

*EN BANC*

G.R. No. 242255 – PROVINCE OF SULU, duly represented by its Governor ABDUSAKUR A. TAN, Petitioner; PHILIPPINE ASSOCIATION OF ISLAMIC ACCOUNTANTS [PAIAJ, 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, v. HON. SALVADOR C. MEDIALDEA, in his capacity as Executive Secretary, HON. 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, HON. JESUS G. DUREZA, in his capacity as Secretary of the Office of the Presidential Adviser on the Peace Process, BANGSAMORO TRANSITION COMMISSION, and MORO ISLAMIC LIBERATION FRONT, Respondents.

G.R. No. 243246 – PHILIPPINE CONSTITUTION ASSOCIATION [PHILCONSA], Petitioner, v. SENATE OF THE PHILIPPINES, represented by Senate President HON. VICENTE SOTTO, HOUSE OF REPRESENTATIVES, represented by Speaker HON. GLORIA MACAPAGAL-ARROYO, and Office of the President, represented by Executive Secretary HON. SALVADOR MEDIALDEA, Respondents.

G.R. No. 243693 – CONG. ABDULLAH D. DIMAPORO and CONG. MOHAMAD KHALID Q. DIMAPORO, Petitioners, v. COMMISSION ON ELECTIONS [COMELEC], represented by Chairperson HON. SHERIFF ABAS, Respondent.

Promulgated:

September 9, 2024

X

SEPARATE CONCURRING OPINION

**DIMAAMPAO, J.:**

These consolidated petitions challenge the constitutionality of Republic Act No. 11054<sup>1</sup> (or the Bangsamoro Organic Law), the historical context of which has been concisely articulated by the esteemed ponente.

<sup>1</sup> Republic Act No. 11054 (2018), The Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao.

*[Handwritten mark]*

In a nutshell, the Decision partially grants the petition in G.R. No. 242255 and declares as void the Bangsamoro Organic Law, insofar as it includes the Province of Sulu in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), for being unconstitutional. Consequently, the Province of Sulu shall not form part of the BARMM. Meanwhile, the remaining provisions of the Bangsamoro Organic Law, based on the issues formulated by the petitioners in these consolidated cases, are not unconstitutional.<sup>2</sup>

*The outcome is well-founded.*

Article III, Section 2(a) of the Bangsamoro Organic Law provides that the territorial jurisdiction of the BARMM, subject to the indispensable plebiscite, shall be composed *inter alia* of the present geographical area known as the Autonomous Region in Muslim Mindanao created under Republic Act No. 6734,<sup>3</sup> as amended by Republic Act No. 9054.<sup>4</sup> This includes the Province of Sulu.<sup>5</sup>

In relation thereto, Article XV, Section 3(a) of the Bangsamoro Organic Law reads in part:

*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.*** (Emphasis and underscoring supplied)

....

Pursuant to the authority granted by Article XV, Section 2 of the Bangsamoro Organic Law, the Commission on Elections (COMELEC) held the Bangsamoro Organic Law Plebiscite on January 21, 2019. The plebiscite question for the Autonomous Region in Muslim Mindanao (ARMM) was couched in this wise: "*Payag ba kayo na pagtibayin ang Batas Republika Blg. 11054 na kilala din bilang Organic Law for the Bangsamoro Autonomous*

<sup>2</sup> Decision, p. 98.

<sup>3</sup> Republic Act No. 6734 (1989), The Organic Act for Autonomous Region in Muslim Mindanao.

<sup>4</sup> Republic Act No. 9054 (2001), Strengthening and Expanding the ARMM Organic Act.

<sup>5</sup> Republic Act No. 9054 (2001), Strengthening and Expanding the ARMM Organic Act, art. II, sec. 1.

*Region in Muslim Mindanao?*<sup>6</sup> Out of 1,738,767 voters in ARMM who participated in the plebiscite, 1,540,017 voted **Yes**, while 198,750 voted **No**.

The *ponencia* elucidates that not only did the Bangsamoro Organic Law transgress the Constitution but it also undermined the autonomy of the constituent units of the ARMM such as the Province of Sulu by treating the ARMM as a unified entity.<sup>7</sup>

Article X, Section 18 of the Constitution functions as the guiding polestar for the creation of autonomous regions in Muslim Mindanao and in the Cordilleras:

....

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.** (Emphasis supplied)

To fully understand the import of the highlighted proviso, let us hark back to the deliberations of the framers of the Constitution—

MR. NOLLEDO: Thank you, Madam President.

The revised report of the Committee on Local Governments is now embodied in Resolution No. 470, copies of which are distributed to the Members of the Commission.

....

I am changing my opinion in my sponsorship speech that the majority shall be determined with respect to the entire voting population of the autonomous regions. **In our new report, it will be noticed that majority of the votes cast shall be determined with respect to each constituent unit.** For example, if Iligan does not like to join the autonomous region based on that sentiments expressed by the voters therein, then Iligan will not form part of the autonomous region.<sup>8</sup> (Emphasis supplied)

In the same vein, the following exchange by the members of the Constitutional Commission is quite illuminating—

MR. BENGZON: In that one plebiscite, are we already going to present to the people the organic act that will be made by Congress?

<sup>6</sup> National Plebiscite Board of Canvassers Report No. 2, available at: < <https://comelec.gov.ph/php-tpls-attachments/References/ComelecResolutions/Plebiscites/PlebiscitesOrganicLaw2018/NPBCReports.pdf> >, last accessed on September 8, 2024.

<sup>7</sup> Decision, pp. 89–90.

<sup>8</sup> Record of the Constitutional Commission No. 058, August 16, 1986.

MR. AZCUNA: Yes, Madam President. The organic act will already be presented, together with the proposed territorial delimitation or the constituent units. **And once the organic acts are accepted, only those constituent units which voted in favor of the organic acts will be included in the autonomous region.** That will be the effect of the plebiscite.

MR. BENGZON: Madam President, what about a particular area, province, municipality or barrio which may wish to join in the autonomous region, but when the organic act is presented it would not agree with the terms or the delimitations and they may vote against that?

MR. AZCUNA: Madam President, the formulation of the organic act will be through a method of consultation with local leaders. So, presumably, it will distill the consensus of the regions and the inhabitants therein, so that it will probably be acceptable to most, if not to all, of the inhabitants of that region. It will really be left to whether or not they want to be included in the autonomous region rather than on a term that they do not like. Anyway, the basic powers are already defined in this Article, so it will just be really details of the region, inclusion of certain territories that will be legislated. **My proposal would simplify it by having only one plebiscite, and then determining in that plebiscite whether a certain province or a certain city voted in favor, in which case it will be included.**<sup>9</sup> (Emphasis supplied)

In *Abbas v. COMELEC*,<sup>10</sup> a case concerning the conduct of the plebiscite to ratify Republic Act No. 6734,<sup>11</sup> the Court had occasion to underscore that the will of the majority in each geographical area taking part in the plebiscite for the creation of an autonomous region in Muslim Mindanao determines their inclusion therein, viz.:

Thus, under the Constitution and R.A. No. 6734, the creation of the autonomous region shall take effect only when approved by a majority of the votes cast by the constituent units in a plebiscite, and only those provinces and cities where a majority vote in favor of the Organic Act shall be included in the autonomous region. **The provinces and cities wherein such a majority is not attained shall not be included in the autonomous region.** It may be that even if autonomous region is created, not all of the thirteen (13) provinces and nine (9) cities mentioned in Article II, section 1(2) of R.A. No. 6734 shall be included therein. **The single plebiscite contemplated by the Constitution and R.A. No. 6734 will therefore be determinative of (1) whether there shall be an autonomous region in Muslim Mindanao and (2) which provinces and cities, among those enumerated in R.A. No. 6734, shall comprise it.**<sup>12</sup> (Emphasis supplied)

<sup>9</sup> Record of the Constitutional Commission No. 060, August 16, 1986.

<sup>10</sup> 258-A Phil. 870 (1989) [Per J. Cortes, *En Banc*].

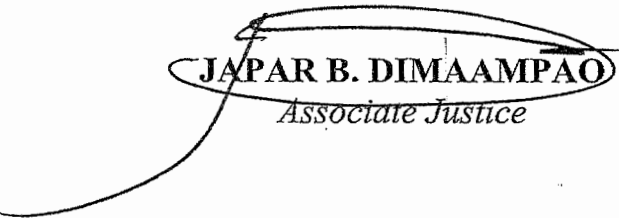
<sup>11</sup> Republic Act No. 6734 (1989), The Organic Act for Autonomous Region in Muslim Mindanao.

<sup>12</sup> *Abbas v. COMELEC*, 258-A Phil. 870 (1989) [Per J. Cortes, *En Banc*].

Given the foregoing discourse, it is beyond cavil that the proviso in Article XV, Section 3(a) of the Bangsamoro Organic Law breached the Constitution when it regarded the provinces and cities constituting the ARMM as a single unit. Significantly, the breakdown<sup>13</sup> of the votes during the Bangsamoro Organic Law Plebiscite in 2019 would show that the Province of Sulu rejected the ratification of the said statute:

PROVINCE	YES VOTES	NO VOTES
Basilan	147,598	6,486
Lanao del Sur	503,420	9,735
Maguindanao	599,581	9,096
Sulu	137,630	163,526
Tawi-Tawi	151,788	9,907
TOTAL	1,540,017	198,750

In fealty to the fundamental law of the land, the expression of the collective will of the voters of the Province of Sulu must prevail. As such, I concur with the erudite reasoning reflected in the Decision.

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*

<sup>13</sup> Regional Plebiscite Board of Canvassers Statement of Votes, available at: <https://www.gmanetwork.com/news/topstories/regions/682636/armm-votes-yes-to-bol-bangsamoro-autonomous-region/story/>, last accessed on September 8, 2024.