis, Pikit
45. Barungis, Pikit
46. Batulawan, Pikit

47. Bualan, Pikit
48. Buliok, Pikit
49. Bulol, Pikit
50. Fort Pikit, Pikit
51. Gli-Gli, Pikit
52. Gokotan, Pikit
53. Kabasalan, Pikit
54. Lagunde, Pikit
55. Macabual, Pikit
56. Macasendeg, Pikit
57. Manaulanan, Pikit
58. Nabundas, Pikit
59. Nalapaan, Pikit
60. Nunguan, Pikit
61. Pamalian, Pikit
62. Panicupan, Pikit
63. Rajahmuda, Pikit[82]

These barangays voted in favor of their inclusion in BARMM. The majority of the votes cast in the municipality where each of these barangays belongs is also in favor of the inclusion.[83]

The National Plebiscite Board of Canvassers also proclaimed that the barangays of (1) Lower Mingading, Aleosan; (2) Pangangan, Aleosan; and (3) Galidan, Tulunan shall not form part of BARMM, since the majority of the votes cast in their respective municipalities rejected the proposal to join BARMM.[84]

Barangay Balatican in the Municipality of Pikit, North Cotabato shall also not form part of BARMM because while the majority of the votes cast in the Municipality of Pikit is in favor of the barangay's inclusion in BARMM, Barangay Balatican did not vote favorably for it.[85]

On February 27, 2019, PHILCONSA filed a Motion for Inhibition before this Court,[86] asking that the *ponente* recuse himself from participating in the disposition of the present Petitions as he was the government's Chief Peace Negotiator with the MILF to draft the Framework Agreement on the Bangsamoro, on which the framework for the creation of BARMM was based. It argues that the *ponente* cannot be an impartial judge of his own creation.[87]

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82 *Id.* at 324.
83 *Id.*
84 *Id.* at 325.
85 *Id.*
86 *Rollo* (G.R. No. 242255), pp. 534–541.
87 *Id.* at 535.

On April 5, 2019, the Office of the Solicitor General, representing the respondents, filed its Consolidated Comment.[88] It responded to the points raised in (1) the PHILCONSA and Dimaporo Petitions; (2) the PHILCONSA Petition; (3) the Dimaporo Petition; and (4) the Prayer for Temporary Restraining Order and Writ of Preliminary Injunction. As regards the PHILCONSA and Dimaporo Petitions, the Solicitor General argues that petitioners do not have standing since they failed to specifically allege the injury they sustained or will sustain by the enactment and enforcement of the Bangsamoro Organic Law and the conduct of the plebiscite.[89] As regards the PHILCONSA Petition, the Solicitor General argues that (1) the Court's power of judicial review does not include purely political questions and that no abuse of discretion can be attributed to respondents for enacting and implementing the Bangsamoro Organic Law;[90] (2) Congress retains the plenary power to amend and repeal the Organic Act that created the ARMM;[91] and (3) the powers devolved to the Bangsamoro government are valid and constitutional.[92] As regards the Dimaporo Petition, the Solicitor General also contends that COMELEC (1) complied with the period within which to conduct a plebiscite and (2) did not act with grave abuse of discretion in conducting two separate plebiscites.[93] Finally, the Solicitor General opposes the Prayer for Temporary Restraining Order and Writ of Preliminary Injunction.[94]

On May 8, 2019, MILF Chair and BARMM Interim Chief Ahod Balawag Ebrahim (Ebrahim), through the BARMM Attorney General's Office, filed a Submission that he has received copies of this Court's January 29, 2019 Resolution, as well as the Consolidated Comment filed by the Solicitor General.[95]

In a June 18, 2019 Resolution,[96] this Court noted the Consolidated Comment filed by the Solicitor General. It also noted the BARMM Interim Chief's Submission. Finally, it directed Ebrahim to show cause why he should not be disciplinarily dealt with for failing to comply with the November 6, 2018 Resolution directing him to file a comment.

On October 3, 2019, the MILF, represented by Ebrahim, filed a Compliance and Manifestation *Ad Cautelam*,[97] stating that Ebrahim did not receive a copy of this Court's November 6, 2018 Resolution. The MILF then

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88 *Id.* at 568–635.
89 *Id.* at 575.
90 *Id.*
91 *Id.*
92 *Id.* at 576.
93 *Id.*
94 *Id.*
95 *Id.* at 685–687.
96 *Id.* at 691–696.
97 *Id.* at 702–713.

prayed that it be served with copies of future court issuances through its legal counsel. This was noted and granted by this Court in a November 5, 2019 Resolution.[98]

On October 29, 2019, BARMM filed a Manifestation[99] stating that it was never impleaded as a party to any of the cases. Thus, its Attorney General's Office does not have the personality to file any pleading that could legally bind it. Further, it prays that BARMM be excluded from receiving any subsequent court notices. Lastly, it asks that this Court disregard the May 8, 2019 Submission made by Ebrahim. This was noted by this Court in a November 26, 2019 Resolution.[100]

On February 10, 2020, the MILF filed its Comment *Ad Cautelam*[101] urging this Court to uphold the constitutionality of the Bangsamoro Organic Law. On procedure, it argues that the MILF was not properly served a copy of the Petitions. Thus, this Court has supposedly not acquired jurisdiction over it. As to the constitutional issues, the MILF insists that: (1) there was no grave abuse of discretion in the enactment of the Bangsamoro Organic Law; (2) the ARMM is a legislative creation and not a constitutional creation that can be abolished only through constitutional amendment; (3) the Bangsamoro parliamentary form of government does not violate the Constitution; (4) the parliamentary form also does not run counter to the principle of separation of powers between the three branches of the government; (5) the MILF's lead role in the Bangsamoro Transition Authority is not inimical to the equal protection clause; and (6) the Bangsamoro Organic Law does not violate the non-establishment clause of the Constitution.

On February 21, 2020, the League of Bangsamoro Organizations, Inc., represented by Dr. Ombra Imam, filed a Comment-in-Intervention[102] in G.R. No. 224455 asking that the Province of Sulu's Petition be dismissed on the following grounds: (1) the resolution authorizing Governor Tan to file the Petition on behalf of the Province of Sulu is an *ultra vires* act which usurped from the constituents of Sulu Province their inalienable right to chart their own political destiny, and that the Petition was filed purely for political agenda; (2) the issues raised are political questions because the Supreme Court may not pass upon them without questioning the wisdom of the Legislative and Executive departments; and (3) the Congress is exercising its plenary powers to legislate laws, and the current Congress cannot be bound by the act of the previous Congress when it repealed the ARMM organic law.

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98 *Id.* at 568–635, 714–716.
99 *Id.* at 719–723.
100 *Id.* at 724–727.
101 *Id.* at 738–779.
102 *Rollo* (G.R. No. 243693), pp. 400–427.

In an April 5, 2022 Resolution,[103] this Court noted the Comment of the Solicitor General and directed the Province of Sulu to file a Reply. It also admitted and noted the following: (1) Answer-in-Intervention filed by the Philippine Association of Islamic Accountants, Inc.; (2) Comment-in-Intervention filed by Latiph et al.; (3) Comment-in-Intervention filed by Governor Mangudadatu and Mayor Mangudadatu; and (4) Comment-in-Intervention of the League of Bangsamoro Organizations, Inc.

On June 17, 2022, the Province of Sulu filed its Reply[104] to the Solicitor General's Comment. In its Reply, the Province of Sulu asserts that (1) the Court can take cognizance of the Petition since it calls for the exercise of the Court's expanded judicial power;[105] (2) the primordial issue to be resolved is the constitutionality of the Bangsamoro Organic Law;[106] (3) Congress is given unbridled authority to pass or enact laws by virtue of its plenary power to amend and/or repeal the Bangsamoro Organic Law;[107] (4) the determination of whether a province, city, or geographical area shall form part of BARMM should be subject to the ratification of the people;[108] (5) Congress does not have the absolute discretion on the distribution of powers between the Executive department and the Legislative Assembly of autonomous regions;[109] and (6) the issues raised will be rendered moot and academic, insofar as it is concerned, if the Court declares Article XV, Sections 1(a) and 3(a) of the Bangsamoro Organic Law unconstitutional.[110]

In a July 5, 2022 Resolution,[111] this Court noted the Reply filed by the Province of Sulu and resolved to await the reply of PHILCONSA to the Comment of the Solicitor General.

On July 9, 2022, PHILCONSA filed its Reply[112] to the Consolidated Comment. It counters that assailing the constitutionality of a law or statute, like the Bangsamoro Organic Law, is not a political question. PHILCONSA also claims that it has legal standing to assail the constitutionality of the Bangsamoro Organic Law as it is an organization specifically organized to "defend, protect, and preserve" the Constitution.[113] It reiterates that the Congress cannot simply abolish the ARMM as it is a constitutional creation, and that the creation of the Bangsamoro Organic Law runs afoul with several constitutional provisions.[114]

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103 *Rollo* (G.R. No. 242255), pp. 858–862E.
104 *Id.* at 863–893.
105 *Id.* at 888–889.
106 *Id.* at 868.
107 *Id.* at 871.
108 *Id.* at 872.
109 *Id.* at 882.
110 *Id.* at 865.
111 *Id.* at 931-933.
112 *Id.* at 900–920.
113 *Id.* at 902.
114 *Id.* at 905–916.

PHILCONSA's Reply was noted by this Court in a September 6, 2022 Resolution.[115]

On August 22, 2023, this Court gave due course to the Petitions and directed all parties to file their respective memoranda.[116]

On October 16, 2023, intervenor League of Bangsamoro Organizations, Inc. filed its Memorandum.[117] It maintains that (1) petitioner Governor Tan of the Province of Sulu lacks legal standing since the Resolution he submitted is merely a collective opinion of the members of the Sangguniang Panlalawigan and does not authorize him to speak on behalf of his constituents;[118] (2) Governor Tan's representation is limited only to those who casted the "no" vote during the plebiscite;[119] (3) the issues raised by Governor Tan are purely political questions which will require an inquiry into the wisdom of the Legislative and Executive departments;[120] and (4) Congress merely exercised its plenary power to legislate laws when it passed the Bangsamoro Organic Law.[121]

Meanwhile, on October 24, 2023, the MILF filed its Memorandum[122] where it states that (1) the Province of Sulu's Petition lacked positive evidence to support that public respondents committed grave abuse of discretion;[123] (2) the ARMM was created by a statute and may be abolished without a constitutional amendment;[124] (3) the Bangsamoro parliamentary form of government does not run afoul of the doctrine of separation of powers since the Constitution does not require that the autonomous regions adopt a presidential form of government;[125] (4) neither does the lead role of the MILF in the Bangsamoro Transition Authority violate the equal protection clause;[126] (5) the automatic inclusion of the Province of Sulu in BARMM is not unconstitutional as it is already part of the geographical area of the ARMM;[127] (6) the Bangsamoro Organic Law does not violate the rights of indigenous peoples in the Province of Sulu since it has an express recognition of the native title of indigenous peoples and guarantees the non-impairment of vested rights they already enjoy;[128] and (7) the Bangsamoro Organic Law does not establish a religion or provide for the use of public resources to support or prohibit a

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115 *Id.* at 923–928.
116 *Id.* at 1007–1008.
117 *Rollo* (G.R. No. 243693), pp. 578–600.
118 *Id.* at 583.
119 *Id.* at 588.
120 *Id.* at 590.
121 *Id.* at 593.
122 *Id.* at 601–653.
123 *Id.* at 615.
124 *Id.* at 615–616.
125 *Id.* at 619.
126 *Id.* at 625.
127 *Id.* at 629.
128 *Id.* at 636.

particular religion and, thus, does not run counter to the non-establishment clause of the Constitution.[129]

On December 1, 2023, PHILCONSA filed its Memorandum[130] where it argues that (1) the Bangsamoro Organic Law creates a new territorial and political subdivision which exceeds the constitutional powers conferred to the Executive and Legislative branches;[131] and (2) the ARMM and Cordilleras cannot be supplanted by Congress[132] since they are the only autonomous regions recognized by the Constitution.[133] PHILCONSA also reiterated the argument made in its December 11, 2018 Petition for *Certiorari* and Prohibition with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[134] that multiple provisions of the Bangsamoro Organic Law run contrary to the Constitution and jurisprudence.[135] PHILCONSA's Memorandum was noted by this Court in a December 5, 2023 Resolution.[136]

On December 5, 2023, the League of Bangsamoro Organizations, Inc. filed its Memorandum[137] where it reiterates its arguments in its October 16, 2023 Memorandum.[138]

On the same date, the MILF also filed its Memorandum[139] where it reiterates the arguments it posed in its February 10, 2020 Comment *Ad Cautelam*[140] and October 24, 2023 Memorandum.[141]

On December 6, 2023, the petitioners in G.R. No. 243693, the Dimaporos, filed a Manifestation stating that they no longer wish to pursue their Petition. They claim that the issue has become moot with respect to them, as Lanao del Norte was not included in the recently concluded plebiscite for BARMM.[142]

On December 7, 2023, the Province of Sulu filed its Memorandum.[143] It argues that (1) its Petition met all the requisites for the Court's exercise of its power of judicial review;[144] (2) the Court can take cognizance of its Petition

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129 *Id.* at 640–641.
130 *Rollo* (G.R. No. 242255), pp. 1037–1072.
131 *Id.* at 1043–1044.
132 *Id.* at 1052.
133 *Id.* at 1044.
134 *Rollo* (G.R. No. 243246), pp. 3–41.
135 *Rollo* (G.R. No. 242255), pp. 1053.
136 *Id.* at 1081A–1081B.
137 *Rollo* (G.R. No. 243246), pp. 533–555.
138 *Rollo* (G.R. No. 243693), pp. 578–600.
139 *Rollo* (G.R. No. 243246), pp. 556–608.
140 *Rollo* (G.R. No. 242255), pp. 738–779.
141 *Rollo* (G.R. No. 243693), pp. 601–653.
142 *Rollo* (G.R. No. 242255), pp. 1216–1222.
143 *Id.* at 1277–1334.
144 *Id.* at 1283.

under its expanded judicial power;[145] (3) the enactment of the Bangsamoro Organic Law constitutes grave abuse of discretion on the part of Congress, Secretary Jesus Dureza of the Office of the Presidential Adviser on the Peace Process, and the Bangsamoro Transition Commission;[146] (4) the Bangsamoro Organic Law violates the Constitution, which authorizes the enactment of only one Organic Act to establish the autonomous region in Muslim Mindanao;[147] (5) establishing a parliamentary form of government in BARMM violates the doctrine of separation of powers;[148] (6) the parliamentary system violates the requirement imposed by the Constitution that the Executive and Legislative Assembly shall both be elective and representative of the constituent political units;[149] (7) the automatic inclusion of the ARMM in BARMM and the provision that the provinces and cities of the ARMM shall vote as one geographical area are unconstitutional;[150] (8) the constituents of the Province of Sulu were deprived of their right of suffrage and right to local autonomy since they were not given the choice to opt in or out of BARMM;[151] (9) the autonomy and identity of the indigenous cultural minorities in the Province of Sulu are erased by its inclusion in BARMM despite voting for its exclusion;[152] (10) the designation of the MILF as the lead in the Bangsamoro Transition Authority violates the equal protection clause since it places the MILF in a class different from others in the ARMM;[153] (11) the Bangsamoro Organic Law violates the non-establishment clause of the Constitution since the establishment of BARMM prejudiced other religions;[154] (12) the decision of the people of the Province of Sulu to not join BARMM should be respected;[155] and (13) Congress does not have absolute discretion to distribute powers between the Executive department and the Legislative Assembly of autonomous regions.[156]

On January 3, 2024, the Office of the Solicitor General, representing respondents Executive Secretary Salvador Medialdea, Department of Interior and Local Government (DILG) Officer-in-Charge Eduardo Año, Senate President Vicente Sotto III, House Speaker Gloria Macapagal Arroyo, COMELEC, Secretary Dureza, and the Bangsamoro Transition Commission filed its Memorandum.[157] The Solicitor General prays that: (1) petitioners' application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction be denied; (2) the Petition for *Certiorari* and Prohibition of the Province of Sulu in G.R. No. 242255 be denied; (3) this Court deny due course and dismiss outright the Petition in G.R. No. 243246

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145 *Id.* at 1286.
146 *Id.* at 1289.
147 *Id.* at 1290.
148 *Id.*
149 *Id.* at 1295–1296.
150 *Id.* at 1297.
151 *Id.*
152 *Id.* at 1304.
153 *Id.* at 1308.
154 *Id.*
155 *Id.* at 1320.
156 *Id.* at 1324.
157 *Id.* at 1344–1520.

for PHILCONSA's failure to allege and prove its legal standing; (4) this Court deny due course and dismiss outright the Petition for *Certiorari* and Prohibition in G.R. No. 243693 as petitioners therein, the Dimaporos, have no legal standing and the issue has become moot and academic; (5) the Petitions in G.R. No. 243246 and G.R. No. 243693 be denied for lack of merit; and (6) the constitutionality of the Bangsamoro Organic Law be affirmed.[158]

In a January 23, 2024 Resolution,[159] this Court noted the Memoranda filed by the League of Bangsamoro Organizations, Inc., the MILF, Province of Sulu, and the Office of the Solicitor General. This Court also noted the Manifestation submitted by the Dimaporos.[160]

On February 7, 2024, respondent-intervenors Latiph et al. filed a Motion for Leave to Admit Memorandum,[161] attaching therewith their Memorandum[162] where they pray that the Petition in G.R. No. 243693 be dismissed for lack of merit. They argue that although BARMM, as a special political subdivision, was created in the Constitution, it was operationalized by legislative acts which the Congress may later amend or revise.[163] In defending the parliamentary form of BARMM, Latiph et al. aver that the doctrine of separation of powers is not applicable to the autonomous government, as the Constitution merely required that the autonomous government's Executive and Legislative departments be "elective and representative" and not necessarily separate.[164] Further, they argue that the chief minister of BARMM need not be directly elected by the people.[165] Finally, they claim that the Congress did not gravely abuse its power when it designated the ARMM as one geographical area, as it has the plenary power to define a constituent unit.[166]

For this Court's resolution are the following issues:

(1) whether the *ponente* should inhibit from the case;

(2) whether petitioners have satisfactorily discharged their burden of showing that this case is justiciable;

   a. whether there is an actual case or controversy calling for the exercise of judicial power;

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158 *Id.* at 1502–1503.
159 *Id.* at 1704–1706.
160 *Id.* at 1704.
161 *Rollo* (G.R. No. 243693), p. 1076.
162 *Id.* at 1077–1144.
163 Id. at 1128.
164 *Id.* at 1129.
165 *Id.* at 1132.
166 *Id.* at 1136–1137.

i. whether the issues raised by the consolidated Petitions pertain to political questions;

b. whether petitioners have legal standing to assail the constitutionality of the Bangsamoro Organic Law and the validity of the conduct of the plebiscite;

i. whether petitioners have a personal and substantial interest in the case such that they sustained, or will sustain, direct injury as a result of the enforcement of the Bangsamoro Organic Law;

c. whether petitioners assailed the constitutionality of the Bangsamoro Organic Law at the earliest opportunity; and

d. whether this Court can address the issues without deliberating on the constitutionality of the Bangsamoro Organic Law, the *lis mota* of the case;

(3) whether the Bangsamoro Organic Law violates Article X of the Constitution;

a. whether BARMM is not the autonomous region that the first Congress must establish as contemplated under the Constitution;

b. whether Congress has the power to create BARMM and replace the ARMM;

c. whether BARMM is a sub-state or is a separate sovereign entity within the Philippine state;

(4) whether the inclusion of the Province of Sulu in BARMM despite its rejection of the Bangsamoro Organic Law is unconstitutional; and

(5) whether the Bangsamoro Organic Law violates indigenous peoples' rights when they were subsumed in the Bangsamoro identity.

The Petitions raise significant legal questions that define the country's commitment to lasting peace. To fully understand the implications of these cases, this Court outlines the peace negotiations between the Philippine

government and the MILF. This includes the commencement of the negotiations, the Framework Agreement on the Bangsamoro, the Comprehensive Agreement on the Bangsamoro, the Bangsamoro Basic Law, and eventually, the Bangsamoro Organic Law.[167]

I

The peace negotiations between the government and the MILF began in January 1997, continued under the facilitation of the Government of Malaysia in 2001, and led to the signing of the Framework Agreement on the Bangsamoro in October 2012 and the completion of its documents in January 2014.[168]

The technical committees of the GRP-MILF peace negotiations held their first meeting on January 7, 1997.[169] On July 18, 1997, the parties signed the agreement for general cessation of hostilities.[170] The administrative guidelines for this agreement were signed on September 12, 1997, leading to the creation of the Joint Coordinating Committee on the Cessation of Hostilities.[171]

Under the Estrada administration, the Joint GRP-MILF Agreement to sustain the quest for peace was executed on February 6, 1998.[172] The General Framework of Agreement of Intent between the GRP and the MILF was signed on August 27, 1998.[173]

Formal peace talks began in Sultan Kudarat, Maguindanao on October 25, 1999, with a target conclusion in June 2000.[174] However, as previously mentioned, President Estrada declared an "all-out-war" against the MILF on March 21, 2000, causing the MILF to withdraw from the negotiations.[175]

Peace talks resumed in 2001 under the Arroyo administration with exploratory discussions in Malaysia.[176] On March 24, 2001, the Agreement on the General Framework for the Resumption of Peace Talks between the

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167 Getting To Peace: GPH-MILF Negotiations Opening Statements 2011-2014, Office of the Presidential Adviser of on the Peace Process Office of the President of the Philippines. pp. 305–311.

168 The Comprehensive Agreement on the Bangsamoro, March 27, 2014, p. 1, *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf (last accessed on July 2, 2024).

169 OFFICE OF THE PRESIDENTIAL ADVISER OF ON THE PEACE PROCESS OFFICE, GETTING TO PEACE: GPH-MILF NEGOTIATIONS OPENING STATEMENTS 2011-2014 305 (2015).

170 *Id.*

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.* at 306.

175 *Id.*

176 *Id.*

GRP and the MILF was signed.[177] This was followed by the signing of the 2001 Tripoli Agreement on Peace on June 22, 2001.[178]

On August 7, 2001, the Implementing Guidelines of the Security Aspect of the Tripoli Agreement was signed by the parties.[179] The humanitarian, rehabilitation, and development guidelines of the Tripoli Agreement were signed on May 7, 2002.[180] A military campaign against the MILF was launched on February 11, 2003 at their headquarters in Buliok Complex, Maguindanao.[181]

Following the death of MILF Chairman Hashim Salamat on July 13, 2003, Al Haj Murad Ebrahim became the MILF Chair, with Mohagher Iqbal as the Chair of the MILF Peace Panel.[182]

On September 8, 2004, the terms of reference for the International Monitoring Team were signed.[183]

On July 27, 2008, the Memorandum of Agreement on Ancestral Domain was initialed in Kuala Lumpur, Malaysia, but a temporary restraining order was issued on August 4, 2008, blocking its signing.[184]

On October 14, 2008, the Memorandum of Agreement on Ancestral Domain was declared unconstitutional.[185]

On September 15, 2009, the parties signed the Framework Agreement on the Foundation of the International Contact Group.[186] The parties agreed to create the Civilian Protection Component of the International Monitoring Team on October 27, 2009.[187] On June 3, 2010, the Declaration of Continuity for Peace Negotiations was signed.[188]

During the administration of President Aquino III, the formal resumption of peace talks took place on February 9, 2011, with the MILF submitting a revised draft of the Comprehensive Compact.[189]

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177 *Id.*
178 *Id.*
179 *Id.*
180 *Id.* at 307.
181 *Id.*
182 *Id.*
183 *Id.*
184 *Id.*
185 *Id.*
186 *Id.*
187 *Id.* at 308.
188 *Id.*
189 *Id.*

On August 4, 2011, President Aquino III met with MILF Chair Ebrahim in Tokyo, Japan, to express the sincerity of the government of the Philippines and to fast-track the peace negotiations.[190]

On August 22, 2011, the government panel submitted its "3-1" proposal to the MILF panel.[191] An informal executive meeting was held on November 3, 2011 in Kuala Lumpur to address pressing issues, especially the fighting in Zamboanga and Basilan.[192] On April 24, 2012, the Government of the Philippines-MILF Decision Points on Principles as of April 2012 was signed.[193] Technical Working Groups were formed during the 30th Formal Exploratory Talks from August 8 to 11, 2012.[194]

I(A)

The Framework Agreement on the Bangsamoro was released during the 31st Formal Exploratory Talks from October 2 to 7, 2012.[195]

On October 15, 2012, the government and the MILF signed the Framework Agreement,[196] which aimed to replace the ARMM with a new autonomous political entity, the Bangsamoro Autonomous Region for Muslim Mindanao or BARMM.[197]

To establish the Bangsamoro as a new political entity, the Framework Agreement provided that the "status quo is unacceptable"[198] and a new autonomous political entity, to be called Bangsamoro,[199] will be established to replace the ARMM. [200]

The Framework Agreement stated that the relationship between the Bangsamoro and the national government is "asymmetric"[201] and "guided by the principle of parity of esteem and accepted norms of good governance."[202] Similarly, this statement is found in the Bangsamoro Transition

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190 *Id.*
191 *Id.*
192 *Id.*
193 *Id.*
194 *Id.*
195 Official Gazette, *Timeline: The Bangsamoro Peace Process*, *available at* https://www.officialgazette.gov.ph/bangsamoro2/ (last accessed on July 9, 2024).
196 Framework Agreement on the Bangsamoro, October 15, 2012, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf (last accessed on July 2, 2024).
197 *Id.*
198 *Id.* at 1. *See* Framework Agreement on the Bangsamoro, I(1).
199 *Id.*
200 *Id.*
201 *Id.* at 2. *See* Framework Agreement on the Bangsamoro, I(4).
202 Annex on Power Sharing, December 8, 2013, *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_131308_AnnexPowerSharing.pdf (last accessed on July 8, 2024).

Commission's final draft[203] of the Bangsamoro Basic Law. The draft provided that the Bangsamoro Basic Law, as the fundamental law of the Bangsamoro, establishes an "asymmetrical political relationship with the Central Government on the principles of subsidiarity and parity of esteem."[204]

Upon the signing of the Framework Agreement, further negotiations ensued, leading to the Comprehensive Agreement on the Bangsamoro.

I(B)

On November 12 to 17, 2012, the Technical Working Group on Normalization was convened during the 33rd Formal Exploratory Talks.[205]

On December 17, 2012, the Bangsamoro Transition Commission was formed through Executive Order No. 120. Its primary task was to draft and propose a Bangsamoro Basic Law,[206] a Code of Parliamentary Procedures for the Future Bangsamoro Parliament, and a Bangsamoro Administrative Code for the consideration of the Bangsamoro Transition Authority in Executive Order No. 187.[207]

On January 21 to 25, 2013, the Terms of Reference of the Third-Party Monitoring Team was signed during the 35th Formal Exploratory Talks. The Third-Party Monitoring Team reviewed, assessed, and monitored the implementation of the Framework Agreement on the Bangsamoro and its annexes.[208]

On February 11, 2013, President Aquino III and MILF Chair Ebrahim launched the Sajahatra Bangsamoro basic services program at the Bangsamoro Leadership and Management Institute in Sultan Kudarat, Maguindanao.[209]

On February 25 to 27, 2013, during the 36th Formal Exploratory Talks, the parties signed the Annex on Transitional Arrangements and Modalities, which details the road map toward the creation of the Bangsamoro.[210] Also

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203 Bangsamoro Transition Commission version of the proposed Bangsamoro Basic Law, June 17, 2017, *available at* https://peace.gov.ph/wp-content/uploads/2018/01/BBL-FINAL-DRAFT-2017.pdf (last accessed on July 10, 2024).

204 *Id.* at 1.

205 OFFICE OF THE PRESIDENTIAL ADVISER OF ON THE PEACE PROCESS OFFICE, GETTING TO PEACE: GPH-MILF NEGOTIATIONS OPENING STATEMENTS 2011-2014 309 (2015).

206 Executive Order No. 120 (2012), sec. 3(a).

207 Amending the Executive Order No. 120 (s. 2012) Constituting the Bangsamoro Transition Commission and for Other Purposes, August 20, 2015.

208 OFFICE OF THE PRESIDENTIAL ADVISER OF ON THE PEACE PROCESS OFFICE, GETTING TO PEACE: GPH-MILF NEGOTIATIONS OPENING STATEMENTS 2011–2014 309 (2015).

209 *Id.*

210 *Id.* at 310.

during this round, the parties signed the Terms of Reference for the Independent Commission on Policing, as prepared by the Technical Working Group on Normalization.[211]

On April 3, 2013, the Bangsamoro Transition Commission was officially convened.[212] On April 23, 2013, the parties signed the Guidelines for Mutual Understanding for Ceasefire-related Functions for the May 13, 2014 National and Local Elections.[213] On April 29, 2013, the Facility for Advisory Support to Transition Capacities was launched at the MILF headquarters in Camp Darapanan, Sultan Kudarat, Maguindanao.[214]

On July 8 to 13, 2013, the parties signed the Annex on Revenue Generation and Wealth Sharing.[215] The Independent Commission on Policing was convened for the first time during the 40th Formal Exploratory Talks on September 10 to 20, 2013.[216]

On December 4 to 8, 2013, the parties signed the Annex on Power Sharing during the 42nd Formal Exploratory Talks.[217] The Annex on Normalization and the Addendum on Bangsamoro Waters and Zones of Joint Cooperation, the final documents to be included in the Comprehensive Agreement on the Bangsamoro, were signed at the close of the 43rd Formal Exploratory Talks on January 22 to 25, 2014.[218]

On March 22, 2014, the parties signed the Terms of Reference for the Joint Normalization Committee, the Independent Decommissioning Body (IDB), and the Transitional Justice and Reconciliation Commission.[219]

The Comprehensive Agreement on the Bangsamoro, which consolidated the Framework Agreement on the Bangsamoro with the previous agreements executed between the government and the MILF, served as the final peace agreement and was signed on March 27, 2014.[220] It affirmed the commitment to recognize the legitimacy of the Bangsamoro people's cause and their aspiration for self-governance through a democratic process.[221]

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211 *Id.*
212 *Id.*
213 *Id.*
214 *Id.*
215 *Id.*
216 *Id.* at 311.
217 *Id.*
218 *Id.*
219 *Id.*
220 The Comprehensive Agreement on the Bangsamoro, March 27, 2014, *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf (last accessed on July 2, 2024).
221 *Id.* at 1.

As the comprehensive agreement that justifies the creation and content of the Bangsamoro Basic Law, and eventually the Bangsamoro Organic Law, the Comprehensive Agreement on the Bangsamoro includes agreements on basic principles and framework,[222] political and fiscal autonomy, territorial jurisdiction, power-sharing and governance,[223] transitional arrangements,[224] normalization,[225] human rights and justice, and development and rehabilitation.[226] Further, it aims to resolve the "Bangsamoro Question" with honor, justice, and dignity; end armed hostilities; and provide a negotiated political settlement that will promote peace and stability.[227]

Under the Comprehensive Agreement, the Bangsamoro Transition Commission was tasked to draft the Bangsamoro Basic Law and to submit it to the Office of the President. The president would then present the draft law to Congress as a legislative proposal, which would be marked as urgent. Once enacted by Congress, the law would be subjected to ratification by the qualified voters in the core territory of the Bangsamoro.

I (C)

The House *Ad Hoc* Committee on the Bangsamoro Basic Law approved the draft and committee report of the revised proposed measure, which was renamed to the "Basic Law for the Bangsamoro Autonomous Region."[228]

On August 11, 2015, the Basic Law for the Bangsamoro Autonomous Region was signed and subsequently renamed to the "Bangsamoro Autonomous Region Law."[229] President Aquino III amended Executive Order No. 120 through Executive Order No. 187, extending the duration of the Bangsamoro Transition Commission until the Bangsamoro Basic Law was ratified.[230]

To make the Bangsamoro Transition Commission more "inclusive," President Duterte amended Executive Order Nos. 120 and 187 through Executive Order No. 8, series of 2016, increasing the members of the Commission from 15 to 21.[231]

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222 *Id.* at 1–2. *See* Agreement Nos. 1, 2, 3, 4, 5, 6, and 7.
223 *Id.* at 2. *See* Agreement No. 9.
224 *Id. See* Agreement No. 8.
225 *Id. See* Agreement No. 11.
226 *Id.*
227 *Id.* at 1.
228 Historical Development of the Bangsamoro Transition Authority – Parliament, *available at* https://parliament.bangsamoro.gov.ph/historical-development-of-the-bangsamoro-transition-authority-parliament/ (last accessed on July 8, 2024).
229 *Id.*
230 Amending the Executive Order No. 120 (s. 2012) Constituting the Bangsamoro Transition Commission and for Other Purposes, August 20, 2015.
231 Historical Development of the Bangsamoro Transition Authority – Parliament, *available at* https://parliament.bangsamoro.gov.ph/historical-development-of-the-bangsamoro-transition-authority-parliament/ (last accessed on July 8, 2024).

As observed by the Senate Committee on Constitutional Amendments and Revision of Codes in its Report on the proposed Bangsamoro Basic Law, the term "basic law" raised concerns in Congress that the law might be interpreted as the "mini-constitution" of BARMM:

> . . . the words "basic law" are attached to, and used to define or refer to, the [Bangsamoro Basic Law]. "Basic Law," so far as lawyers and judges are concerned, is synonym for "constitutional law" and "organic law." Thus, the **[Bangsamoro Basic Law] by its own terms**, is intended, by those who drafted it, to have the same effect as the **"constitution"** or **"constitutional law"** of the territory that is designed as the "Bangsamoro." The [Bangsamoro Basic Law] is, in other words, intended to have the same primacy and consequences as the Constitution of the territory of the Bangsamoro as the 1987 Constitution in the territory of the Republic of the Philippines. But it goes without saying that two **different** constitutional instruments **cannot** have legal effect at the same time and in the same territory.[232] (Emphasis in the original)

The Committee concluded that the Bangsamoro Basic Law failed the twofold test set by the Constitution: national sovereignty and territorial integrity.[233]

The Bicameral Committee renamed the Bangsamoro Basic Law to the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao" or the Bangsamoro Organic Law, a consolidation of House Bill No. 6475 and Senate Bill No. 1717.[234] This was to avert constitutional questions and to comply with the Constitution's mandate for an "organic act,"[235] upholding national sovereignty and territorial integrity.[236]

The Framework Agreement on the Bangsamoro originally referred to the new political entity as the Bangsamoro.[237] It was eventually changed to Bangsamoro Autonomous Region[238] to clearly define that it is the autonomous region provided for under the 1987 Constitution.

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232 Report by the Committee on Constitutional Amendments and Revision of Codes, p. 19, *available at* https://legacy.senate.gov.ph/press_release/2015/BANGSAMORO%20BASIC%20LAW%20Report%20of%20the%20Committee%20on%20Consti%20Amendments%2011May2015.pdf (last accessed on July 11, 2024).

233 *Id.* at 23.

234 An Act Providing for the Basic Law for the Autonomous Region of Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao," and Republic Act No. 6734, Entitled "An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao," and for Other Purposes.

235 BENEDICTO R. BACANI, ET AL., Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (Republic Act. No. 11054): FRAMEWORK AND ANNOTATIONS 147–148 (2021).

236 CONST., art. X, sec. 15.

237 Framework Agreement on the Bangsamoro, October 15, 2012, *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf (last accessed on July 2, 2024). *See* I(1), p. 1.

238 Bangsamoro Organic Law, art. I, sec. 1.

I(D)

The Bangsamoro Organic Law was an enactment of Congress and not a direct output of peace negotiations. It honors the commitments made by the Philippine government in the Comprehensive Agreement on the Bangsamoro.[239]

The Comprehensive Agreement on the Bangsamoro was developed through extensive consultations with different stakeholders, ensuring that the law upholds the intent of the Bangsamoro Organic Law to advance peace and grant substantial autonomy to the Bangsamoro region.

On July 27, 2018, Republic Act No. 11054 or the Bangsamoro Organic Law was enacted. It specifically provides for the establishment of BARMM[240] as an autonomous political entity.[241] The Bangsamoro Organic Law effectively repeals Republic Act No. 6734, as amended by Republic Act No. 9054, which provided for an Organic Act for the ARMM.

Beyond territorial jurisdiction, the Bangsamoro Organic Law was passed to secure the Bangsamoro people's identity, along with all other indigenous cultural communities in BARMM, and to identify the people who desire to be included in it.[242]

The establishment of BARMM recognizes the cause of the Bangsamoro people and the aspirations of Muslim Filipinos and indigenous communities, granting them substantial self-governance within the Philippine Constitution while ensuring respect for national sovereignty and territorial integrity.[243]

On January 21, 2019, the Bangsamoro Organic Law was ratified through a plebiscite for the core territories, namely, Lanao del Sur, Maguindanao, Sulu, Basilan and Tawi-Tawi, component cities of Marawi and Lamitan, as well as Cotabato City, for its inclusion.[244]

Another plebiscite was held on February 6, 2019 in Lanao del Norte, Aleosan, Carmen, Kabacan, Midsayap, Pikit, and Pigkayawan towns in North

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239 Johaira C. Wahab, *Peace-Making as Law-Making in the Bangsamoro Organic Law: The Continuing Pursuit of Meaningful Self-Governance under the 1987 Constitution, in* ORGANIC LAW FOR THE BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO (REPUBLIC ACT NO. 11054): FRAMEWORK AND ANNOTATIONS 19 (2021).

240 Bangsamoro Organic Law, art. I, sec. 1.

241 Bangsamoro Organic Law, art. I, sec. 3.

242 *Sula et al. v. COMELEC*, G.R. No. 244587, January 10, 2023 [Per J. Leonen, *En Banc*].

243 Bangsamoro Organic Law, Preamble.

244 Historical Development of the Bangsamoro Transition Authority – Parliament, *available at* https://parliament.bangsamoro.gov.ph/historical-development-of-the-bangsamoro-transition-authority-parliament/ (last accessed on July 9, 2024).

Cotabato and other areas that sought inclusion in the proposed BARMM, leading to the inclusion of the 63 barangays of North Cotabato.[245]

On February 22, 2019, 76 members of the Bangsamoro Transition Authority took their oath. BARMM was inaugurated on March 2, 2019, commencing the work of the newly created Bangsamoro Transition Authority.[246]

II

Prior to resolving the procedural and substantive issues these cases present, we first address petitioner PHILCONSA's Motion for Inhibition,[247] asserting that the *ponente* is prohibited by the Constitution and the Rules of Court from participating in the proceedings here.[248]

For transparency, we quote in full PHILCONSA's grounds for seeking the *ponente*'s inhibition:

> 1. It is an irrefragable fact that prior to his appointment to the Supreme Court as Associate Justice in November 2012, Justice Leonen was named in July 2010 as the Philippine government's chief negotiator with the Moro Islamic Liberation Front [MILF] which culminated to the Framework Agreement on the Bangsamoro (FAB) – which was done and initialed on 12 October 2012 in Kuala Lumpur, Malaysia and signed in Manila on October 15, 2012. Justice Leonen signed as GPH Panel Chairman while Mohagher Iqbal signed as MILF Chairman. The signing was witnessed by the Malaysian Facilitator – Tengku Dato' Ab Ghafar bin Tengku Mohamed, in the presence of President Aquino and the Malaysian Prime Minister Abdul Razak. The Agreement provides, among others, the following – later incorporated by Congress in R.A. 11054:
>
> a. The establishment of the Bangsamoro political entity to replace the Autonomous Region for Muslim Mindanao.
> b. The right of the people to identify themselves as Bangsamoro.
> c. The establishment of a ministerial form of government.
> d. The delineation of the core territory of the Bangsamoro.
> e. The enumeration of the exclusive powers of the Bangsamoro and the reserved powers of the Philippine Government.
> f. The establishment of the Transition Commission which will draft the Bangsamoro Basic Law to be submitted to Congress.
>
> 2. The FAB was later appended together with 12 agreements, 10 of which were signed in Kuala Lumpur, Malaysia, and made an integral part of

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245 *Id.*
246 *Id.*
247 *Rollo* (G.R. No. 243246), pp. 142–149.
248 *Id.* at 145.

the Comprehensive Agreement on the Bangsamoro (CAB) signed by the Philippine Government with the MILF on March 27, 2014. These agreements were eventually used by Congress to enact R.A. 11054, also known as the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao" ("BARMM") on July 27, 2018, to abolish the ARMM, a creation of the 1987 Constitution, and to create the BARMM sans authority/jurisdiction from the 17th Congress – acting in excess of and/or with grave abuse of discretion, therefore void, and for which herein movant has filed a Petition to declare said law unconstitutional.

3. As the Chief Architect of the creation of the Bangsamoro Autonomous Region, it is respectfully submitted that Justice Leonen cannot be expected to review his "creation" with the utmost impartiality as is required of him by the Constitution.

   3.01 Thus, on 23 June 2015, the Supreme Court, through its spokesman – Atty. Theodore Te, issued a press release:

   "Associate Justice Marvic M.V.F. Leonen, who was the Chair of the Government Negotiating Panel that negotiated the Framework Agreement for the Bangsamoro before being appointed to the Supreme Court has voluntarily inhibited himself from participation in the pending cases and any future cases involving the FAB, CAB and the BBL," high court Information Chief Theodore Te said.

   3.02 Following the above press release, Justice Leonen took no part in the case of *Philconsa vs. Philippine Government (GPH), et al., G.R. No. 218406,* 29 November 2016 – wherein the validity of the Comprehensive Agreement on the Bangsamoro (CAB) and the Framework Agreement on the Bangsamoro (FAB) was challenged.

4. It must be borne in mind that the inhibition of judges is rooted in the Constitution which recognizes the right to due process of every person. Due process necessarily requires that a hearing be conducted before an impartial and disinterested tribunal because unquestionably, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.

5. The rule on disqualification of judges is laid down in Rule 137, Section 1 of the Rules of Court, which reads:

   "SECTION 1. Disqualification of judges. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, ***or in which he has presided in any inferior court when his ruling or decision is the subject of review***, without the written consent of all parties in interest, signed by them and entered upon the record."

   A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those

mentioned above."

6. Clearly then, and as above noted, as Chief Architect of the Bangsamoro Autonomous Region, Justice Leonen is prohibited not only by the Constitution but also by the Rules from taking part in any deliberations or proceedings by this Honorable Court on the constitutionality of the R.A. 110054 abolishing the ARMM, a creation of the 1987 Constitution, and creating the BARMM, acting in excess of and/or with grave abuse of discretion, therefore, null and void.[249] (Emphasis in the original)

PHILCONSA underscores the rule providing for the mandatory disqualification of judges under Rule 137 of the Rules of Court, in cases where a judge presided in a lower court when their ruling is subject of review. Attempting to apply the rule on mandatory disqualification here, PHILCONSA broadly asserts that the *ponente* was the "Chief Architect of the creation of the Bangsamoro Autonomous Region."[250] However, the *ponente* did not preside in a lower court, much less ruled in a lower court subject of review here. PHILCONSA does not explain the relevance of the cited rule to this case.

The prevailing rule is that "[t]his Court will not require a judge to inhibit [themselves] in the absence of clear and convincing evidence to overcome the presumption that [they] will dispense justice in accordance with law and evidence."[251]

Thus, PHILCONSA's Motion may be denied due to its failure to properly invoke the rules and explain the basis for seeking the *ponente*'s inhibition.

Notwithstanding this utter failure, to satisfy our conscience and to put at ease the concerns of the public, this Court endeavors to consider other potential grounds for the *ponente*'s inhibition, which PHILCONSA did not invoke.

A.M. No. 10-4-20-SC or the Internal Rules of the Supreme Court provides:

RULE 8
INHIBITION AND SUBSTITUTION OF
MEMBERS OF THE COURT

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249 *Id.* at 142–145.

250 *Id.* at 143.

251 *Chavez v. Marcos*, 834 Phil. 219, 222–223 (2018) [Per J. Leonen, Third Division], *citing Pagoda Phils., Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 346 (2005) [Per J. Panganiban, Third Division].

> SECTION 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:
>
> (a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;
>
> (b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
>
> (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
>
> (d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
>
> (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and
>
> (f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse was reviewed or acted on any matter relating to the case.
>
> A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.
>
> The inhibiting Member must state the precise reason for the inhibition.

The Internal Rules enumerates six grounds mandating the inhibition of Members of this Court. It also provides that, if none of these grounds exists in a case, a Member may voluntarily inhibit from participating in a case, in the exercise of their sound discretion.

II(A)

On whether the rules mandatorily require the *ponente*'s inhibition, the relevant ground is Rule 8, Section 1, paragraph (f) of the Internal Rules. It disqualifies a Member of this Court from participating in the proceedings here if (1) the Member was an official of a government agency or private entity that is a party to this case; ***and*** (2) the Member reviewed or acted on any matter relating to this case.

The supposed acts that PHILCONSA claims to require the *ponente*'s inhibition were performed in his capacity as the chairperson of the

Government Peace Negotiating Panel. However, the Government Peace Negotiating Panel is not a party to this case.

PHILCONSA named as respondents in its Petition the Senate, the House of Representatives, and the Office of the President. Its Petition in G.R. No. 243246 was consolidated with that of Governor Tan of the Province of Sulu in G.R. No. 242255, and that of the Dimaporos in G.R. No. 243693. The respondents in the Province of Sulu Petition are Executive Secretary Medialdea, DILG Officer-in-Charge Año, the Senate, the House of Representatives, COMELEC, Secretary Dureza, the Bangsamoro Transition Commission, and the MILF.[252] The respondent in the Dimaporo Petition is COMELEC, as represented by Chairperson Sheriff Abas.

Indeed, PHILCONSA has not shown that the *ponente* is an official of any of the foregoing parties here. On this basis alone, the disqualification laid down under Rule 8, Section 1(f) of the Internal Rules of the Supreme Court may be disregarded.

Further, as chairperson of the Government Peace Negotiating Panel, the *ponente* may have interacted with some of the respondents in an official capacity, but these interactions do not render him an official of any of the respondent government agencies.

As chairperson of the Government Peace Negotiating Panel, the *ponente* had previously worked with respondent Presidential Adviser on the Peace Process. However, the latter is a specific individual government position which he never occupied. Although the Presidential Adviser on the Peace Process has an office which was *not* impleaded as a party here, in any case, the *ponente* was also *not* an official of the Office of the Presidential Adviser on the Peace Process.

To differentiate the Government Peace Negotiating Panel from the Presidential Adviser on the Peace Process, this Court outlines the antecedents of the official administrative structure for carrying out the peace process in the Philippines.

Administrative Order No. 30, issued in 1987, recognized that the attainment of a full and lasting peace is necessary to lay the foundation for social justice, economic development, and political stability.[253] It broadly laid out the government's approach in its pursuit of peace, and the administrative framework in carrying out the peace process:

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252 *Rollo* (G.R. No. 242255), p. 542.

253 Administrative Order No. 30 (1987), Defining the Systematic Approach and the Administrative Framework for the Government's Peace Efforts.

SECTION 3. *Organization for the Peace Process.* — The administrative framework for carrying out the peace process shall be as follows:

a. *The Presidency.* — The President shall provide the active leadership for the prosecution of the peace process. She shall, from time to time, enunciate the broad guidelines that will serve as the policy framework for the conduct of the Government's peace initiatives, as well as issue as necessary specific instructions and directives to carry out action programs designed to achieve peace.

b. *Office of the Peace Commissioner.* — This Office shall be headed by a Peace Commissioner who shall be assisted by such staff as may be necessary. It shall have the following functions and responsibilities:

1. Serve as staff to the President in coordinating the functions of the following offices: Office of the National Security Director, the Cabinet Secretariat, and Peace Negotiating Panels;

2. Assist the President in providing the day-to-day management and direction of the peace efforts;

3. Enlist, coordinate with, organize and mobilize a network of pro-peace citizen-groups (e.g. the church and civic, social, youth, religious and other organizations) for active involvement in the peace process; and

4. Perform such other functions and exercise such delegated authorities as may be assigned by the President.

c. ***Peace Negotiating Panels. — There shall be Peace Negotiating Panels which will perform the functions and responsibilities provided for in Section 2 (b) hereof, including the conduct of negotiations, dialogues and face-to-face discussions with groups that are threats to peace.***

d. *Staff for Non-Government Organizations Liaison.* — There shall be a Staff for Non-Government Organizations Liaison which shall perform the functions and responsibilities referred to in Section 2 (d) hereof, or to enlist the cooperation and collaborative efforts of all groups in support of the pursuit of the Government's peace initiatives, directed towards getting the commitment of ordinary citizens and non-government groups and associations such as the church and similar groups to support the peace process.[254] (Emphasis supplied)

Thereafter, on September 1, 1992, President Ramos issued Executive Order No. 19 constituting the National Unification Commission. It was envisioned as an advisory body to the president,[255] tasked to formulate and recommend, after due consultation, a viable general amnesty program and peace process for the country. Executive Order No. 19 also created a Council of Advisers to serve as a consultative body on the peace process.[256]

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254 Administrative Order No. 30 (1987), sec. 3.
255 Executive Order No. 19 (1992), sec. 1.
256 Executive Order No. 19 (1992), sec. 3.

As the official term of the National Unification Commission was set to end on July 31, 1993, President Ramos issued Memorandum Order No. 153 dated July 30, 1993, "Establishing a Transition Mechanism for the Continuation of the Peace Process Pending the Establishment of the Successor of the National Unification Commission." It aims to:

> . . . sustain the momentum of the peace process until the institutionalization of the administrative structure for carrying out the comprehensive peace process.
>
> To achieve the foregoing objective, it is hereby directed that:
>
> 1. The Secretary of Justice shall perform the duties and functions of the Acting Presidential Adviser on the Peace Process (APAPP). He shall act as the lead person to oversee the continuation of the on-going activities relating to the peace process. This shall include the following:
>
> 1.1 Processing of the results of the NUC nationwide consultation;
>
> 1.2 Operationalization of the NUC recommendations for the pursuit of a comprehensive peace process: and
>
> 1.3 Winding up of the affairs of the NUC, and ensuring the smooth turn-over of NUC records, assets and activities to the successor of the NUC to be hereafter created.
>
> 2. The NUC Secretariat created under Executive Order No. 19, S-92, shall continue to provide staff support services for the pursuit of the comprehensive peace process. It shall be under the direct supervision of the Secretary of Justice in his capacity as APAPP.
>
> 3. The NUC Secretariat is authorized to continue receiving, disbursing and accounting for funds released for the peace process.
>
> 4. The APAPP and Chairpersons of the Government Peace Negotiating Panels may avail of the services of consultants.
>
> There shall be separate funding for the offices of the APAPP and the Government Peace Negotiating Panels which shall be drawn from the President's Contingent or Confidential Fund.
>
> Until such funds are released, the NUC Secretariat shall advance funding support from its own budget for the operations of the Panels, subject to reimbursement.

> Until the creation of its successor, the NUC Secretariat shall provide general staff support services for all the Panels.[257]

Thereafter, Memorandum Order No. 163 dated August 25, 1993 was issued, "Defining the Functions and Responsibilities of the Presidential Adviser on the Peace Process." It provided that:

> The Presidential Adviser on the Peace Process shall have the following functions and responsibilities:
>
> 1. Recommend to the President policies and programs to ensure the implementation of the comprehensive peace process;
>
> 2. Advice and assist the President in the management and direction of the comprehensive peace process;
>
> 3. Coordinate the functions and activities of bodies which may be created to implement the various components of the comprehensive peace process, including a National Amnesty Commission, the National Reconciliation and Development Council and the Government Peace Negotiating Panels;
>
> 4. Report to the President on the progress of the implementation of the recommendations of the National Unification Commission;
>
> 5. Request the assistance of the departments, agencies, including government-owned and controlled corporations in the efficient and effective implementation of the comprehensive peace process; and
>
> 6. Perform such other functions, as well as exercise such powers as may be delegated or assigned to him by the President.[258]

The term of the National Unification Commission ended on July 31, 1993. The administrative structure was then reformed in Executive Order No. 125 dated September 15, 1993, "Defining the Approach and Administrative Structure for Government's Comprehensive Peace Efforts," as follows:

> SECTION 4. *Administrative Structure.* — The administrative structure for carrying out the peace process shall be as follows:
>
> (a) THE PRESIDENCY. The President shall provide the active leadership for the pursuit of the comprehensive peace process.
>
> (b) PRESIDENTIAL ADVISER ON THE PEACE PROCESS. The Presidential Adviser on the Peace Process (PAPP) shall be charged with the management and supervision of the comprehensive peace process. He shall be appointed by the President and shall have the rank and remuneration of a Cabinet member. He shall perform the

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257 Memorandum Order No. 153 (1993).
258 Memorandum Order No. 163 (1993).

functions and discharge the duties and responsibilities enumerated in Memorandum Order No. 163 dated 25 August 1993.

(c) NATIONAL RECONCILIATION AND DEVELOPMENT COUNCIL. The National Reconciliation and Development Council (NRDC) shall perform the functions and responsibilities relative to the implementation of the reconciliation program for surfacing rebels.

(d) GOVERNMENT PEACE NEGOTIATING PANELS. There shall be a Government Peace Negotiating Panel (GPNP) for each of the three rebel groups, to be composed of a Chairman and four (4) members who shall be appointed/designated by the President as his official emissary to conduct negotiations, dialogues and face-to-face discussions with rebel groups. They shall report directly to the President on the conduct and progress of their negotiations.

(e) PANEL OF ADVISERS. There shall be a panel of advisers for each of the GPNPs, composed of a member from the Senate, from the House of Representatives and from the Cabinet to be designated by the President, which shall function as an advisory body to their respective GPNPs on the conduct of their negotiations leading to the achievement of a comprehensive, just and lasting peace.

Under Executive Order No. 125, the Government Peace Negotiating Panels and the Presidential Adviser on the Peace Process were constituted as distinct offices.

The relationship between the Office of the Presidential Adviser on the Peace Process and the Government Peace Negotiating Panels was made clearer under Executive Order No. 3 issued by President Arroyo in 2001, which provides that the Presidential Adviser on the Peace Process *supervises government agencies* such as the Government Peace Negotiating Panel:

SECTION 5. Administrative Structure. The administrative Structure for carrying out the comprehensive peace process shall be as follows:

. . . .

b. PRESIDENTIAL ADVISER ON THE PEACE PROCESS. The Presidential Adviser on the Peace Process (PAPP) shall be charged with the management and supervision of the comprehensive peace process. The PAPP shall be appointed by the President and shall have the rank and remuneration of a Cabinet Member. He shall have the authority to coordinate and integrate, in behalf of the president, all existing peace efforts. As such, the PAPP shall have direct supervision and control over the specific structures and programs designed for the implementations of the comprehensive peace process. He shall have the following functions and responsibilities:

. . . .

> 4) Supervise the government agencies and instrumentalities, to include their program and activities, purposely created for the implementation of various components of the comprehensive peace process, such as the Government Peace Negotiating Panels and the National Program for Unification and Development;
>
> . . . .
>
> c. GOVERNMENT PEACE NEGOTIATING PANELS. There shall be established Government Peace Negotiating Panels (GPNPs) for negotiations with different rebel groups, to be composed of a Chairman and four (4) members who shall be appointed by the President as her official emissaries to conduct negotiations, dialogues, and face-to-face discussions with rebel groups. They shall report to the President, through the PAPP, on the conduct and progress of their negotiations.
>
> The GPNPs shall each be provided technical support by a Panel Secretariat under the direct control and supervision of the respective Panel Chairmen. They shall be authorized to hire consultants and to organize their own Technical Committees to assist in the technical requirements for the negotiations.
>
> Upon conclusion of a final peace agreement with any of the rebel groups, the concerned GPNP shall be dissolved. Its Panel Secretariat shall be retained in the Office of the Presidential Adviser on the Peace Process (OPAPP) for the purpose of providing support for the monitoring of the implementation of the peace agreement.[259]

These issuances reveal that the laws governing the peace process recognized that the Government Peace Negotiating Panels worked with the Presidential Adviser on the Peace Process but are nonetheless distinct from each other.

In any case, assuming for the sake of argument that the chairperson of a Government Peace Negotiating Panel may somehow be considered an official of the Presidential Adviser on the Peace Process, the inclusion of the Presidential Adviser on the Peace Process as a respondent here is, in itself, tenuous. The Province of Sulu Petition in G.R. No. 242255 naming the Presidential Adviser on the Peace Process, Secretary Dureza, a respondent cites no reason why he was impleaded as a party in his individual capacity.

There is no allegation showing that the Presidential Adviser on the Peace Process is a real party in interest here, or an indispensable party. The Presidential Adviser on the Peace Process is not even a necessary party, as complete relief can be accorded to the parties without his participation.

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[259] Executive Order No. 3 (2001), sec. 5.

To illustrate, the relief prayed for in the Province of Sulu Petition is that the Bangsamoro Organic Law be declared unconstitutional, and that the Executive department of the government be required to desist from implementing this law:

> A. Forthwith, a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued: (a) **RESTRAINING** or **ORDERING** the executive department, through respondents ES and Usec Año, to **REFRAIN and DESIST** from enforcing RA 11054, and (b) **ENJOINING** respondent COMELEC from implementing COMELEC *En Banc* Resolution No. 18-0720 and from proceeding with the scheduled plebiscite period, plebiscite campaign period and plebiscite itself set on 21 January 2019 for the ratification of RA 11054; and
>
> B. After hearing, a Decision be promulgated in favor of the petitioner and against respondents **GRANTING** the instant petition and **DECLARING** Republic Act No. 11054 entitled "*An Act Providing for the Bangsamoro Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, entitled "An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao," as amended by Republic Act No. 99054, entitled, "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao,"* otherwise known as the "*Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao"* **UNCONSTITUTIONAL.**[260]

The Presidential Adviser on the Peace Process does not perform any role in implementing the Bangsamoro Organic Law.

Similarly, PHILCONSA's Petition in G.R. No. 243246 is devoid of any reason to implicate either the Office of the Presidential Adviser on the Peace Process or the Government Negotiating Panel as a respondent:

> **WHEREFORE**, it is respectfully prayed unto this Honorable Court, in the exercise of its legal and equity jurisdiction that a judgment be rendered as follows[:]
>
> a. Upon filing of this Petition, a temporary restraining order be issued restraining/enjoining the respondents, their agents and instrumentalities and/or ordering them to cease and desist from implementing R.A. 11054 and for receiving and disbursing any funds arising from, connected with or related to the unconstitutional and unlawful law;
> b. After hearing or proper proceedings. A writ of preliminary injunction be issued:
>
> 1. Enjoining the implementation of the unconstitutional and void R.A. 11054 and E.O. No[.] 120, as amended creating

[260] *Rollo* (G.R. No. 242255), pp. 49–50.

public offices as only Congress [h]as the mandate to create;

2. Prohibiting/enjoining the recipients/beneficiaries from using funds received pursuant to said enactment and return the balance of unspent funds to the National Treasurer;

3. And directing the respondents, their agents and instrumentalities from further proceedings with any programs, projects or activities grounded or emanating from R.A. 11054; and

4. The preliminary injunction be made permanent.

c. Declaring R.A. 11054 as unconstitutional and void.

Other reliefs, just and equitable under the premises, are likewise prayed for.[261]

The Presidential Adviser on the Peace Process could be dropped as a party to this case without any material effect on the Petitions. Thus, there is no factual or legal basis to conclude that the *ponente* was an official of any of the government agencies made party to this case.

In any event, even if the Government Peace Negotiating Panel had been validly named as a party here, Rule 8, Section 1(f) of the Internal Rules of the Supreme Court still does not apply, as the *ponente* has not reviewed or acted on any matter relating to this case.

II(B)

To address the issue of whether *ponente* "reviewed or acted on any matter relating to" this case, this Court must (1) describe the *ponente*'s role and actions as chairperson of the Government Peace Negotiating Panel, (2) identify what "this case" is, and (3) analyze whether the ponente's actions were on matters "relating to this case."

First, the Government Peace Negotiating *Panel* conducts negotiations, dialogues, and discussions with rebel groups[262] for a final peace agreement. Once a peace agreement is concluded, the concerned Government Peace Negotiating Panel is dissolved. The *ponente*'s role as chairperson of the Government Peace Negotiating Panel pertained only to the negotiations that resulted in the peace agreements. Thus, pursuant to this role, the *ponente*

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[261] *Rollo* (G.R. No. 243246), pp. 35–36.

[262] Order No. 125, September 15, 1993, "Defining the Approach and Administrative Structure for Government's Comprehensive Peace Efforts"

signed the Framework Agreement on the Bangsamoro in October 2012 that the Government Peace Negotiating Panel negotiated.

PHILCONSA also broadly claims that the *ponente* was the "Chief Architect of the creation of the Bangsamoro Autonomous Region,"[263] ascribing the creation of the region to the *ponente*. However, it failed to explain what exactly a "Chief Architect" is, and what was its basis in declaring that the *ponente* is said "Chief Architect." It did not explain how the *ponente* is responsible for the creation of the Bangsamoro Autonomous Region.

Second, these consolidated cases are *not* about the propriety of signing the Framework Agreement on the Bangsamoro. These are also *not* about the propriety of engaging in negotiations, dialogues, and discussions with revolutionary groups.

The Framework Agreement, which the *ponente* signed on behalf of the Executive department, is the embodiment of the political commitment of the then administration. It is not a law, but the president's guarantee of addressing the historical injustices against Moros, which may be operationalized through a statute. To reiterate the contrast, the Bangsamoro Organic Law was an enactment of Congress, subject to ratification by the people, and is not a direct output of peace negotiations.[264]

Here, petitioners pray that this Court rule on the constitutionality of the provisions of the Bangsamoro Organic Law. In other words, what is to be scrutinized in this case, in relation to the Constitution, is the text of a law.

The authority to make laws is an exercise of legislative power,[265] vested in Congress, except for the legislative power reserved for the people.[266] Accordingly, legislation begins when a member of Congress introduces a bill in either or both houses of Congress. The legislative process ends when, after the three readings in Congress, the president signs the bill, or does not act on it for a period of 30 days from receipt, or, in case of presidential veto, Congress overrides said veto.[267]

Third, the *ponente* did not act on matters relating to the Bangsamoro Organic Law.

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263 *Rollo* (G.R. No. 243246), p. 143.

264 Johaira C. Wahab, *Peace-Making as Law-Making in the Bangsamoro Organic Law: The Continuing Pursuit of Meaningful Self-Governance under the 1987 Constitution*, *in* ORGANIC LAW FOR THE BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO (REPUBLIC ACT NO. 11054): FRAMEWORK AND ANNOTATIONS 19 (2021).

265 *Ople v. Torres*, 354 Phil. 948, 966 (1998) [Per J. Puno, En Banc], *citing Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 (1927) [Per J. Malcolm, Second Division].

266 CONST., art. VI, sec. 1.

267 CONST., art. VI, secs. 26 and 27.

Conducting negotiations, dialogues, and discussions with revolutionaries are not matters relating to the constitutionality of the provisions of the Bangsamoro Organic Law. The negotiations and the signing of the Framework Agreement on the Bangsamoro are endeavors of the Executive department in pursuit and promotion of lasting peace.

As previously discussed, while the Framework Agreement stated that there would be a Bangsamoro region, which would, in turn, be governed by a Basic Law,[268] it also provided that the Bangsamoro Basic Law would be drafted by a Transition Commission, which was yet to be created at the time the Framework Agreement was signed.[269]

The *ponente*'s role as chairperson did not pertain to the drafting of the Bangsamoro Basic Law. He was not a member of the Transition Commission tasked to draft the Bangsamoro Basic Law for submission to the president. That proposed draft, submitted not even to Congress but to the president, is not related to the constitutionality of the text of the Bangsamoro Organic Law.

Proposed drafts from people outside of Legislature are not part of the legislative process. As pointed out in *Philippine Constitution Association v. Philippine Government*,[270] the question of what to do with a draft written by nonmembers of Congress, and whether to use said draft to initiate the legislative process, is a question within the sole discretion of Congress, thus:

> During the Aquino administration, the Bangsamoro Transition Commission submitted its proposed Bangsamoro Basic Law to former President Benigno S. Aquino III, who submitted the same to the 16th Congress, which however failed to enact the same before its adjournment. Thus, the bill proposing the Bangsamoro Basic Law has to be refiled with the present Congress. With the signing of EO No. 08 by President Duterte, the expanded Bangsamoro Transition Commission shall redraft the proposed Bangsamoro Basic Law to be submitted to the President who is expected to certify it to the present Congress as an urgent bill. ***Congress, in turn, may or may not accept the proposed Bangsamoro Basic Law as it is worded.*** There is therefore no guarantee that Congress will enact the Bangsamoro Basic Law. ***Congress has the sole discretion whether or not to pass the Bangsamoro Basic Law, as proposed by the Bangsamoro Transition Commission.***[271] (Emphasis supplied)

The creation of a law is a purely legislative act that begins with a member of Congress introducing a bill to Congress. The bill's contents depend entirely on the members of Congress. Congress is an independent

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[268] Framework Agreement on the Bangsamoro, October 15, 2012, *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf (last accessed on July 2, 2024). *See* p. 2 of the Framework Agreement.

[269] *Id. See* p. 9 of the Framework Agreement.

[270] 801 Phil. 472 (2016) [Per J. Carpio, *En Banc*].

[271] *Id.* at 490–491.

branch of government. Even assuming that the president submits a proposed law to Congress, what to do with that proposal is within the Congress' discretion. In choosing to initiate the legislative process, and deliberating on the text of the law, Congress may be inspired or influenced by various factors, such as current events, public sentiment, ulterior motives, or even a presidential pronouncement. Whatever may have incepted Congress in initiating the legislative process, and whatever its members may have employed to decide how the law would read, that a member of Congress chooses a source does not create any causal, direct, or binding relationship between that source and the legislative process.

As pointed out in *Philippine Constitution Association v. Philippine Government*, Congress is a separate, independent branch of government, and cannot be compelled to adopt any proposed law:

> The [Comprehensive Agreement on the Bangsamoro] and the [Framework Agreement on the Bangsamoro] require the enactment of the Bangsamoro Basic Law for their implementation. It is a fundamental constitutional principle that Congress has full discretion to enact the kind of Bangsamoro Basic Law that Congress, in its wisdom, deems necessary and proper to promote peace and development in Muslim areas in Mindanao. Congress is expected to seriously consider the [Comprehensive Agreement] and the [Framework Agreement] but Congress is not bound by the [Comprehensive Agreement] and the [Framework Agreement]. Congress is separate, independent, and co-equal of the Executive branch that alone entered into the [Comprehensive Agreement] and the [Framework Agreement]. The Executive branch cannot compel Congress to adopt the [Comprehensive Agreement] and the [Framework Agreement]. Neither can Congress dictate on Congress the contents of the Bangsamoro Basic Law, or the proposed amendments to the Constitution that Congress should submit to the people for ratification.[272]

Thus, even assuming that Congress referred to the text of the Framework Agreement on the Bangsamoro in crafting the Bangsamoro Organic Law, the *ponente*'s act of signing the Framework Agreement is too far-removed from the law's enactment to be deemed as an act on a matter relating to its constitutionality. The *ponente* had no direct involvement with what eventually became the Bangsamoro Organic Law.

II(C)

Under the Internal Rules of the Supreme Court, when no ground for mandatory inhibition exists, a Member of this Court may voluntarily recuse from a case for a "just or valid reason . . . in the exercise of [their] sound discretion."

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[272] *Id.* at 488–489.

We consider how this Court dealt with voluntary inhibitions in the past.

In his Separate Opinion in *Republic v. Sereno*,[273] Justice Francis Jardeleza observed that there is no clear rule governing voluntary inhibition, but enumerated the principles generally relied upon in resolving the issue:

> Unfortunately, the Court has not laid down a clear litmus test by which a case of *voluntary* recusal by lower court judges and justices should be decided. As it stands, it seems to me that the body of law on discretionary recusal turns on eight (8) identifiable, but not internally consistent, principles: (1) partiality of a judge or justice is not presumed; (2) bare allegations of partiality are not sufficient; (3) clear and convincing extrinsic evidence is required to prove partiality; (4) voluntary inhibition applies only to conduct or statements made from extrajudicial sources, *i.e.*, not in the court proceedings in question; (5) the judge must do a careful self-examination before deciding; (6) the judge or justice has a duty to decide and to sit; (7) judges and justices must act "like Caesar's wife - above suspicion"; and (8) the judge's or justice's decision must affirm the public's faith in the judiciary, for "any act which would give the appearance of impropriety becomes, of itself, reprehensible."[274]

Noting that the application of the foregoing principles is unpredictable, Justice Jardeleza carefully considered and weighed the following factors in deciding against recusing himself:

> 1. the inherent value of a judge's duty to participate in deciding a case, particularly weighed against the importance of the subject matter of a particular case;
> 2. that, ultimately, matters pertaining to voluntarily are principally addressed solely to the discretion of the Justice concerned.
> 3. his personal determination that the acts complained of do not negate the degree of objectivity required of a judge pursuant to the constitutional right to due process.
> 4. the relationship of his complained of acts and words to the actual issues raised in this case.[275]

In significant cases raising important constitutional questions, this Court has also rejected offers of voluntary inhibition. Justice Artemio Panganiban, in a footnote in *Veterans Federation Party v. Commission on Elections*,[276] explained why this Court rejected his offer to inhibit:

> At the outset of this else, I offered to inhibit myself from participating in these cases because, prior to my appointment to this Court, I had been a general counsel and director of one of the respondents. However, the Court unanimously resolved to deny my request for the following reasons: (1) I

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273 831 Phil. 271 (2018) [Per J. Tijam, *En Banc*].
274 Id. at 685–688.
275 *Id.* at 705–706.
276 396 Phil. 419 (2000) [Per J. Panganiban, *En Banc*].

> was merely a voluntary non-compensated officer of the non-profit Philippine Chamber of Commerce and Industry (PCCI), (2) the present case and its antecedents were not extant during my incumbency at PCCI, and (3) this case involved important constitutional questions, and the Court believed that all justices should as much as possible participate and vote. This Court action was announced during the Oral Argument on July 1, 1999.[277]

However, in *Estrada v. Desierto*,[278] Justice Panganiban voluntarily inhibited himself upon motion of counsel alleging that he and Justice Hilario Davide, Jr. had "compromised themselves by indicating that they have thrown their weight on one side,"[279]—Justice Panganiban in particular because he had allegedly commented on the merits of the pending petition. Thus, Justice Panganiban saw fit to inhibit:

> . . . (1) to "hold myself above petitioner's reproach and suspicion" and (2) to deprive "him or anyone else [of] any excuse to cast any doubt on the integrity of these proceedings and of the decision that this court may render in these cases of transcendental importance to the nation."[280]

It goes without saying that whether to voluntarily inhibit, as well as what issues to consider in deciding the matter, is a question left entirely to the discretion of the Members of this Court.

Having gone through all the foregoing, in deciding whether to voluntarily inhibit from participating in this case, the *ponente* is left to consider the importance of the case and the possible doubt that may be cast on the integrity of the proceedings here.

On the first point, this case, like *Veterans Federation Party v. Commission on Elections*, involves constitutional questions of paramount importance, and its significance cannot be overstated.

On the second point, the *ponente*'s acts as chairperson of the Government Peace Negotiating Panel do not negate the degree of objectivity required for a Member of this Court to participate in deciding this case. As discussed, the *ponente*'s role pertained to negotiations for a final peace agreement. Any doubt that might be cast on the proceedings is too negligible when weighed against the significance of this case.

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277 *Id.* at 424.
278 406 Phil. 1 (2001) [Per J. Puno, *En Banc*].
279 *Id.* at 39.
280 *Id.* at 132–133.

Further, in a previous case, this Court, sitting as the Presidential Electoral Tribunal, had the opportunity to explain what sense of impartiality means for Members of this Court:

> . . . Impartiality does not entail tabula rasa.
>
> The absence of relationships or lack of opinion on any subject is not what makes a person impartial. Rather, it is the acknowledgment of initial or existing impressions, and the ability to be humble and open enough to rule in favor of where evidence may lie.
>
> Human beings are naturally predisposed to formulate opinions, which may form into biases or inclinations, as it is inherent in our survival as a species to make constant value judgments on what is beneficial or detrimental to us. Instead of a constant state of absolute neutrality, it is the exhibition of openness to alter one's initial opinion that signifies impartiality. Impartiality does not mean coming to the court as a blank slate, which is inherently impossible. When Justices are appointed to the Supreme Court, they bring with them their experiences, philosophy, and values. What the job requires is the independence of the mind, not a completely blank slate.[281]

Thus, this Court denies petitioner PHILCONSA's Motion for Inhibition.

III

Our legal system is governed by a separation of powers. The Constitution allocated governmental powers among the three branches of Legislative, Executive, and Judiciary, with each having autonomy and supremacy within its own sphere.[282] This is qualified by a system of checks and balances "carefully calibrated by the Constitution to temper the official acts" of each branch.[283]

The source and scope of this Court's judicial power is enshrined in Article VIII, Section 1 of the Constitution:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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281 *Marcos, Jr. v. Robredo*, 890 Phil. 300, 323 (2020) [*Per Curiam, En Banc*].
282 *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936) [Per J. Laurel, *En Banc*].
283 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 863 (2003) [Per J. Carpio Morales, *En Banc*].

Judicial power is two-pronged. In a traditional sense, it is the power to enforce constitutional rights. In its expanded form, it includes the power to determine if the acts of other government branches are exercised within the bounds of the fundamental law. The expansion of the bounds of judicial power in the Constitution has narrowed the grounds for invoking the political question doctrine.[284]

The political question doctrine deters this Court from passing upon "'questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the [L]egislature or [E]xecutive branch of the government.' It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."[285]

Anchored on the principle of separation of powers, the political question doctrine ensures that coequal branches of the government remain supreme in their own sphere—but only within their own sphere. This Court, through its expanded judicial power, is tasked not only to allocate the constitutional limits of the powers granted to the coequal branches of the government but also to make sure that they exercise their powers within these limits.[286] This is the basis upon which the remedy of a petition for *certiorari* under Rule 65 is founded.[287]

Here, it is argued that the Petitions raise political questions which would require this Court to inquire into the wisdom of the Legislative and Executive departments when they passed the Bangsamoro Organic Law.[288]

We do not agree. Where there is a serious allegation that the Legislature acted beyond the scope of its powers and did enact a law which contravenes the Constitution, it not only becomes a right, but a duty for this Court to declare the law unconstitutional.[289] As explained in *Tañada v. Angara*:[290]

> Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the

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284 *Falcis v. Civil Registrar General*, 861 Phil. 388, 436–437 (2019) [Per J. Leonen, *En Banc*].
285 *Tañada v. Cuenco*, 103 Phil. 1051, 1067 (1957) [Per J. Concepcion, *En Banc*]
286 *Id.* at 1065.
287 *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 142 (2016) [Per J. Brion, *En Banc*].
288 *Rollo* (G.R. No. 243693), pp. 400–427; *rollo* (G.R. No. 242255), pp. 580–582.
289 *Tatad v. Secretary of Department of Energy*, 346 Phil. 321, 357 (1997) [Per J. Puno, *En Banc*].
290 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].

> application or interpretation of a constitutional provision is raised before this Court, . . . it becomes a legal issue which the Court is bound by constitutional mandate to decide."[291] (Citations omitted)

Petitioners have pointed out specific provisions of the Bangsamoro Organic Law which they allege to have infringed upon their constitutionally protected rights. In particular, the Province of Sulu alleges that the constituents' right of suffrage and right to local autonomy was violated when it was included in the territory of BARMM even after their negative vote in the plebiscite.[292] The Petitions also point to pertinent provisions of the Bangsamoro Organic Law which are supposedly contrary to the fundamental law.[293]

Judicial power includes inquiry into whether the exercise of power by the legislature and the executive departments do not exceed what is granted to them constitutionally. The questions raised in the Petitions are within judicial review.

Judicial review is not automatically triggered by any general allegation of unconstitutionality.[294] It is not raw political power to be exercised arbitrarily. Judicial review while granted must be exercised within measured responsibility founded on our recognition of our role within the legal order, the social context where we are in, and the goals set for us by the Constitution. We set upon ourselves requirements for justiciability.

III(A)

This Court will rule on the constitutionality of a statute if there is a justiciable controversy which needs to be resolved to protect the rights of the parties.[295]

De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas[296] defined justiciable controversy as:

> . . . a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law. It must be appropriate or ripe for judicial determination, admitting of specific relief through a decree that is conclusive in character. It must not be conjectural or merely anticipatory,

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291 *Id.* at 574.
292 *Rollo* (G.R. No. 242255), p. 13.
293 *Id.* at 12–13; *rollo* (G.R. No. 243246), pp. 19–34.
294 *Imbong v. Ochoa,* 732 Phil. 1, 122 (2014) [Per J. Mendoza, *En Banc*].
295 *Alliance of Non-life Insurance Workers v. Mendoza,* 879 Phil. 574, 606 (2020) [Per J. Leonen, Third Division], *citing Provincial Bus Operators Association of the Philippines v. DOLE,* 836 Phil. 205, 244 (2018) [Per J. Leonen, *En Banc*].
296 809 Phil. 65 (2017) [Per J. Jardeleza, Third Division].

> which only seeks for an opinion that advises what the law would be on a hypothetical state of facts.[297] (Citations omitted)

Traditionally, the requirements for justiciability are: (1) there is an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; (3) the constitutionality must be raised at the earliest opportunity; and (4) resolving the constitutionality must be the very *lis mota* of the case.[298]

The first requirement, that of the existence of an actual case or controversy, echoes Article VIII, Section 1 of the Constitution. There is an actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute."[299]

Kilusang Mayo Uno v. Aquino III[300] explained the guidelines for its determination:

> In *Information Technology Foundation of the Philippines v. Commission on Elections*, this Court required that "the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue." Further, there must be "an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."
>
> Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent *imagined possibilities* of abuse.[301] (Emphasis in the original, citations omitted)

Requiring an actual case or controversy shapes the doctrine of separation of powers. It compels this Court to stay its hand in undoing the actions of other branches until there is an actual and imminent injury or breach of a right. It is founded on the theory that the Court's contribution to the legal order cannot be based upon theoretical possibilities of violations of fundamental rights. We have the power to discern the meaning of the constitution, laws, and implementing regulations, and ordinances; but "the ambiguities may only be clarified in the existence of an actual situation."[302]

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297 *Id.* at 81–82.

298 *Alliance of Non-life Insurance Workers v. Mendoza*, 879 Phil. 574, 606–607 (2020) [Per J. Leonen, Third Division], *citing Provincial Bus Operators Association of the Philippines v. DOLE*, 836 Phil. 205, 244 (2018) [Per J. Leonen, *En Banc*].

299 *Belgica v. Ochoa*, 721 Phil. 416, 519 (2013) [Per J. Perlas-Bernabe, *En Banc*].

300 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].

301 *Id.* at 1189.

302 *Id.* at 1188.

An indicator of the existence of an actual case or controversy, is that "the act being challenged has had a direct adverse effect on the individual challenging it."[303] The pleading should alleged that the petitioner has "sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."[304]

Another indicator of an actual case or controversy is that the issues have not been mooted by subsequent events and any ruling on would have no practical use or value.[305] In *David v. Macapagal-Arroyo*,[306] this Court reiterated when we can proceed to determine the constitutionality of governmental actions despite the appearance of being mooted:

> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review.[307] (Citations omitted)

Further, another indicator is that the petitions must not violate the doctrine of hierarchy of courts. The doctrine limits the choice of venue where there are significant issues that require factual findings in instances where there is concurrence of jurisdiction with courts that can be triers of fact. It is a policy that recognizes that lower courts may make findings on constitutionality of governmental actions while at the same time reserving direct recourse to the Supreme Court for special and important reasons clearly stated in the petition. Additionally, "it is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket."[308]

The doctrine of hierarchy of courts is not absolute. In *Diocese of Bacolod v. COMELEC*[309] we laid down eight instances when a direct recourse to this Court may be permitted, namely: (1) when there are genuine issues of constitutionality which must be immediately resolved; (2) when the issues involved are of transcendental importance; (3) in cases of first impression

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303 *Samahan ng mga Progresibong Kabataan v. Quezon City,* 815 Phil. 1067, 1090 (2017) [Per J. Perlas-Bernabe, *En Banc*], *citing Imbong v. Ochoa,* 732 Phil. 1, 124 (2014) [Per J. Mendoza, *En Banc*].

304 *Samahan ng mga Progresibong Kabataan v. Quezon City,* 815 Phil. 1067, 1091 (2017) [Per J. Perlas-Bernabe, *En Banc*].

305 *David v. Macapagal-Arroyo,* 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

306 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

307 *Id.* at 754.

308 *People v. Cuaresma,* 254 Phil. 418, 427 (1989) [Per J. Narvasa, First Division].

309 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

where no jurisprudence exists to guide the lower courts; (4) when constitutional issues raised are better decided by this Court; (5) when time is of utmost importance; (6) when it reviews the act of a constitutional organ; (7) when there are no other plain, speedy, and adequate remedy in the ordinary course of law; and (8) when it involves questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[310]

Generally, for an actual case or controversy, actual events transpire which gives rise to a conflict before this Court can rule on possible constitutional violations.[311] Recently, this Court clarified that its power of judicial review is not confined to "actual cases" but also to "actual controversies" where it is shown here is a clear and convincing showing of a contrariety of legal rights and a necessity for making a finding on the constitutionality of a governmental act.[312]

In *Executive Secretary v. Pilipinas Shell,*[313] we explained the threshold that must be met in asserting this contrariety of rights:

> [I]n asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that *the law is so contrary to their rights that there is no interpretation other than that there is a breach of rights.* No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[314] (Emphasis supplied, citation omitted)

To mount a challenge against the constitutionality of a statute as applied, it must be alleged that: (1) there exists actual facts of a direct injury to a party; or (2) there is a clear and convincing contrariety of rights. These challenges are called "as-applied" as they "determine the existence of an actual case or controversy by reviewing the facts and allegations of unconstitutionality as applied to the petitioner."[315] In as-applied challenges, "[a] court's ruling on a constitutionality issue is strictly predicated on the facts established or alleged by a party in relation to the assailed act."[316]

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310 *Id.* at 331–335.

311 *Provincial Bus Operators Association of the Philippines v. DOLE*, 836 Phil. 205, 245–246 (2018) [Per J. Leonen, *En Banc*].

312 *Executive Secretary v. Pilipinas Shell,* G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].

313 *Id.*

314 *Id.*

315 *IDEALS, Inc. v. Senate*, G.R. No. 184635 and G.R. No. 185366, June 13, 2023 [Per J. Leonen, *En Banc*].

316 *Id.* (Citation omitted)

Should a petition fail to meet the requirements for an as-applied challenge, this Court may, in exceptional circumstances, still rule upon the constitutionality of a statute provided that the allegations are sufficient to support a proper facial challenge.

Unlike an as-applied challenge where "one can challenge the constitutionality of a statute only if [they assert] a violation of [their] own rights,"[317] a facial challenge permits the review of a statute where "the constitutional violation is visible on the face of the statute"[318] despite the absence of facts.

We explained the nature of a facial review in *IDEALS, Inc. v. Senate* explains the nature of a facial review:

> A facial review has been characterized as "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."
>
> By asserting a facial challenge, a litigant must show that "a statute is invalid on its face as written and authoritatively construed," measured against the Constitution, without need to look at the facts of a case. "The inquiry uses the lens of relevant constitutional text and principle and focuses on what is within the four corners of the statute, that is, on how its provisions are worded. The constitutional violation is visible on the face of the statute."[319]

In *Universal Robina Corporation v. DTI*,[320] this Court laid down the three instances when a facial review of a law may be permitted:

> First, in cases involving freedom of expression and its cognates, a facial challenge of a law may be allowed. This contemplates cases where a law: (1) exerts *prior restraint* on free speech; and (2) is *overbroad,* creating a *chilling effect* on free speech. Thus, where no chilling effect is alleged, courts should exercise judicial restraint.
>
> Thus, in *Calleja,* despite the absence of actual facts, a facial review of the law was permitted because the petitioners sufficiently raised "concerns regarding the freedom of speech, expression, and its cognate rights." This Court held:

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317 *Disini v. Secretary of Justice,* 727 Phil. 28, 122 (2014) [Per J. Abad, *En Banc*].

318 *IDEALS, Inc. v. Senate,* G.R. No. 184635 and G.R. No. 185366, June 13, 2023 [Per J. Leonen, *En Banc*].

319 *Id., citing Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, *En Banc*] and J. Leonardo-De Castro, Separate Opinion in *Imbong v. Ochoa, Jr.,* 732 Phil. 1, 221 (2014) [Per J. Mendoza, *En Banc*].

320 G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

> As such, the petitions present a permissible facial challenge on the ATA in the context of the freedom of speech and its cognate rights—and it is only on these bases that the Court will rule upon the constitutionality of the law. . . . In fact, the Court is mindful that several of the petitioners have already come under the operation of the ATA as they have been designated as terrorists.

Second, judicial review is also proper, despite no actual facts, when a violation of fundamental rights is involved—one *so egregious* or *so imminent* that judicial restraint would mean that such fundamental rights would be violated. In *Parcon-Song v. Parcon,* this Court explained:

> The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.

"Egregiousness" pertains to how prevalent such violations of fundamental rights would be. They should be so widespread that virtually any citizen, properly situated, could raise the issue. An example of a law with such wide coverage was ruled upon in *Samahan ng mga Progresibong Kabataan v. Quezon City,* which reviewed curfew ordinances issued by the local governments of Quezon City, Manila, and Navotas.

Not all constitutional questions are susceptible to fall under this exception. Questions involving the allocation of power among the different branches of government, those pertaining to the constitutional framework of the Philippine economy, and those relating to the amendment and revision of the Constitution are such that this Court can and should exercise judicial restraint. Such questions can await an actual case to be properly threshed out and decided by courts.

Third[,] judicial review is proper, despite no actual facts, when it involves a constitutional provision invoking emergency or urgent measures, and such review can potentially be rendered moot by the transitoriness of the emergency. Thus, the questioned action would be capable of repetition, yet because of the transitoriness of the emergency involved, would evade judicial review and not allow any relief. Under such circumstances, this Court may provide controlling doctrine over the provision.[321] (Emphasis in the original, citations omitted)

Facial challenge is a "manifestly strong medicine" which must be used sparingly and only as a last resort. Thus, litigants who choose to invoke it carry the burden "to prove that the narrowly drawn exception for an extraordinary judicial review of such statute or regulation applies."[322]

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321 *Id.*

322 *Falcis v. Civil Registrar General,* 861 Phil. 388, 446, 449 (2019) [Per J. Leonen, *En Banc*].

Against these guidelines, we find that the Petition in G.R. No. 242255 filed by the Province of Sulu presents an actual case or controversy.

In its Petition, the Province of Sulu sufficiently alleges a breach of its constituents' rights of suffrage and right to local autonomy when the Bangsamoro Organic Law automatically included their province in the territory of the ARMM, which voted as one geographical unit during the plebiscite.[323] It claims that this also erased the identities and trampled on the will of indigenous groups living in Sulu who do not wish to be a part of BARMM, in violation of their constitutional rights.[324]

This matter is ripe for adjudication.

While the rest of the component provinces in the ARMM voted to be included in the territory of BARMM, the Province of Sulu claims that it voted to not join the region. Its constituents supposedly suffered an injury when the Bangsamoro Organic Law was implemented and the province deemed part of BARMM.

As regards the Dimaporo Petition in G.R. No. 243693, which sought to enjoin the implementation of COMELEC Resolution Nos. 10469 and 10425, it has been rendered moot after the two-day plebiscite was concluded on January 21, 2019 and February 6, 2019. Ruling on the validity of the COMELEC Resolutions at this point would merely be an academic discussion, as the issues presented are not capable of repetition. The plebiscite for the ratification of the Bangsamoro Organic Law has been conducted, and the plebiscite guidelines that the Dimaporo Petition assails is applicable only to that plebiscite.

While the Dimaporo Petition raised issues of paramount interest as it sought to prevent "massive electoral fraud and irregularities,"[325] those fears did not seem to materialize. Even if they did, the irregularities should be tackled in a separate proceeding. In any case, petitioners in G.R. No 243693 themselves acknowledge that their Petition is now moot through their December 6, 2023 Manifestation.[326]

PHILCONSA's Petition in G.R. No. 243246 does not present an actual case or controversy. It alleges neither an actual breach of right nor a clear and convincing contrariety of rights. If anything, it seeks to challenge the constitutionality of the Bangsamoro Organic Law on its face by pointing to alleged unconstitutional provisions which the Legislature passed supposedly

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323 *Rollo* (G.R. No. 242255), pp. 28–33.
324 *Id.* at 34–37.
325 *Rollo* (G.R. No. 243693), p. 16.
326 *Rollo* (G.R. No. 242255), pp. 1216–1221.

in excess of its power.[327] The assailed provisions centered on the form of government and powers of BARMM. The Petition, however, lacked any assertion of a right which petitioner seeks to protect by having the Bangsamoro Organic Law declared unconstitutional.

The essence of judicial review is a power for this Court to act for the protection of rights.[328] PHILCONSA comes with an academic proposition. At best, it is theoretical advocacy better suited for debate in the academe.

III(B)

Our jurisprudence[329] generally require that a party challenging the constitutionality of a law, act, or statute must show "not only that the law is invalid, but also that [they have] sustained or [are] in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that [they suffer] thereby in some indefinite way."[330]

Locus standi entails a personal and substantial interest in the case in that the party has sustained or will sustain a direct injury because of the assailed governmental act.[331] "Interest" pertains to a material interest, potentially affected by the decree, as distinguished from mere interest in the question involved, or an incidental interest.

The general requirement of standing is essential so that the parties can identify and limit the constitutional questions to what is essential to them. Their personal stake in the outcome of the controversy ensures that the issues are sharpened and only the approaches relevant to their situation can be considered. Their personal stake therefore will properly provide the frame for the resolution of difficult constitutional questions while at the same time maintaining the proper deference to the other departments of government.[332]

But this Court not only settles controversies for specific parties, but has a responsibility to construe the meaning of the constitution for all. Therefore it too has opened the option of taking a liberal but measured stance on legal standing. In some cases, suits are brought not by parties who have been personally injured by the operation of a law or any other government act, but by concerned citizens, taxpayers, or voters who sue in the public interest.[333]

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327 *Rollo* (G.R. No. 243246), pp. 19–34.

328 *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, *En Banc*].

329 *Ifurung v. Carpio Morales*, 831 Phil. 135 (2018) [Per J. Martires, *En Banc*].

330 *Id.* at 154.

331 *Id.*, *citing Funa v. Villar*, 686 Phil. 571, 585 (2012) [Per J. Velasco, Jr., *En Banc*].

332 *Association of Flood Victims v. COMELEC*, 740 Phil. 472, 481 (2014), *citing* Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 632–633 (2000) [Per J. Kapunan, *En Banc*].

333 *Bayan Muna v. Romulo*, 656 Phil. 246, 265 (2011) [Per J. Velasco, Jr., *En Banc*].

Funa v. Villar[334] held that in cases involving subjects of transcendental importance, nontraditional plaintiffs such as concerned citizens, taxpayers, voters, or legislators were allowed to sue in the public interest. *David* qualifies their standing:

> 1. For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
> 2. For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
> 3. For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
> 4. For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[335]

We now delve into petitioners' legal standing.

In G.R. No. 242255, petitioner Province of Sulu is a territorial and political subdivision of the Republic in the Sulu archipelago and was part of the ARMM.[336] It is represented by Governor Tan, through Resolution No. 049-2018 of the Sangguniang Panlalawigan of Sulu.[337]

Similar to *Province of Cotabato*, there is no doubt as to the province's standing here, in view of the direct and substantial injury that the Province of Sulu would suffer, as its territory was included in BARMM. As it asserted, it did not favorably vote for the ratification of the Bangsamoro Organic Law, nor for its inclusion in BARMM.[338]

In its Petition in G.R. No. 243246,[339] PHILCONSA pleaded that it is a nonstock, nonprofit association under existing laws, "organized purposely to defend, protect, and preserve the Constitution":[340]

> In keeping with its patriotic mission to defend, preserve and protect the Constitution, Petitioner is constrained to file this Petition to this Honorable Court, to declare null and void R.A. 11054 . . . in gross violation of the Constitution tainted with grave abuse of discretion amounting to lack of and/or in excess of jurisdiction.[341]

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334 686 Phil. 571 (2012) [Per J. Velasco, Jr., *En Banc*].
335 *Id.* at 585–586. *See also Funa v. Agra*, 704 Phil. 205, 218 (2013) [Per J. Bersamin, *En Banc*].
336 *Rollo* (G.R. No. 242255), p. 6.
337 *Id.*
338 *Province of North Cotabato v. GRP*, 589 Phil 387, 488 (2008) [Per J. Carpio-Morales, *En Banc*].
339 *Rollo* (G.R. No. 243246), p. 6.
340 *Id.*
341 *Id.* at 5.

It invokes this Court's previous recognition of its legal standing to file cases on constitutional issues impressed with public interest and/or of transcendental importance.[342]

However, PHILCONSA did not allege any injury it stands to suffer with the enactment of the Bangsamoro Organic Law. While PHILCONSA stated that its mission is to defend the Constitution, this Court cannot be expected to speculate on the injury PHILCONSA stands to suffer.

In *Senator Pangilinan v. Cayetano*[343] we discussed the standing of associations:

> This Court has also recognized that an association may file petitions on behalf of its members on the basis of third party standing. However, to do so, the association must meet the following requirements: (1) "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving [it] a 'sufficiently concrete interest' in the outcome of the issue in dispute"; (2) "the party must have a close relation to the third party"; and (3) "there must exist some hindrance to the third party's ability to protect his or her own interests."
>
> In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*, this Court found that an association "has the legal personality to represent its members because the results of the case will affect their vital interests":
>
> > The modern view . . . fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
> >
> > . . . .
> >
> > We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical. . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.

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342 *In re Save the Supreme Court Judicial Independence v. Abolition of JDF*, 751 Phil. 30, 43–44 (2015) [Per J. Leonen, *En Banc*].

343 898 Phil. 522 (2021) [Per J. Leonen, *En Banc*].

In *Provincial Bus Operators Association of the Philippines*, this Court did not allow the association of bus operators to represent its members. There were no board resolutions or articles of incorporation presented to show that it was authorized to file the petition on the members' behalf. Some of the associations even had their certificates of incorporation revoked. This Court ruled that it is insufficient to simply allege that the petitioners are associations that represent their members who will be directly injured by the implementation of a law:

> The associations in *Pharmaceutical and Health Care Association of the Philippines, Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because ***they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.***
>
> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
>
> In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.
>
> Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.
>
> In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—i.e., the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert

> a transcendental right.[344] (Emphasis supplied, citation omitted)

In public suits, such as the case before this Court, petitioner may assert a "public right" in assailing an allegedly illegal official action, as a representative of the general public. This may be a person who is affected no differently from any other citizen, suing in the category of a "citizen," or "taxpayer." However, petitioners must show that they are entitled to seek judicial protection.[345]

Here, PHILCONSA failed to convince this Court why it must be heard as an association. Its invocation of its duty falls short of demonstrating that it has suffered or will suffer a direct injury resulting from the passage and implementation of the Bangsamoro Organic Law. It did not plead any special reason or exhibit actual or imminent injury from which its members stand to suffer.

Finally, petitioners in G.R. No. 243693, the Dimaporos, sought to prohibit COMELEC from conducting the plebiscite to ratify the Bangsamoro Organic Law.[346]

In asserting their standing, the Dimaporos argue that the subject of their Petition is of "transcendental importance which has overreaching significance to society and paramount public interest considering its impact on the people of the Autonomous Region in Muslim Mindanao[,] particularly on the province of Lanao Del Norte."[347]

Notably, the Dimaporos do not question the validity of the Bangsamoro Organic Law and impugns the conduct of the plebiscite. Particularly, they challenged the necessity of conducting the plebiscite on two separate days.[348] However, they have since withdrawn their Petition as the assailed conduct of the plebiscites had transpired on January 21, 2019 and February 6, 2019, and the issue they raised has become moot.

III(C)

The last two requisites for justiciability pertain to how the issue of constitutionality must be raised at the earliest opportunity, and that it must be the *lis mota* of the Petitions.

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344 *Id.* at 614–617.
345 *Matibag v. Benipayo*, 429 Phil. 554, 576–577 (2002) [Per J. Carpio, *En Banc*].
346 *Rollo* (G.R. No. 243693), p. 4.
347 *Id.* at 5.
348 *Id.* at 10–15.

"[It] is not the date of filing of the petition that determines whether the constitutional issue was raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same[.]"[349]

Further, as a rule, "this Court will not pass upon a constitutional question, although properly presented by the record, if the case can be disposed of on some other ground such as the application of a statute or general law."[350] Thus, the petition must show that there can be no proper disposition of the case without passing upon the constitutionality of the law.[351]

In these consolidated cases, the constitutional question was raised at the earliest opportunity as the Petitions timely raised it before this Court, which is competent to rule upon it. The Petitions directly assail the validity of the Bangsamoro Organic Law, pointing to salient provisions which petitioners claim were passed in contravention of the Constitution and their rights.

Thus, there can be no proper disposition of the case without passing upon the constitutionality of the Bangsamoro Organic Law, and this Court shall resolve the issues presented before it.

IV

To determine the validity of enacting the Bangsamoro Organic Law, it must be sound on the following points: (1) its enactment must be legal; (2) the text of the law must conform to the Constitution; (3) it must not conflict with other laws; and (4) it must withstand judicial review.[352]

The Constitution provides for two types of local governance: (1) the territorial and political subdivisions composed of provinces, cities, municipalities, barangays; and (2) autonomous regions.[353] Further territorial and political subdivisions are allowed within autonomous regions.

The territorial and political subdivisions and autonomous regions are granted autonomy under Article X of the Constitution.[354] However, the Constitution draws a distinction between them, indicating a clear difference in the autonomy they exercise. Article X differentiates their creation and

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349 *Matibag v. Benipayo*, 429 Phil. 554, 578 (2002) [Per J. Carpio, *En Banc*].
350 *Laurel v. Garcia*, 265 Phil. 827, 845–846 (1990) [Per J. Gutierrez, Jr., *En Banc*].
351 *People v. Vera*, 65 Phil. 56, 82 (1938) [Per J. Laurel, *En Banc*].
352 *Province of North Cotabato v. GRP*, 589 Phil. 387 (2008) [Per J. Carpio-Morales, *En Banc*].
353 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 232 (2013) [Per J. Peralta, *En Banc*], *citing* CONST., art. X, sec. 1.
354 CONST., art. X, secs. 2, 15.

relationship with the national government.[355] The autonomous regions of Muslim Mindanao and the Cordilleras are structured under a constitutional autonomy framework tailored for historically marginalized populations within a clear geographical area. In contrast, the other political subdivisions are governed by a local autonomy framework.

Article X, Section 18 of the Constitution declares that:

> SECTION 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
>
> The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Pursuant to the Constitution, Republic Act No. 6649[356] established the Regional Consultative Commission for Muslim Mindanao, which subsequently drafted Republic Act No. 6734, otherwise known as the Organic Act for the ARMM. Republic Act No. 6734 was later amended by Republic Act No. 9054, which both detailed the powers of the national government, in relation to those reserved for the regional government.

Congress may repeal, modify, or replace an earlier organic act provided that the text remains consistent with the Constitution and subject to the affected people's ratification.

In *Province of North Cotabato*, the Court held that the president has the authority to conduct peace negotiations with the MILF, determine the process and form of the peace efforts, including signing peace agreements, and propose legislation to Congress.[357]

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355 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 232 (2013) [Per J. Peralta, *En Banc*].

356 Republic Act No. 6649 (1988), The Regional Consultative Commission Act of 1988 for the Autonomous Region in Muslim Mindanao.

357 *Province of North Cotabato v. GRP*, 589 Phil 387, 533 (2008) [Per J. Carpio-Morales, *En Banc*].

The Constitution provides that the organic act shall define: (1) the basic structure of government, consisting of the executive department and legislative assembly; and (2) special courts with personal, family, and property law jurisdiction.[358] Further, in *Sema v. COMELEC*,[359] the Court emphasized that it is a fundamental legal principle that organic acts of autonomous regions cannot supersede the Constitution.[360]

While the Constitution does not precisely define the boundaries of autonomy for autonomous regions, Article X, Section 20 specifies the powers vested in their legislative assemblies under the Constitution:

> SECTION 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:
>
> (1) Administrative organization;
> (2) Creation of sources of revenues;
> (3) Ancestral domain and natural resources;
> (4) Personal, family, and property relations;
> (5) Regional urban and rural planning development;
> (6) Economic, social, and tourism development;
> (7) Educational policies;
> (8) Preservation and development of the cultural heritage; and
> (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

These powers were reiterated in Article V, Section 2 of the Bangsamoro Organic Law, to be exercised by the Bangsamoro government, without prejudice to the president's general supervision. Further, the national government retains all powers, functions, and responsibilities that are not granted to the Bangsamoro government by the Constitution or national laws.[361] The national government retains authority over matters including, but not limited to, national defense and security, citizenship, foreign affairs, and foreign trade.

Further, the term "national laws" in Article X, Section 20 should be interpreted alongside Article II, Section 2 of the Constitution, which incorporates generally accepted principles of international law into domestic law.

As part of the Philippine State, autonomous regions must adhere to international law, including treaties and customary international law. These international norms, once internalized in Philippine law, are considered part

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358 CONST., art. X, sec. 18.
359 580 Phil 623 (2008) [Per J. Carpio, *En Banc*].
360 *Id.* at 661.
361 Bangsamoro Organic Law, art. V, sec. 1.

of the laws that the president must ensure to be faithfully executed by autonomous regions, under his general supervision authority in Article X, Section 16 of the Constitution.

V

The authority to enact an organic act of autonomous region under the Constitution was granted not only to the first Congress. Moreover, Congress may not pass a law that cannot be repealed.

Article X, Section 19 mandates that the first Congress elected under this Constitution must, within 18 months from the organization of both Houses, enact the organic laws for the autonomous regions in Muslim Mindanao and the Cordilleras.

Petitioners claim that the authority to enact this organic act was granted only to the first Congress elected under the Constitution. Specifically, petitioner Province of Sulu asserts that since the ARMM was created by the Constitution, Congress, by itself, cannot abolish it.[362] It may only be abolished through a constitutional amendment.[363] Thus, petitioner Province of Sulu claims that the Bangsamoro Organic Law, which effectively abolished the ARMM, is unconstitutional.[364]

These arguments lack merit.

The failure of the first Congress to act cannot be allowed to frustrate the clear intent of the electorate of having an autonomous region for Muslim Mindanao. The relatively short period under the Constitution was prescribed to underscore the urgency of creating autonomous regions to solve peace and order problems and foreclose the secessionist movement.[365]

The history of the organic act of the autonomous region for Muslim Mindanao spans several legislative measures, beyond the first Congress, all aimed at empowering Muslim Filipinos to govern themselves. They were established through legislations, and not created by the Constitution which entails a constitutional amendment.

On March 25, 1977, President Marcos issued Proclamation No. 1628, declaring autonomy in Southern Philippines. It established a Provisional

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362 *Rollo* (G.R. No. 242255), p. 18.
363 *Id.* at 12.
364 *Id.*
365 JOAQUIN BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 440 (2011 Ed).

Regional Government in select provinces in Mindanao, which main functions, powers, and responsibilities were:

> 1. To prepare for the referendum in the said areas;
> 2. To prepare for the election of the regional legislative assembly in the said areas;
> 3. To administer said areas in accordance with the existing laws and policies governing the activities presently being undertaken by the local government units therein; and
> 4. To exercise such other powers as the President of the Philippines may direct.

On July 25, 1979, President Marcos enacted Presidential Decree No. 1618, establishing an autonomous government in select provinces in Mindanao, granting it specific powers and functions. This decree laid the foundation for the creation of the ARMM, recognizing the cultural heritage of Muslim Filipinos and that it is "consonant with the concept of autonomy to grant such powers and authority to the Autonomous Regions as would enable them to adopt and implement regional policies and legislation which are germane to their particular needs and social and cultural values."[366]

In *Province of North Cotabato*, Chief Justice Reynato Puno narrated how this creation of an autonomous region was incorporated in the Constitution:

> Under President Marcos, autonomy in the affected provinces was recognized through Presidential Proclamation No. 1628. It declared autonomy in 13 provinces and constituted a provisional government for the affected areas. The proclamation was followed by a plebiscite and the final framework for the autonomous region was embodied in Presidential Decree No. 1618.
>
> The establishment of the autonomous region under P.D. 1628 **was constitutionalized by the commissioners in the 1987 Constitution as** shown by the following exchange of views:
>
> > MR. ALONTO: Madam President, I have stated from the start of our consideration of this Article on Local Governments that the autonomous region exists now in this country. There is a *de facto* existence of an autonomous government in what we call now Regions IX and XII. Region IX is composed of the provinces of Tawi-Tawi, Sulu, Basilan, Zamboanga City, Zamboanga del Sur and Zamboanga del Norte, including all the component cities in the provinces. Region XII is composed of the Provinces of Lanao del Norte, Lanao del Sur, Maguindanao, Sultan

[366] Presidential Decree No. 1618 (1979), Twelfth Whereas Clause.

Kudarat and North Cotabato. This autonomous region has its central governmental headquarters in Zamboanga City for Region IX and in Cotabato City for Region XII. In fact, it is stated by Commissioner Ople that it has an executive commission and a legislative assembly.

MR. DE CASTRO: Madam President.

MR. ALONTO: These two regions have been organized by virtue of P.D. No. 1618 of President Marcos, as amended by P.D. No. 1843.

MR. DE CASTRO: Madam President.

MR. ALONTO: If the Gentleman will bear with me, I will explain to him. That is why there is a *de facto* autonomous government existing in Mindanao.

. . . .

MR. OPLE: May I provide more information to Commissioner de Castro on this matter.

First of all, we have to correct the misimpression that the autonomous regions, such as they now exist in Mindanao, do not enjoy the recognition of the central government. Secondly, may I point out that the autonomy existing now in Regions IX and XII is a very imperfect kind of autonomy. We are not satisfied with the legal sufficiency of these regions as autonomous regions and that is the reason the initiative has been taken in order to guarantee by the Constitution the right to autonomy of the people embraced in these regions and not merely on the sufferance of any existing or future administration. It is a right, moreover, for which they have waged heroic struggles, not only in this generation but in previous eras and, therefore, **what we seek is constitutional permanence for this right**.

May I also point out, Madam President, that the Tripoli Agreement was negotiated under the aegis of foreign powers. No matter how friendly and sympathetic they are to our country, this is under the aegis of the 42-nation Islamic Conference. Should our brothers look across the seas to a conclave of foreign governments so that their rights may be recognized in the Constitution? Do they have to depend upon foreign sympathy so that their right can be recognized in final, constitutional and durable form.

THE PRESIDENT: Commissioner Ople, the consensus here is to grant autonomy to the Muslim areas of Mindanao?

MR. OPLE: Yes.

> **Clearly, the mandate for the creation of the ARMM is derived principally from the 1987 Constitution.**[367] (Emphasis in the original, citations omitted)

Following the ratification of the Constitution, on August 1, 1989, Republic Act No. 6734 established the ARMM. It aimed to address the historical grievances and aspirations of Filipino Muslims by granting them a measure of self-governance. It also defined the geographical coverage of the ARMM, outlined its basic structure of government, and specified its powers and functions.

On March 31, 2001, Republic Act No. 9054 amended Republic Act No. 6734, expanding the ARMM. It enhanced the autonomy of the ARMM through allocation of additional powers and resources to the regional government, including control over natural resources and revenues.

The Bangsamoro Organic Law then repealed Republic Act No. 9054, abolishing the ARMM to replace it with the Bangsamoro Autonomous Region.[368]

Throughout our history, different Congresses deliberated on and passed the organic acts for the autonomous region in Muslim Mindanao. They have evolved in response to the changing political and socio-economic landscape of Mindanao and of the country. It is absurd to believe that the Constitution contemplated that only the first Congress may enact the organic law for the autonomous regions. Likewise outrageous is the claim that the organic law cannot be amended by subsequent Congresses.

Ultimately, the reformation of the laws establishing the autonomous region echoes the goal of the Constitution to foster peace, development, and inclusive governance in a region that has long been marginalized.

VI

The Bangsamoro is not a separate state.

The framers of the Constitution envisioned autonomous regions having "an efficient working relationship [with] the central government," not a complete separation from the rest of the country.[369]

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[367] C.J. Puno, Separate Concurring Opinion in *Province of North Cotabato v. GRP*, 589 Phil 387, 562–564 (2008) [Per J. Carpio-Morales, *En Banc*].

[368] Bangsamoro Organic Law, art. XVIII, sec. 4.

[369] III Record, Constitutional Commission (August 11, 1986).

The powers granted to the Bangsamoro must be in line with the constitutional aim of enabling distinct cultural and traditional development through autonomous regions. In *Disomangcop v. Secretary Datumanong*:[370]

> The need for regional autonomy is more pressing in the case of the Filipino Muslims and the Cordillera people who have been fighting for it. Their political struggle highlights their unique cultures and the unresponsiveness of the unitary system to their aspirations.
>
> Perforce, regional autonomy is also a means towards solving existing serious peace and order problems and secessionist movements. Parenthetically, autonomy, decentralization, and regionalization, in international law, have become politically acceptable answers to intractable problems of nationalism, separatism, ethnic conflict and threat of secession.[371] (Citations omitted)

In the deliberations of 1986 Constitutional Commission, Commissioner Jose Nolledo underscored the demand for meaningful, effective, and forceful autonomy:

> Decentralization gives hope to the poor. It disperses political power and responsibility, just as wealth must be equitably diffused. As Somacher, an economist, said: "Centralization is mainly an idea of order while decentralization, one of freedom." As Rene Santiago observed, centralization emphasizes the maintenance of status quo for society to sustain itself, while decentralization promotes entrepreneurship and innovation.
>
> Our unitary structure, indeed, gravitates toward order that progress—national and local—becomes a casualty. Because of our enormous and hardheaded adherence to the unitary system foisted upon us by the colonial powers in a span of several centuries, Filipinos have found the idea of dictatorship appealing. That is why we always hear, and we seem to believe, that we Filipinos respond better to a strong leader and we find ourselves wittingly rammed through a situation where our rights are despicably trampled upon and where freedom becomes illusory and our dreams remain empty and unfulfilled. Thus, despite our vast natural resources and our great intellectual endowments, the Philippines has lagged behind her Asian neighbors.[372]

Commissioner Ahmad Domocao Alonto explained the rationale for autonomous regions, how every segment must be free "to develop the ideals they prize so much in life," within the framework of unity:

> I daresay that if to achieve unity, it is necessary to divide the

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370 486 Phil. 398 (2004) [Per J. Tinga, *En Banc*].
371 *Id.* at 433.
372 III Record, Constitutional Commission (August 11, 1986).

> country into several autonomous states bound together by a common goal and sense of oneness, we should not hesitate to do so. If unity cannot be achieved in a strictly unitary system as experience has taught us, then by all means let us revert to the only option left open for us—UNITY IN DIVERSITY—which seems to be the goal fixed for us by Divine Wisdom when our ancestors, belonging to a common racial strain but speaking different tongues, ventured through unchartered seas guided by the same Divine Providence to these different islands separated by natural barriers yet belonging to the same geographical region. For the sake of the hundreds of thousands, perhaps millions, of precious lives of our kin and kin that were sacrificed in the fields of battles to defend their newfound paradise, for us, their progeny, let us forge that unity of the anvil of necessity, perchance God Almighty, whose Providence controls the destiny of man and nation, grants that we can preserve these beautiful Isles for the generations yet to come.
>
> In other words, Madam President, my very rationale or standing on the principle that we must take into account and into consideration the multifarious sectors of our society, the multiplicity of ideology, the multiplicity of principles in our society to be able to structure our government is for each sector of the society to make a basis of their cooperation in nation-building the ideals that they preciously consider for themselves.
>
> This is why in the different proposals to this Constitutional Commission, I am most appreciative of those proposals that will at least give autonomous freedom to the different sections of, if not all over, the country; but at least to start with, with those that in the course of our nation-building have shown some disparate and unrefusing and a highly unitarian centralized authority in this country.
>
> I refer, Madam President, to the Muslims of Mindanao and to some of our brothers in Northern Luzon who adhere to the principle that in order to have real freedom, real justice and real democracy, each section of our society must be given the chance and freedom to develop the ideals they prize so much in life.[373]

"Meaningful and authentic regional autonomy" allows locals to govern themselves effectively, formulating development plans without undue interference from the central government.[374]

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373 *Id.*

374 *Disomangcop v. Secretary Datumanong*, 486 Phil 398, 439 (2004) [Per J. Tinga, *En Banc*].

Under the Montevideo Convention on the Rights and Duties of the States,[375] the state as a person of international law should possess the following qualifications: a permanent population, a defined territory, government, and the capacity to enter relations with other states.

In the Bangsamoro Organic Law, the Bangsamoro government is not conferred the power to enter relations with other states, nor is it granted sovereignty. National defense and security, citizenship, foreign policy, and foreign trade remain in the domain of the national government.[376] The Bangsamoro, although its territory is defined, is not a separate state. The autonomy granted to the Bangsamoro government is limited to its internal governance, preventing it from having sovereignty.

After all, as this Court ruled, the Constitution does not envisage any state within this jurisdiction other than the Philippine state. It also does not contemplate a transitory status for any unit, intended to prepare any part of Philippine territory for independence.[377]

Further, any examination of a newly established entity to fulfill the constitutional mandate of having an autonomous region in Muslim Mindanao must consider *Province of North Cotabato*. In that case, the Court found that the Bangsamoro Juridical Entity proposed under the Memorandum of Agreement on the Ancestral Domain Aspect of the 2001 GRP-MILF Tripoli Agreement on Peace was incompatible with the constitutional concept of an autonomous region.

In *Disomangcop,* the Court discussed that, consistent with the goal of regional autonomy, powers vested upon autonomous regions refer to internal administrative matters:

> Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government.
>
> The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.[378] (Citations omitted).

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375 Montevideo Convention on the Rights and Duties of States, December 26, 1934, *available at* https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.html (last accessed on July 9, 2024).

376 Bangsamoro Organic Law, art. V, sec. 1.

377 *Province of North Cotabato v. GRP*, 589 Phil. 387, 509 (2008) [Per J. Carpio-Morales, *En Banc*].

378 *Disomangcop v. Secretary Datumanong*, 486 Phil 398. 434–435 (2004) [Per J. Tinga, *En Banc*].

The Bangsamoro government is granted several powers under the Bangsamoro Organic Law, such as:

1. Legislative Authority: The Parliament has the authority to enact laws on matters that are within the powers and competencies of the Bangsamoro Government.[379] It shall enact laws to promote, protect, and ensure the general welfare of the Bangsamoro People and other inhabitants in the Bangsamoro Autonomous Region.[380]

2. Executive Authority: The executive function and authority shall be exercised by the Cabinet which shall be headed by a Chief Minister. [381] The Chief Minister shall be elected by a majority vote of all the members of the Parliament.[382]

3. Fiscal Autonomy: The Bangsamoro government shall enjoy fiscal autonomy, with the end view of attaining economic self-sufficiency and genuine development.[383] It shall have the power to create its sources of revenue.

4. Judicial Authority: The Bangsamoro Justice System shall be administered in accordance with the unique cultural and historical heritage of the Bangsamoro.[384]

5. Ecological Balance and Natural Resources: To protect and improve the quality of life of its inhabitants, the development in the Bangsamoro Region shall be carefully planned to take into consideration the ecological balance and the natural resources that are available for its use and for the use of future generations. [385]

6. Art and Cultural Preservation: The Bangsamoro government shall preserve the history, culture, arts, traditions, and the rich cultural heritage of the Bangsamoro people and their Sultanates.[386]

7. Social Justice: The Bangsamoro Government shall provide, maintain, and ensure the delivery of basic and responsive

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379 Bangsamoro Organic Law, art. VII, sec. 3
380 Bangsamoro Organic Law, art. VII, sec. 5(a).
381 Bangsamoro Organic Law, art. VII, sec. 4.
382 Bangsamoro Organic Law, art. VII, sec. 4.
383 Bangsamoro Organic Law, art. XII, sec. 1.
384 Bangsamoro Organic Law, art. X, sec. 1.
385 Bangsamoro Organic Law, art. XIII, sec. 2.
386 Bangsamoro Organic Law, art. IX, sec. 24.

heath programs, quality education, appropriate services, livelihood opportunities, affordable and progressive housing projects, power and electricity, and water supply, among others, to the Bangsamoro people and other inhabitants of the Bangsamoro Autonomous Region.[387]

8. Economic Development: The Bangsamoro Government shall promote the effective use of economic resources and endeavor to attain economic development that facilitates growth and full employment, human development and social justice.[388] It shall create and implement plans, development initiatives and expansion.

9. Autonomous Governance: The Bangsamoro government is allowed genuine and meaningful self-governance.[389] It is granted internal autonomy to administer its own political and administrative affairs.

While administrative autonomy devolved some powers to the region, these are also limited by national policies or standards,[390] for instance, the Local Government Code. Under Article X, Section 3 of the Constitution, the structure of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials were placed in the hands of Congress.[391]

Thus, creating an autonomous region does not equate to any separation from the Philippine state, nor having sovereignty from the Republic. It can only be formed within the framework of the Constitution, respecting the national sovereignty and territorial integrity of the Philippines.[392]

VII

The relationship between the national government and the Bangsamoro is asymmetric, with the Bangsamoro government conferred expansive autonomy.[393]

Article X of the Constitution provides in full:

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387 Bangsamoro Organic Law, art. IX. sec. 8.
388 Bangsamoro Organic Law, art. XIII, sec. 2.
389 Bangsamoro Organic Law, Preamble.
390 *League of Provinces of the Philippines vs. DENR*, 709 Phil. 189, 211 (2013) [Per J. Peralta, *En Banc*], *citing* JOSE N. NOLLEDO, THE LOCAL GOVERNMENT CODE OF 1991 ANNOTATED 10 (2004 edition).
391 *League of Provinces of the Philippines vs. DENR*, 709 Phil 189, 211 (2013) [Per J. Peralta, *En Banc*], *citing* 2 JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE PHILIPPINES A COMMENTARY (1998).
392 Bangsamoro Organic Law, Preamble; art. I, sec. 3.
393 JOHAIRA C. WAHAB, ORGANIC LAW FOR THE BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO: FRAMEWORK AND ANNOTATIONS 80 (2021).

ARTICLE X
Local Government

General Provisions

SECTION 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.

SECTION 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

SECTION 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

SECTION 9. Legislative bodies of local governments shall have sectoral representation as may be prescribed by law.

SECTION 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

SECTION 11. The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executive and legislative assemblies. The jurisdiction of the metropolitan authority that will hereby be created shall be limited to basic services requiring coordination.

SECTION 12. Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials.

SECTION 13. Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

SECTION 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

Autonomous Regions

SECTION 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

SECTION 16. The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.

SECTION 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

SECTION 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act

> shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
>
> The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.
>
> SECTION 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.
>
> SECTION 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:
>
> (1) Administrative organization;
> (2) Creation of sources of revenues;
> (3) Ancestral domain and natural resources;
> (4) Personal, family, and property relations;
> (5) Regional urban and rural planning development;
> (6) Economic, social, and tourism development;
> (7) Educational policies;
> (8) Preservation and development of the cultural heritage; and
> (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Article X is divided into three parts: the general provisions, provisions governing local government units, and those applicable to autonomous regions.

Section 1 is composed of two sentences. It distinguishes the territorial and political subdivisions, i.e., the provinces, cities, municipalities, and barangays, from the autonomous regions in Muslim Mindanao and the Cordilleras which it states *shall* be created. This distinction implies varying degrees of autonomy, how they are created, and their relationship with the national government.[394] As previously explained:

> The creation of autonomous regions takes into consideration the "historical and cultural heritage, economic and social structures, and other relevant characteristics" which its constituent geographical areas share in common. These factors are not considered in the creation of territorial and

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394 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 233 (2013) [Per J. Peralta, *En Banc*], *citing* CONST., art. X, secs. 2, 5.

political subdivisions.

> Autonomous regions are not only created by an act of the Congress. The Constitution also provides for a plebiscite requirement before the organic act that creates an autonomous region becomes effective. This constitutes the creation of autonomous regions a direct act of the people. It means that the basic structure of an autonomous region, consisting of the executive department and legislative assembly, its special courts, and the provisions on its powers may not be easily amended or superseded by a simple act of the Congress.
>
> Moreover, autonomous regions have powers, e.g., over their administrative organization, sources of revenues, ancestral domain, natural resources, personal, family and property relations, regional planning development, economic, social and tourism development, educational policies, cultural heritage and other matters.
>
> On the other hand, the creation of territorial and political subdivisions is subject to the Local Government Code enacted by the Congress without a plebiscite requirement. While this does not disallow the inclusion of provisions requiring plebiscites in the creation of provinces, cities, and municipalities, the Local Government Code may be amended or superseded by another legislative act that removes such requirement. Their government structure, powers, and responsibilities, therefore, are always subject to amendment by legislative acts.
>
> The territorial and political subdivisions and autonomous regions are granted autonomy under the Constitution. The constitutional distinctions between them imply a clear distinction between the kinds of autonomy that they exercise.[395] (Citations omitted)

Sections 2 to 14 apply to provinces, cities, municipalities, and barangays, implementing administrative autonomy.[396] They may be applied within an autonomous region. Obviously, the intent was to provide a different degree of autonomy to these regions also to govern their local government units but all under a unitary state.

Note for instance that there are two provisions that provide for President's general supervision. Section 4 mandates that "the President of the Philippines shall exercise general supervision over *local governments*." On the other hand, Section 16 decrees that the "President shall exercise general supervision over *autonomous regions* to ensure that laws are faithfully executed." The need to have two provisions illustrate their difference.

Sections 15 to 21 govern autonomous regions.

The Bangsamoro Autonomous Region is an integral part of the Philippines, possessing greater autonomy or mode of decentralization than

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[395] *Id.* at 232–233.
[396] *Id.*

other territorial and political subdivisions. It is granted expansive autonomy, which does not imply separation from the national government, nor does it confer local sovereignty within the state.[397]

The defining concept underlying the relationship between the national government and the Bangsamoro Autonomous Region under the Bangsamoro Organic Law is in tune with the Constitution. The statute expressly recognizes the right to genuine and meaningful self-governance within the framework of the Constitution.[398] Further, it allows the Bangsamoro Autonomous Region to freely pursue its political, economic, social, and cultural development,[399] also in accordance with the Constitution.[400]

Under the Bangsamoro Organic Law, the Bangsamoro Autonomous Region's[401] relationship with the national government is not fundamentally different from that of the ARMM, although the latter lacked significant devolved powers.

The final draft of the then Bangsamoro Basic Law explicitly identifies the asymmetric relationship between the "Central Government" and the Bangsamoro government:

> Preamble
>
> . . . .
>
> With the blessing of the Almighty, do hereby promulgate this Bangsamoro Basic Law as the fundamental law of the Bangsamoro that establishes our asymmetrical political relationship with the Central Government on the principles of subsidiarity and parity of esteem.
>
> . . . .
>
> Article VI
> Intergovernmental Relations
>
> SECTION 1. Asymmetric Relationship. The relationship between the Central Government and the Bangsamoro Government shall be asymmetric. This is reflective of the recognition of their Bangsamoro

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397 JOHAIRA C. WAHAB, ORGANIC LAW FOR THE BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO: FRAMEWORK AND ANNOTATIONS 80 (2021).

398 Bangsamoro Organic Law, art. I, sec. 3.

399 Bangsamoro Organic Law, art. IV, sec. 2.

400 CONST., art. X, sec. 14 provides: "The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region."

401 Bangsamoro Organic Law, art. I, sec. 2 provides:
SECTION 2. *Name.* – The political entity under this Organic Law shall be known as the Bangsamoro Autonomous Region in Muslim Mindanao, hereinafter referred to as the "Bangsamoro Autonomous Region."

> identity, and their aspiration for self-governance. This makes it distinct from other regions and other local governments.
>
> . . . .
>
> SECTION 3. General Supervision. Consistent with the principle of autonomy and the asymmetric relation of the Central Government and the Bangsamoro Government, the President shall exercise general supervision over the Bangsamoro Government to ensure that laws are faithfully executed.[402]

In removing these provisions from the draft Bangsamoro Basic Law, the Senate Committee on Constitutional Amendments and Revision of Codes surmised that this means that the Philippines would transition into a federal form of government with an "asymmetrical relationship":[403]

> The BBL presumes that the Philippines could be easily converted into a federal form of government with what it calls "asymmetrical relationship." But it has to be emphasized that the U.S.A. is a government of enumerated powers, with the balance of powers retained by the government of several states. By contrast, the Philippine government is a unitary government and possesses all powers of sovereignty except only those given to the autonomous regions by the Philippine Constitution. In other words, **for the asymmetrical relationship to work, there must first be a federal government.**
>
> Although the BBL purports to be an exercise in local autonomy, it bursts its bounds and turns into a part-sovereign state or a sub-state. The mere term "Bangsamoro territory" implies that although it is under the jurisdiction of the Philippines, it is a separate part. It is highly similar to the "associative state" which in 2008 the Supreme Court struck down for posing the threat of territorial dismemberment.
>
> . . . .
>
> The critic's voice resounds with pain, as he points out: "As a result, the CAB and the BBL have the effect of reviewing the cornerstone principle of the Constitution, namely, the separation of powers. What may have become asymmetrical is the Constitution . . . . taking into account the violence done on the Constitution as brought out in the present review, incredibly to say the least, is the direct involvement of the President and the Congress in the inordinate claims of the CAB and BBL . . . ."
>
> The BBL seeks to establish a political entity so far unknown in the

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402 This is lifted from the 2017 draft of the Bangsamoro Basic Law that is accessible on the website of the Office of the Presidential Adviser on Peace, Reconciliation and Unity, *available at* https://peace.gov.ph/wp-content/uploads/2018/01/BBL-FINAL-DRAFT-2017.pdf (last accessed on July 11, 2024).

403 Report by the Committee on Constitutional Amendments and Revision of Codes, May 11, 2015, *available at* https://legacy.senate.gov.ph/press_release/2015/BANGSAMORO%20BASIC%20LAW%20Report%20of%20the%20Committee%20on%20Consti%20Amendments%2011May2015.pdf (last accessed on July 11, 2024).

> rest of constitutional democracies. While the Constitution takes care to define the limits of local autonomy, the BBL is vested with powers far beyond constitutional limits.[404] (Emphasis in the original)

Thus, the final draft of the Bangsamoro Organic Law removed the clauses on asymmetric relations and parity of esteem, replacing them with provisions on territorial integrity and allegiance, echoing Article X of the Constitution.

While the Bangsamoro Organic Law does not explicitly define the nature of the relationship between the Bangsamoro government and the national government, jurisprudence guides this Court.

The relationship between the national government and the autonomous regions was examined in an opinion in *League of Provinces of the Philippines v. DENR*:[405]

> Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. ***They are, thus, in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation***. The Constitution grants them legislative powers over some matters, e.g. natural resources, personal, family and property relations, economic and tourism development, educational policies, that are usually under the control of the national government. However, they are still subject to the supervision of the President. Their establishment is still subject to the framework of the Constitution, particularly, sections 15 to 21 of Article X, national sovereignty, and territorial integrity of the Republic of the Philippines.[406] (Emphasis supplied)

The term "asymmetrical" must be distinguished from the "associative relationship" between the government and the Bangsamoro Juridical Entity, found in the Memorandum of Agreement on Ancestral Domain, which this Court declared unconstitutional.[407]

Province of North Cotabato held that the concept of association is not recognized under our Constitution:

> No province, city, or municipality, not even the ARMM, is recognized under our laws as having an "*associative*" relationship with the national government. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional

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404 *Id.* at 7–10.

405 709 Phil. 189 (2013) [Per J. Peralta, *En Banc*].

406 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 235–236 (2013) [Per J. Peralta, *En Banc*], *citing* CONST., art. X, secs. 2, 5.

407 *Province of North Cotabato v. GRP*, 589 Phil 387, 509 (2008) [Per J. Carpio-Morales, En Banc].

> government. **It also implies recognition of the associated entity as a state.**[408] (Emphasis in the original)

Thus, the Court declared it as unconstitutional:

> The [Memorandum of Agreement on Ancestral Domain] cannot be reconciled with the present Constitution and laws. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the [Bangsamoro Juridical Entity], are **unconstitutional,** for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence.[409] (Emphasis in the original)

The character of the relationship between the national government and the Bangsamoro remains within constitutional parameters. This is demonstrated by three provisions.

First, embodying Article X of the Constitution, the relationship expands delegated legislative authority to the Bangsamoro Autonomous Region, as previously listed. These are beyond those typically granted to local government units, while retaining the general supervisory powers of the president over it.[410]

Second, the Bangsamoro Autonomous Region was created by Congress, through an organic act, which is assailed here. The Bangsamoro Organic Law defines its government structure, with the Executive department and Legislative Assembly.

Finally, the national government retains "[a]ll powers, functions, and responsibilities not granted by the Constitution or by national law to the Bangsamoro Government."[411]

In *Disomangcop,* we explained that decentralization ensures effective regional autonomy, allowing local government units to exercise a level of self-determination distinct from the central government:

> A necessary prerequisite of autonomy is decentralization.
>
> Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by subnational units. It is typically a delegated power, wherein a larger government chooses to

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408 *Id.*
409 *Id.* at 547.
410 Bangsamoro Organic Law, art. VI, sec. 1.
411 Bangsamoro Organic Law, art. V, sec. 1.

> delegate certain authority to more local governments. Federalism implies some measure of decentralization, but unitary systems may also decentralize. Decentralization differs intrinsically from federalism in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government.
>
> Decentralization comes in two forms—deconcentration and devolution. Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices. This mode of decentralization is also referred to as administrative decentralization.
>
> Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to local government units. This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.[412] (Citations omitted)

Then in *Limbona v. Mangelin,*[413] we discussed two types of autonomy:

> [A]utonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," and "ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." . . .
>
> Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.
>
> . . . .
>
> An autonomous government that enjoys autonomy of the latter category is subject alone to the decree of the organic act creating it and accepted principles on the effects and limits of "autonomy." On the other hand, an autonomous government of the former class is, as we noted, under the supervision of the national government acting through the President (and the Department of Local Government).[414]

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412 *Disomangcop v. Secretary Datumanong,* 486 Phil 398, 436–437 (2004) [Per J. Tinga, *En Banc*].
413 252 Phil. 813 (1989) [Per J. Sarmiento, *En Banc*].
414 *Id.* at 825–826.

In that case, the Court clarified the extent of self-governance for autonomous governments established under Presidential Decree No. 1618, which came before the autonomous region envisioned in the Constitution.[415] This classification of autonomy ought to be further corrected.

"The grant of autonomy does not make territorial and political subdivisions sovereign within the state, or an '*imperium in imperio.*'"[416] While the territorial and political subdivisions are authorized to manage their local affairs to ensure more responsive and effective governance,[417] Congress maintains authority over the extent of powers or autonomy granted to them,[418] and the national government retains most of its powers and authority.[419]

Accordingly, Article V, Section 3 of the Bangsamoro Organic Law states that the power of the Bangsamoro government shall be exercised to promote the general welfare of its constituents within its territory:

> SECTION 3. General Welfare. — The Bangsamoro Government shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance and those which are essential to the promotion of general welfare. Within its territorial jurisdiction, the Bangsamoro Government shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among its residents, maintain peace and order, and preserve the comfort and convenience of its inhabitants.

Moreover, Article V, Section 1 of the same law stipulates that any powers, functions, and responsibilities not conferred upon the Bangsamoro government by the Constitution or national law shall reside with the national government. If the national government invalidates a constituent unit's act pursuant to delegated power, the territorial or political subdivision cannot claim that its autonomy has been violated.[420]

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415 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 235 (2013) [Per J. Peralta, *En Banc*].

416 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 231 (2013) [Per J. Peralta, *En Banc*], *citing Basco v. PAGCOR*, 274 Phil. 323, 341 (1991) [Per J. Paras, *En Banc*].

417 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 235 (2013) [Per J. Peralta, *En Banc*], citing *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 102 (2000) [Per J. Panganiban, *En Banc*].

418 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 235 (2013) [Per J. Peralta, *En Banc*].

419 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 234 (2013) [Per J. Peralta, *En Banc*], *citing Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 102 (2000) [Per J. Panganiban, *En Banc*].

420 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 235 (2013) [Per J. Peralta, *En Banc*].

Significantly, the powers assigned to the national government, particularly those related to foreign relations, are not within the realm of the Bangsamoro government. As stressed, the Bangsamoro is not established as an independent state. This is also consistent with the Constitution and jurisprudence that the president, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations.[421]

Further, the Constitution also stipulates that the national government is responsible for the defense and security of the regions, even in autonomous areas.[422]

Thus, BARMM, through an act of Congress, is empowered to pursue genuine and meaningful self-governance,[423] which the president, Congress, and even the Judiciary, can keep in check. We must keep in mind, in expounding on the powers of this autonomous region that its creation was further ratified by the people.

VIII

Creating an autonomous region requires the people's ratification through the conduct of a plebiscite.

Article X, Section 18 of the Constitution states that:

> SECTION 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
>
> The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

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421 CONST., art. V, sec. 21.
422 CONST., art. X, sec. 21.
423 Bangsamoro Organic Law, Preamble.

Congress alone cannot establish an autonomous region; the Constitution mandates a plebiscite for the organic act creating an autonomous region to become effective. This renders the creation of autonomous regions a direct act of the people. Consequently, the fundamental structure of an autonomous region, including its Executive department, Legislative Assembly, special courts, and its powers, cannot be easily amended or overridden by a simple act of Congress.[424]

The Bangsamoro Organic Law directs the conduct of a plebiscite in all areas proposed for inclusion in the Bangsamoro.[425]

This significantly differs from the Memorandum of Agreement on Ancestral Domain, which declared certain areas as forming part of the Bangsamoro Juridical Entity. The assailed law here, therefore, underscores the people's consent or approval, as it entails a plebiscite rather than a unilateral delineation of territory.

In *Disomangcop*, the Court had the occasion to rule that the ARMM Organic Acts, ratified by the people through a plebiscite, cannot be amended by a statute.[426] It held that while classified as statutes, organic acts hold significance beyond ordinary statutes because they enjoy affirmation by a plebiscite.[427] Any amending legislation must be submitted to a plebiscite.

Jurisdiction of the Bangsamoro government is conferred upon the ratification of the Bangsamoro Organic Law through a majority vote in the designated area. Additionally, affected political units must affirmatively vote in the plebiscite as detailed in Article XV, Section 3 of the Bangsamoro Organic Law.

To recall, on January 21, 2019, the Bangsamoro Organic Law was ratified through a plebiscite for the core territories, namely Lanao del Sur, Maguindanao, Sulu, Basilan and Tawi-Tawi, the component cities of Marawi and Lamitan, as well as Cotabato City, for its inclusion.[428]

Another plebiscite was held on February 6, 2019 in Lanao del Norte, Aleosan, Carmen, Kabacan, Midsayap, Pikit, and Pigkayawan towns in North Cotabato, and other areas that sought inclusion in the proposed BARMM,

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424 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 232–233 (2013) [Per J. Peralta, *En Banc*].

425 Bangsamoro Organic Law, art. III, sec. 2.

426 *Disomangcop v. Secretary Datumanong*, 486 Phil 398, 427 (2004) [Per J. Tinga, *En Banc*].

427 *Id.*

428 Bangsamoro Transition Authority, Historical Development of the Bangsamoro Transition Authority – Parliament, *available at* https://parliament.bangsamoro.gov.ph/historical-development-of-the-bangsamoro-transition-authority-parliament/ (last accessed on July 9, 2024).

leading to the eventual inclusion of the 63 barangays of North Cotabato in the region.[429]

While the creation of territorial and political subdivisions may be legislated by the Congress sans a plebiscite requirement, the limits of the territory of the Bangsamoro may be determined only upon its ratification. Eventually, the Local Government Code may be amended on this point, or superseded by another legislative act that removes such requirement. Their government structure, powers, and responsibilities, therefore, are always subject to amendment by legislative acts.[430]

Thus, every territory, i.e., every province, city, and geographic area, must favorably vote for its inclusion in BARMM in a plebiscite called for this purpose.

IX

It was erroneous to include the Province of Sulu in BARMM, when its people did not favorably vote to ratify the Bangsamoro Organic Law.

Article III of the Bangsamoro Organic Law defines its territorial jurisdiction, including the ARMM:

> SECTION 1. *Territorial Jurisdiction.* Territorial jurisdiction is the land mass as well as the waters over which the Bangsamoro Autonomous Region has jurisdiction, which shall always be an integral, indivisible, and inseparable part of the national territory of the Republic of the Philippines as defined by the Constitution and existing laws.
>
> SECTION 2. *Composition.* The territorial jurisdiction of the Bangsamoro Autonomous Region, subject to the plebiscite as provided in Section 3, Article XV of this Organic Law, shall be composed of:
>
> > (a) ***The present geographical area known as the Autonomous Region in Muslim Mindanao created under Republic Act No. 6734, as amended by Republic Act No. 9054, which shall subsist as such until this Organic Law is ratified through a plebiscite***;
> >
> > (b) The municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan, and Tangkal in the Province of Lanao del Norte that voted for inclusion in the Autonomous Region in Muslim Mindanao during the 2001 plebiscite;
> >
> > (c) The following thirty-nine (39) barangays in the municipalities of Aleosan, Carmen, Kabacan, Midsayap, Pigkawayan, and Pikit in the

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429 *Id.*

430 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 233 (2013) [Per J. Peralta, *En Banc*].

> Province of North Cotabato that voted for inclusion in the Autonomous Region in Muslim Mindanao during the 2001 plebiscite:
>
> (1) Dunguan, Lower Mingading, and Tapodoc in the Municipality of Aleosan (3);
> (2) Manarapan and Nasapian in the Municipality of Carmen (2);
> (3) Nanga-an, Simbuhay, and Sanggadong in the Municipality of Kabacan (3);
> (4) Damatulan, Kadigasan, Kadingilan, Kapinpilan, Kudarangan, Central Labas, Malingao, Mudseng, Nabalawag, Olandang, Sambulawan, and Tugal in the Municipality of Midsayap (12);
> (5) Lower Baguer, Balacayon, Buricain, Datu Binasing, Kadingilan, Matilac, Patot, and Lower Pangangkalan in the Municipality of Pigkawayan (8); and
> (6) Bagoinged, Balatican, S. Balong, S. Balongis, Batulawan, Buliok, Gokotan, Kabasalan, Lagunde, Macabual, and Macasendeg in the Municipality of Pikit (11);
>
> (d) The City of Cotabato;
>
> (e) The City of Isabela in the Province of Basilan; and
>
> (f) All other contiguous areas where a resolution of the local government unit or a petition of at least ten percent (10%) of the registered voters in the area seeks for their inclusion at least two (2) months prior to the conduct of the ratification if this Organic Law.
>
> The establishment of the territorial jurisdiction of the Bangsamoro Autonomous Region shall take effect upon ratification of this Organic Law by majority of the votes cast in the abovementioned territorial jurisdiction in a plebiscite conducted for the purpose: *Provided,* ***That in all cases, the political units directly affected shall vote favorably in the plebiscite, as provided in Section 3, Article XV of this Organic Law.*** (Emphasis supplied)

As the statute directs the conduct of a plebiscite in all areas directly affected by the organic law, it also outlines the rules on the conduct of the plebiscite in Article XV:

> SECTION 1. *Establishment of the Bangsamoro Autonomous Region.* – The establishment of the Bangsamoro Autonomous Region and the determination of its territorial jurisdiction shall take effect upon ratification of this Organic Law by majority of the votes cast in a plebiscite in the following:
>
> (a) The present geographical area known as the Autonomous Region in Muslim Mindanao created under Republic Act No. 6734, as amended by Republic Act No. 9054, which shall subsist as such until this Organic Law is ratified through a plebiscite;

. . . .

SECTION 2. *Period of Plebiscite.* – The plebiscite herein mentioned shall be conducted not earlier than ninety (90) days nor later than one hundred fifty (150) days after the effectivity of this Organic Law.

For this purpose, the Commission on Elections shall undertake the necessary steps to enable the holding of the plebiscite within the period.

SECTION 3. *Results of the Plebiscite.* –

(a) The Bangsamoro Autonomous Region shall be established and all the provinces and cities of the Autonomous Region in Muslim Mindanao created under Republic Act No. 6734, as amended by Republic Act No . 9054, shall form part of the Bangsamoro Autonomous Region if the majority of the votes cast in the Autonomous Region in Muslim Mindanao shall be in favor of the approval of this Organic Law: ***Provided, That the provinces and cities of the present Autonomous Region in Muslim Mindanao shall vote as one geographical area.***

(b) Any of the municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan, and Tangkal in the Province of Lanao del Norte that votes favorably for its inclusion in the Bangsamoro Autonomous Region shall form part of the Bangsamoro Autonomous Region: *Provided*, That the majority of the votes cast in the Province of Lanao del Norte shall be in favor of the inclusion of the municipality in the Bangsamoro Autonomous Region.

(c) Any of the barangays in the municipalities of Kabacan, Carmen, Aleosan, Pigcawayan, Pikit, and Midsayap as enumerated in paragraph (c) Section 1 of this Article that votes favorably for its inclusion in the Bangsamoro Autonomous Region shall form part of the Bangsamoro Autonomous Region: *Provided*, That the majority of the votes cast in the municipality to which the barangay belongs shall be in favor of the inclusion of the barangay in the Bangsamoro Autonomous Region.

(d) The City of Cotabato shall form part of the Bangsamoro Autonomous Region if the majority of the votes cast in the city shall be in favor of its inclusion.

(e) The City of Isabela in the Province of Basilan shall form part of the Bangsamoro Autonomous Region if the majority of the votes cast in the city shall be in favor of its inclusion in the Bangsamoro Autonomous Region: *Provided*, That the majority of the votes cast in the Province of Basilan shall be in favor of the inclusion of the City of Isabela in the Bangsamoro Autonomous Region.

(f) Any other contiguous area where there is a resolution of the local government unit or a petition of at least ten percent (10%) of the registered voters in the local government unit asking for its inclusion at least two (2) months prior to the conduct of the ratification of this Organic Law shall form part of the Bangsamoro Autonomous Region if the majority of the votes cast in the political units directly affected shall be in favor of the inclusion of the petitioning local government unit in the Bangsamoro Autonomous Region. (Emphasis supplied)

In the assailed plebiscite to ratify the organic law, while all the political units directly affected must favorably vote for its inclusion in the Bangsamoro Autonomous Region by a majority, the provinces and cities of the present ARMM voted as one geographical area.

In the votes cast in the entire ARMM, 1,540,017 voted "yes" which overwhelmingly won in the region, as opposed to the 198,750 "no" votes.

The Province of Sulu rejected the measure, as the "yes" votes narrowly lost at 137,630 against the 163,526 "no" votes. This created the absurd situation where petitioner's constituents did not ratify the organic law, but it was nonetheless made part of the newly created Bangsamoro Autonomous Region.

Petitioner Province of Sulu argues that the clause directing the provinces and cities of the ARMM to vote as one geographical unit violates Article X, Section 18 of the Constitution. It partly states that "only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region."

Petitioner is correct. The inclusion of Sulu in BARMM, despite its constituents' rejection in the plebiscite, is therefore unconstitutional.

In considering the ARMM as one geographical area, the Bangsamoro Organic Law transgressed the Constitution and disregarded the autonomy of each constituent unit of what used to comprise the ARMM. ***The Province of Sulu, as a political subdivision under the ARMM, did not lose its character as such and as a unit that was granted local autonomy. The Constitution and the Local Government Code provide for how political entities may be abolished. The Province of Sulu cannot be deemed abolished upon its rejection of the Bangsamoro Organic Law.*** Thus, it was illegally included in the autonomous region, and the Organic Law explicitly violated the constitutional provision that "only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region."[431]

Fortunately for the region, only petitioner Province of Sulu appears to have not ratified the statute in the plebiscite. In effect, the Bangsamoro Organic Law deprived the constituent units of their local autonomy, which ironically is what the legislation champions.

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[431] CONST., art. X, sec. 18.

Despite the people of Sulu exercising their right to vote during the plebiscite, their constitutionally guaranteed right of suffrage was cast aside, as majority of their votes were overwhelmed by the rest of the population of the entire ARMM. The plebiscite could not be interpreted as castrating the constituents of the Province of Sulu their power to join or to not join the region.

There is merit in petitioner's assertion that, unlike Republic Act No. 9054, which merely expanded the then four provinces composing the ARMM, the Bangsamoro Organic Law abolishes the current ARMM and paves the way for the establishment of a new autonomous region.[432]

In sum, the right of suffrage of petitioner's constituents should not have been trampled upon. By granting the petition of the Province of Sulu, we uphold the sacrosanct sovereign power of its constituents in the context of the plebiscite.

X

"The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."[433]

Accordingly, the democratic and parliamentary form of the Bangsamoro government is constitutional.

Article X, Section 18 of the Constitution provides that "the organic act shall define the basic structure of government for the region," comprising an elected executive department and legislative assembly that represent the constituent political units.

Article IV, Section 3 of the Bangsamoro Organic Law declares that the Bangsamoro Autonomous Region will have a democratic political system that enables its citizens to freely engage in political processes within its territory, and will adopt a parliamentary form of government.

Article IV, Section 4 of the same law states that the Bangsamoro government must implement an electoral system that aligns with national election laws, facilitates democratic participation, promotes the establishment of genuinely principled political parties, and ensures accountability.

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[432] *Rollo* (G.R. No. 242255), p. 29.
[433] CONST., art. IV, sec. 1.

On these points, petitioners contend that the parliamentary form of government runs counter to the constitutional provision that the Philippines is a democratic and republican State.[434]

To recall, Article X, Section 15 of the Constitution provides for the creation of autonomous regions, while Section 18 emphasizes the need to define their basic structure, including an Executive department and Legislative Assembly. Nowhere in the Constitution did it dictate a specific governmental structure, whether presidential or parliamentary. This noncommittal approach allows for flexibility, which addressed the complexities of the political milieu in the Bangsamoro.

The parliamentary form of the Bangsamoro government is democratic.

As the parliamentary system upholds democratic principles, it features an Executive branch that is formed by the Legislature. Under this scheme, members of the Parliament are elected by its people as representatives of their constituent political units. In turn, the Bangsamoro parliament, by majority vote, elects a chief minister, who shall exercise the executive powers of the Bangsamoro government.

These are outlined in Article VII of the Bangsamoro Organic Law:

> SECTION 1. *Seat of Government.* – The Parliament shall fix by law the permanent seat of the Bangsamoro Government anywhere within the territorial jurisdiction of the Bangsamoro Autonomous Region taking into consideration accessibility and efficiency in which its mandate may be carried out under this Organic Law.
>
> SECTION 2. *Powers of Government.* – The powers of government shall be vested in the Parliament which shall exercise those powers and functions expressly granted to it in this Organic Law, and those necessary for, or incidental to, the proper governance and development of the Bangsamoro Autonomous Region. It shall set policies, legislate on matters within its authority, and elect a Chief Minister who shall exercise executive authority on its behalf.
>
> SECTION 3. *Legislative Authority.* – The Parliament shall have the authority to enact laws on matters that are within the powers and competencies of the Bangsamoro Government.
>
> Section 4. *Executive Authority.* – The executive function and authority shall be exercised by the Cabinet which shall be headed by a Chief Minister. The Chief Minister shall be elected by a majority vote of all the members of the Parliament.

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434 CONST., art. II, sec. 1.

> The Chief Minister shall nominate two (2) Deputy Chief Ministers who shall be elected by the Parliament, as provided for in Section 35 of this Article, and appoint the members of the Cabinet, majority of whom shall come from the Parliament.

As a democratic system, the Bangsamoro government derives its legitimacy from the Bangsamoro people, as each parliament member is directly voted into office. Similarly, the chief minister can never be a stranger, as the person is voted into office by the people's representatives.

An autonomous region is not prohibited from prescribing a form of government that differs from that of the national government. The Constitution directs that the organic act for the autonomous region "*shall define* the basic structure of government for the region,"[435] without prescribing any specific structure. The sole limitation of this structure is that it must consist "of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units."[436]

Practically, if the Constitution prescribes only the exact same form of government for the autonomous and the national government, then that is not a conferment of genuine autonomy. Establishing an autonomous region is a recognition that the exact same structure fails the locals. It does not fully address the historical injustices against the marginalized, indigenous peoples of this country.[437]

Further, the Bangsamoro Autonomous Region functions under a democratic political system that permits its citizens to actively participate in political processes within its jurisdiction, alongside adopting a parliamentary form of government.

To maintain the national government's power of general supervision over the Bangsamoro government, Article VI, Section 1 of the Bangsamoro Organic Law states that the president shall exercise general supervision over the Bangsamoro government to ensure that laws are faithfully executed. For willful violation of the Constitution, national laws, or the Organic Law, the president may suspend the chief minister for a period not exceeding six months.[438]

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435 CONST., art. X, sec. 18.

436 CONST., art. X, sec. 18. *See also* Johaira C. Wahab, *Peace-Making as Law-Making in the Bangsamoro Organic Law: The Continuing Pursuit of Meaningful Self-Governance under the 1987 Constitution, in* ORGANIC LAW FOR THE BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO (REPUBLIC ACT NO. 11054): FRAMEWORK AND ANNOTATIONS 98–100 (2021).

437 *Id.*

438 Bangsamoro Organic Law, art. VI, sec. 1.

Contrary to the posture of some of the petitioners, there are more than two forms of government. To impose the choice only between presidential and parliamentary is not only a misrepresentation of the possible political forms, it engages in undue restriction of reality.

Even for the national government, our Constitution incorporates elements of presidential and parliamentary systems. It retains the presidential form of government, with the president serving as head of state, while seamlessly integrating some parliamentary features into the system. Examples of these features include the "question hour," partly-list system, and recall mechanism.

During "question hour," legislators have the flexibility to summon government officials for questioning,[439] similar to the practice in parliamentary governments where members of the parliament can interrogate ministers.

The party-list system was introduced to provide proper and adequate representation of the marginalized sectors in the House of Representatives,[440] reflecting practices in many parliamentary democracies.

Mechanisms of recall in our legal framework allow voters to remove elected officials before their term ends,[441] through a democratic process. This resembles elements of direct accountability in parliamentary systems where confidence votes can lead to the fall of an administration.

Further, the blending of legislative and executive functions in local governments is not new; the Bangsamoro Organic Law did not introduce these measures.

For example, at the provincial level, the Executive branch consists of officials, such as the governor and vice governor, who also serve as members of the provincial board, a legislative body responsible for local governance. This dual role allows them to influence both the formulation of policies and their implementation, demonstrating how executive and legislative powers work together within the same government structure.

The framers of the Constitution recognized the value of this hybrid approach for balancing strong executive leadership with direct representation and accountability that leads to more stable and responsive governance. The form of governance within the autonomous region was provided by Congress, approved by the President and voted for by the affected people in a free and

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439 CONST., art. VI, sec. 22.
440 CONST., art. VI, sec. 5.
441 CONST., art. XI.

orderly plebiscite. To strike down the law based on a misguided sense of what forms of government should be is an arbitrary exercise of judicial review.

XI

The Bangsamoro identity may be by ascription, or by self-ascription.

Contrary to petitioner Province of Sulu's argument, the Bangsamoro Organic Law does not "erase" the autonomy and identity of indigenous cultural communities in the areas included in BARMM. Neither does the law violate indigenous people's rights when indigenous people are supposedly deemed included in the Bangsamoro identity.

The Bangsamoro Organic Law defines who the Bangsamoro people are:

> SECTION 1. *Bangsamoro People.* – Those who, at the advent of the Spanish colonization, were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands, whether of mixed or of full blood, shall have the right to identify themselves, their spouses and descendants, as Bangsamoro.[442]

Moro is a political construct that was originally used to refer to demean Muslims in Mindanao, as distinguished from tribal peoples. Under the Bangsamoro Organic Law, "Moro" has evolved into "Bangsamoro," referring to the natives or original inhabitants of Mindanao, the Sulu archipelago, and nearby islands at the time of Spanish colonization. These individuals, along with their spouses and descendants, have the right to identify as Bangsamoro, regardless of whether they are of mixed or full blood.[443]

Bangsamoro identity is not imposed, allowing a person the right to self-identify as Bangsamoro. This identity is inclusive and voluntary, providing individuals the freedom to choose whether to be identified as Bangsamoro,[444] either by ascription or self-ascription.[445] Individuals also retain the right to preserve their distinct indigenous ethnic identity in addition to their Bangsamoro political identity.[446] This right must be upheld and respected.[447]

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442 Bangsamoro Organic Law, art. II, sec. 1.
443 Bangsamoro Organic Law, art. II, sec. 1.
444 Bangsamoro Organic Law, art. II, sec. 2.
445 Bangsamoro Organic Law, art. IX, sec. 3(h).
446 Bangsamoro Organic Law, art. IV, sec. 10.
447 Bangsamoro Organic Law, art. IV, sec. 10.

Unlike the establishment of territorial and political subdivisions, the creation of autonomous regions primarily anchors on the presence of common and distinctive "historical and cultural heritage, economic and social structures, and other relevant characteristics" or factors beyond ethnic characteristics shared among its constituent geographical areas, certain provinces, cities, municipalities, or barangays.[448]

BARMM is a political entity that provides for its basic structure of government, recognizing the "justness and legitimacy of the cause of the Bangsamoro people and the aspirations of Muslim Filipinos and all indigenous cultural communities in the Bangsamoro Autonomous Region in Muslim Mindanao."[449] The aim is to "secure their identity and posterity," enabling "meaningful self-governance within the framework of the Constitution and the national sovereignty, as well as territorial integrity of the Republic of the Philippines."[450]

It is baseless to claim that indigenous peoples have no place in BARMM. In contrast, this Court finds that the assailed statute is replete with safeguards for indigenous peoples.

Under the Bangsamoro Organic Law, the rights of indigenous peoples are recognized in several provisions. It specifically mandates the Bangsamoro government to uphold and advance the rights of non-Moro indigenous peoples under the Constitution and national laws.[451]

All residents of the Bangsamoro Autonomous Region have the right to freely choose and maintain their distinct indigenous or ethnic identities, alongside their Bangsamoro political identity.[452]

Further, there shall be reserved elected seats for non-Moro indigenous peoples, such as Teduray, Lambangian, Dulangan Manobo, B'laan, and Higaonon, which shall adhere to their customary laws and indigenous processes.[453]

The law affirms that the Bangsamoro government acknowledges the rights of the indigenous peoples and shall adopt measures for their promotion and protection of their rights to native titles or *fusaka inged*; indigenous customs and traditions; justice systems and indigenous political structures; equitable share in revenues from the utilization of resources in their ancestral

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448 J. Leonen, Concurring Opinion in *League of Provinces of the Philippines v. DENR*, 709 Phil. 189, 232 (2013) [Per J. Peralta, *En Banc*].

449 Bangsamoro Organic Law, art. I, sec. 3.

450 Bangsamoro Organic Law, art. I, sec. 3.

451 Bangsamoro Organic Law, art. IV, sec 9.

452 Bangsamoro Organic Law, art. IV, sec 10.

453 Bangsamoro Organic Law, art. VII, sec. 8.

lands; free, prior and informed consent; political participation in the Bangsamoro government including reserved seats for the non-Moro indigenous peoples in the Parliament; basic services; and freedom of choice as to their identity.[454]

The statute also ensures that it does not reduce the rights and privileges of non-Moro indigenous peoples in the Bangsamoro Autonomous Region as guaranteed by the Constitution and national laws, particularly Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997.[455]

In addition, the Bangsamoro Organic Law mandates its government to establish a ministry dedicated to indigenous peoples, tasked with developing and implementing policies to enhance their welfare and recognize their ancestral domains.[456] The parliament is prohibited from diminishing the rights of indigenous peoples under international declarations and human rights conventions, as well as local laws applicable to them in the Bangsamoro Autonomous Region.[457]

The parliament of the Bangsamoro Autonomous Region must establish a tribal university system and enact legislation to integrate and support the educational system of non-Moro indigenous peoples within the region.[458]

Further, the Bangsamoro government is ordered to protect and promote the historical, cultural, artistic, and traditional heritage of the Bangsamoro people, including their Sultanates and the indigenous peoples of the Bangsamoro Autonomous Region. This includes establishing the Bangsamoro Commission for the Preservation of Cultural Heritage, in collaboration with relevant national government agencies, to fulfill this objective.[459]

The organic law also states that indigenous peoples and communities in the Bangsamoro Autonomous Region are entitled to a fair allocation of revenues derived from the exploitation of natural resources within their territories as recognized by their traditional or customary rights. This entitlement will be formalized through legislation passed by the parliament, specifying the distribution mechanism and percentages. It is ensured that the rights and protections afforded to indigenous peoples under Republic Act No. 8371 and other relevant laws remain intact and unaffected.[460]

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454 Bangsamoro Organic Law, art. IX, sec. 3.
455 Bangsamoro Organic Law, art. IX, sec. 3.
456 Bangsamoro Organic Law, art. IX, sec. 3.
457 Bangsamoro Organic Law, art. IX, sec. 3.
458 Bangsamoro Organic Law, art. IX, sec. 19.
459 Bangsamoro Organic Law, art. IX, sec. 24.
460 Bangsamoro Organic Law, art. XII, sec. 36.

Under Article X, Section 1, traditional or tribal laws govern disputes among indigenous peoples within the region. Non-Moro indigenous peoples are entitled to utilize their traditional justice systems, conflict resolution mechanisms, peace-building processes, and customary laws within their communities.[461]

Finally, the Bangsamoro Organic Law also provides that the parliament are to pass laws designating protected areas, detailing the procedures for declaration and management, and defining the roles of the Bangsamoro government and other stakeholders. It is stipulated that protected areas within ancestral domains must receive the free, prior, and informed consent of the non-Moro indigenous peoples.[462]

Certainly, the Bangsamoro Organic Law does not appear to "erase" the autonomy and identity of indigenous cultural minorities in the region, but far from it.

Its implementation, however, is another story. A journalist who has painstakingly and heroically monitored the entire process of struggle in Mindanao reports that with only 10 months until the end of the transition period, there is still no Indigenous Peoples' Code in the BARMM.[463] This does not however go into the existence of the legal platforms for recognition. It is a reality that should challenge the current and future Bangsamoro leadership to also do right for its indigenous non-Moro people.

In sum, the Bangsamoro Organic Law is yet another milestone in the longstanding quest for self-determination of the Bangsamoro people. It aims to confer genuine autonomy to indigenous peoples, correct historical injustices, and pave the way for unity and a just and lasting peace.

Our people have endured centuries of marginalization, disenfranchisement, and conflict. Over the years, various peace agreements have been negotiated, passed, and transformed into enabling laws.

This Court finds that the Bangsamoro Organic Law is a measure that embodies the aspirations of the Bangsamoro people for genuine autonomy and self-determination within the constitutional framework. Legal recognition, as a product of long historical struggle, is an honorable and peaceful means to do justice for all the historical injustices suffered by its peoples. Assured of

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461 Bangsamoro Organic Law, art. X, sec. 1.

462 Bangsamoro Organic Law, art. XIII, sec. 8.

463 Carolyn O. Arguillas, *10 months to end of transition period, still no Indigenous Peoples' Code in the BARMM,* August 28, 2024, *available at* https://mindanews.com/top-stories/2024/08/10-months-to-end-of-transition-period-still-no-indigenous-peoples-code-in-the-barmm/ (last accessed on August 30, 2024).

its own understanding of our varied history as well as the commands of the constitution, this Court knows where it should stand.

We find no ground to declare this law unconstitutional.

ACCORDINGLY, the application for the issuance of a temporary restraining order and/or writ of preliminary injunction in G.R. Nos. 242255 and 243246, and the Motion for Inhibition in G.R. No. 243246 are **DENIED** for lack of merit.

The Petition in G.R. No. 242255 is **PARTIALLY GRANTED**. Republic Act No. 11054, in so far as it includes petitioner Province of Sulu in the Bangsamoro Autonomous Region, is declared **VOID** for being **UNCONSTITUTIONAL**. The Province of Sulu shall not be part of the Bangsamoro Autonomous Region.

The remaining provisions of Republic Act No. 11054, otherwise known as the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, based on the challenges raised in these petitions, are **NOT UNCONSTITUTIONAL**.

This Decision is immediately executory.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

on leave but left vote in favor
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

See Separate Concurring Opinion
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO JR.
Associate Justice

ON LEAVE BUT LEFT HER VOTE
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the court.

ALEXANDER G. GESMUNDO
Chief Justice