

MINORITY RIGHTS VS. MINORITY RIGHTS: THE CASE OF INDIGENOUS PEOPLES' RIGHTS IN THE NEW BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO

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Abstract

The Philippine government concluded the peace process with the Moro Islamic Liberation Front with the passage of the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao. Many issues plagued the process but one of the more important issues is the fear that the indigenous groups in the autonomous region would be further marginalized. History tells of many stories of discrimination of lumads and with their leaders kept from having a seat in the negotiating tables, they are bracing for the worst. It is argued in this paper that an institutional approach to the issue would indicate that the rights of the lumads will not only be recognized but also protected. There are three reasons why institutions will continue to protect the rights of the lumads. Firstly, the peace process is not limited to the peace negotiations. There are various avenues in which lumad issues could be promoted. Secondly, there is evidence that the legislative process has not only protected the rights of the lumads, it has even enhanced the provisions on lumad protection in the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao. Lastly, even if the peace negotiators have deliberately ignored the pleas of the lumads, the 1987 Philippine Constitution and other institutions would continue to protect their guaranteed rights as citizens and as members of indigenous groups in the Philippines.

Keywords: Peace Process, Institutions, Second-Order Minorities, Lumad, Moro

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I. Introduction

In 2018, Philippine President Rodrigo Duterte signed into law the *Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao* (Republic Act 11054) or OLBARMM. OLBARMM is a significant law for the peace process between the Philippine government peace panel and the armed group Moro Islamic Liberation Front (MILF) because it institutionalizes the peace agreements signed between the Philippine government peace panel and the MILF. It also describes the future autonomous government in the southern Philippine island of Mindanao where the *moro* (Muslim Filipino) population or *bangsamoro* (Moro nation) is concentrated. In a television interview after the passage of the bill in the Philippine Congress, Mohagher Iqbal, the chairperson of the MILF peace panel, opined that the bill which was then to be signed by the Philippine president was 85% to 90% “compliant” with the peace agreements the MILF signed with the Philippine government peace panel (Quintos, 2018). There were no reports that Duterte vetoed any parts of the bill transmitted by the Philippine Congress to the Office of the President.

Iqbal’s statement on the compliance of the bill is important for the peace process. The bill and the law should reflect what were discussed by the peace panels of the MILF and the government in order to prevent the MILF from reneging from its commitments to the peace agreement. To put it in other words, in order to prevent the eruption of violence, the law must substantially reflect what was promised by the government peace panel to the MILF. This is not an easy task given that the Philippine government is a presidential system with three co-equal

branches of government. The members of the government peace panel who were appointed by the Philippine president are not the legislators in Philippine Congress. Once the peace agreements are translated into a bill to be considered in the Philippine Congress, various factors and interests must be weighed and considered.

One important factor to be considered by the legislators in the passage of OLBARMM is the 1987 Philippine Constitution. The constitutionality of the bill has been both affirmed and questioned (Alternative Law Groups, 2015 and Quilala, 2015). The legislators seem to be aware of this and must adjust the bicameral version of the bill (Cepeda, 2018). It is imperative that the law be constitutional because it may be questioned in the Supreme Court of the Philippines. While Iqbal and the MILF are examining the compliance of the law with the peace agreements, it is also important that the law be compliant with the 1987 Philippine Constitution.

OLBARMM is clearly a law for the bangsamoro who are in terms of religious beliefs, a minority in the Philippines. 80% of the Filipinos identify themselves as Roman Catholics and 5.5% identify themselves as Muslims in 2010 (Philippine Statistics Authority, 2015). It is therefore interesting that OLBARMM recognizes not only the aspirations of the bangsamoro but also of all the indigenous cultural communities within the autonomous region. Article I, Section 3 of the law recognizes not only the minority rights of the Muslims but also the minority rights of the other indigenous cultural communities. If this section is compared to the sections of the bills drafted by the MILF-

led Bangsamoro Transition Commission (BTC) in the 16th and 17th Congresses, the rights of indigenous cultural communities were not acknowledged. It was during this period of the peace process and the legislative process that there seems to be a clash in the rights of two minorities in the Philippines and that the rights of indigenous cultural communities within the autonomous region will be determined by the bangsamoro. It is argued in this paper that in taking an institutional perspective, it would be clear that both rights must be recognized and the fear of further discrimination of other indigenous cultural communities may be unfounded.

The main objective of this research is to demonstrate that using an institutional approach in looking at minority rights in the Philippines would result in the recognition of all minority rights rather than a further marginalization of one set of minority rights by the recognition of another set of minority rights. In order to do this, an analysis of documents that shape Philippine institutions would be analysed mainly the 1987 Philippine Constitution, OLBARMM, and the Indigenous People's Rights Act (IPRA). Process tracing would also be utilized as it helps us understand changes in the OLBARMM from the bills proposed by the BTCs. Two processes will be analysed: the peace process between the Philippine government and the MILF and the legislative process particularly of the process that led to the signing of the OLBARMM. This would also include comparing the differences in the content of the various documents related to the approved OLBARMM.

This paper would also aim to contribute to the literature on second-order minorities that has observed the tendency of first order minorities marginalizing second-order minorities. This paper would also limit its study on two minorities or more accurately two minority groups in the Philippines namely the moros and the lumads, the non-moro indigenous groups in Mindanao. Moreover, only the lumads in the proposed autonomous region will be included in the study.

II. Moros, Lumads, Filipinos

The peace process between the Philippine government and the MILF is framed as a process that will resolve the conflict between the Catholic Filipinos and Muslim Moros (Barter, 2015). Using this framing, the Philippine government would represent the Catholic Filipinos while the MILF would represent the interest of the Moros. This framing is problematic for many reasons. For one, the Philippine state is a secular state. Article II, Section 6 of the 1987 Philippine Constitution states that the separation of the State and Church is inviolable. The Legislature is not allowed to appropriate public money to any religion. Article VI, Section 29 (2) of the 1987 Philippine Constitution states “[n]o public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or any priest, preacher, minister or other religious teacher, or dignitary as such...” Moreover, while majority of the Filipinos are Catholics, there is no evidence that government acts according to the Catholic beliefs that comprise it. Philippine Congress has passed pieces of legislation like the Responsible Parenthood and

Reproductive Health Act of 2012 (Republic Act 10354) which the Catholic Church has openly opposed.

Second, the framing assumes that government prefers one religion over the other. The right to religion is protected by the 1987 Philippine Constitution. Section 5 of the Bill of Rights states “[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed...” No one is barred from taking public office based on religion and any form of discrimination based on religion is not permitted in the Philippines. Provinces, municipalities, and legislative districts with predominantly Muslim population have been led by politicians who are Muslims. The national government, particularly the Executive Branch and the members of the Philippine Senate are elected not only by Catholics but by all qualified Filipino citizens. There are no religion-related qualifications in the Philippines.

Lastly, to lump together non-Moros into the category Catholic Filipino is an oversimplification. Catholic Filipino is not a homogenous group. In terms of ethnicity, Catholic Filipinos can be Ilocanos, Tagalogs, Cebuanos, Bicolanos, etc. These groups have different languages and culture. These groups are indigenous to the areas where they are the majority but were Christianized during the more than three hundred years of Spanish colonization of the Philippines.

The term moro is also another oversimplification. Moro is a derogatory term (Suryadinata, 2015) but has been

used by Moro leaders to unite the different Moro groups. While it has been used to mobilize Muslim Filipinos against the Philippine government, it is a category made up of different groups. In terms of ethnicity, there are at least ten different Moro groups namely: Badjao, Magindanao, Iranun or Ilanun, Kalibugan, Maranao, Pullun Mapun, Samal, Sangil, Tausug, and Yakan (Rodil, 1993). These are some of the ethnic groups that have been Islamized by Muslim traders in the 15th century. This is opposed to some description of Moros as “indigenous Muslim minorities” (Paredes, 2015). Islam like Catholicism and Christianity are not indigenous to the Philippines. Most of the indigenous groups in the Philippines were converted to foreign religions. The moros also differ “in religiosity and adherence to Islamic doctrine and practice...but their common denominators – a long historical identification with Islam and a shared history of targeted colonial and post-colonial state persecution” (Paredes, 2015). Are the “long historical identification with Islam” and “shared history of targeted colonial and post-colonial state persecution” enough to bring the bangsamoro together? Historically, the moros were mobilized to fight the Philippine government by two different separatist groups namely the MILF and the Moro National Liberation Front (MNLF).

The MNLF was formed by Nur Misuari and is recognized by the Organization of Islamic Conference. It signed a peace agreement with the Philippine government in 1996 and it resulted in the strengthening of the Autonomous Region in Muslim Mindanao (ARMM) through Republic Act 9054. The MILF was formed by Hashim Salamat,

himself a former MNLF leader. It claims to focus on the Islamic components of separatism as opposed to the nationalist focus of the MNLF. The MILF signed a peace agreement with the Philippine government in 2014 and Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) will replace the ARMM. For some, this is seen as an effort to further strengthen the autonomy arrangement with the moros. However, it can also be seen as a symptom of the division within the bangsamoro as the MNLF of Nur Misuari has not fully supported the peace process of the government with the MILF.

Both the MILF and the MNLF claim to represent the bangsamoro but it can be observed that different ethnic groups dominate the two separatist groups. Arguably, the MNLF is dominated by Tausugs of the southern islands and the MILF is dominated by the Magindanao and Maranao of the central Mindanao island. Moro is far from homogenous (Suryadinata, 2015) and the moro separatist movement is also not homogenous. Other groups have been formed out of these two major separatist groups like the MNLF-Reformist group and the Bangsamoro Islamic Freedom Fighters.

The lumads are indigenous non-Moro groups in Mindanao. According to Rodil (1993), lumad is a Cebuano term that means indigenous. Cebuano is a language that originated from an island in the central part of the Philippines but it is widely spoken in Mindanao. The term was adopted in June 1986 by an assembly of 78 indigenous groups (Rodil, 1993). Rodil (1993) enumerated the 17 different lumad groups in Mindanao: Ata, Bagobo, Mamanwa, Mangguangan, Mandaya,

Banwa-on, Bilaan, Bukidnon, Dulangan, Kalagan, Kulaman, Manobo, Subanon, Tagabili, Tagakaolo, Talandig, and Teduray. In the Moro-dominated ARMM, there are more than 700,000 individuals who belong to an indigenous group (NCIP, n.d.). In a research conducted by Korad-Adenauer-Stiftung Philippines, Institute for Autonomy and Governance, and Development Consultants Inc. (Korad-Adenauer-Stiftung, 2014), there are 117,189 individuals who belong to an indigenous group in the main island of Mindanao. Of that population, the three major lumad groups are the Teduray, Dulangan Manobo, and Lambiangan. This study did not include the lumad groups in the island provinces that are part of the ARMM. Lumad is a collective term for the diverse indigenous peoples of Mindanao and even the indigenous groups in the ARMM are not homogenous.

It is important to note that the moros and the lumads are indigenous groups in Mindanao who in terms of population, are minorities compared to the settlers from the northern and central parts of the Philippines. The lumads are also a minority in the moro-dominated ARMM and most likely in the moro-dominated BARMM. This is the reason why the lumads are considered as second-order minorities (Barter, 2015 and Paredes, 2015). Using this framework, there seems to be an assumption of irreconcilable differences on the one hand, between the settlers and the indigenous groups in Mindanao, both moro and lumad and on the other hand, between the moros and the lumads. The ties among the lumads and moros have a long history and is probably best encapsulated in the story between Mamalu and Tabunaway:

One view of their historical relationship is related in shared oral traditions about two brothers, Mamalu and Tabunaway, the putative ancestors of the Lumads and Moros, respectively. Whereas Tabunaway converted to Islam in the fifteenth century, Mamalu chose to retain the ancestral religion and moved away into the interior uplands. This narrative of political and religious divergence is often used to explain why Lumads and Moros are different today, despite their common genealogical, cultural, and geographical origins. Despite this split, it is said that the brothers made a pact to live in peace and to help each other in times of need. (Paredes, 2015, p.170).

This peace pact story between the brothers have been used by the peace constituency in Mindanao to remind the different groups in the conflict of their commonalities and how they could cooperate despite their differences. Paredes adds that though it “is apocryphal to outsiders, the pact is regarded as legal fact by many Lumad groups” (2015, p.173).

In terms of the 1987 Philippine Constitution, there are no differences in terms of the protection of the rights of Filipinos. Catholic Filipinos (or Christian Filipinos), moros, and lumads are Filipinos who are entitled to the rights accorded a citizen of the Philippines. If there are differences, there are special provisions for indigenous peoples which include the lumads and the moros. For example,

Article X, Section 1 of the 1987 Constitution provides for an autonomous region in Muslim Mindanao which is a recognition of the distinct history of the bangsamoro which include its historical control of territories in Mindanao. The provision is further elaborated in Article X, Section 20 which requires Philippine Congress to give legislative powers to the autonomous government in terms of administrative organization, revenue generation, ancestral domain and natural resources, personal, family, and property relations, regional urban and rural planning development, economic, social, and tourism development, educational policies, preservation and development of cultural heritage, and others that are related to the general welfare of the inhabitants of the autonomous region.

Article II, Section 22 of the 1987 Philippine Constitution states “[t]he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.” In Article XIV, Section 17, “[t]he State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.” This can be seen as a recognition of the diversity in the Philippines not only between the “Christian Filipinos” and the indigenous peoples but also of the different indigenous cultural communities that have been Christianized or Islamized. In recognition of the history of land dispossession, the 1987 Philippine Constitution also aims to protect their rights to ancestral lands. In Article XII, Section 5 it states “[t]he State, subject to

the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.” This provision also recognizes the relationship of land and a cultural community’s economic, social, and cultural well-being.

In 1987, the Office on Muslim Affairs was created through Executive Order 122-A which establishes the state policy “to ensure the rights and well-being of Muslim Filipinos with due regard to their beliefs, customs, traditions and institutions, as well as to further ensure their contribution to national goals and aspirations and to make them active participants to nation-building.” This office was later replaced by the National Commission on Muslim Filipinos through Republic Act 9997 to address the needs of Muslim Filipinos. The main difference of the two offices is that the Office on Muslim Affairs is created only through an Executive Order while the National Commission on Muslim Filipinos is created through a statute.

Through Executive Order 122-B and Executive Order 122-C, the Office of Northern Cultural Communities and the Office of Southern Cultural Communities were created respectively. The Executive Orders establishes the state policy of ensuring the rights and well-being of “non-Muslim hilltribes and ethnolinguistic minority groups with due regard to their beliefs, customs, traditions and institutions, as well as to further ensure their contribution to national goals and aspirations and to make them active participants in nation-building.” These

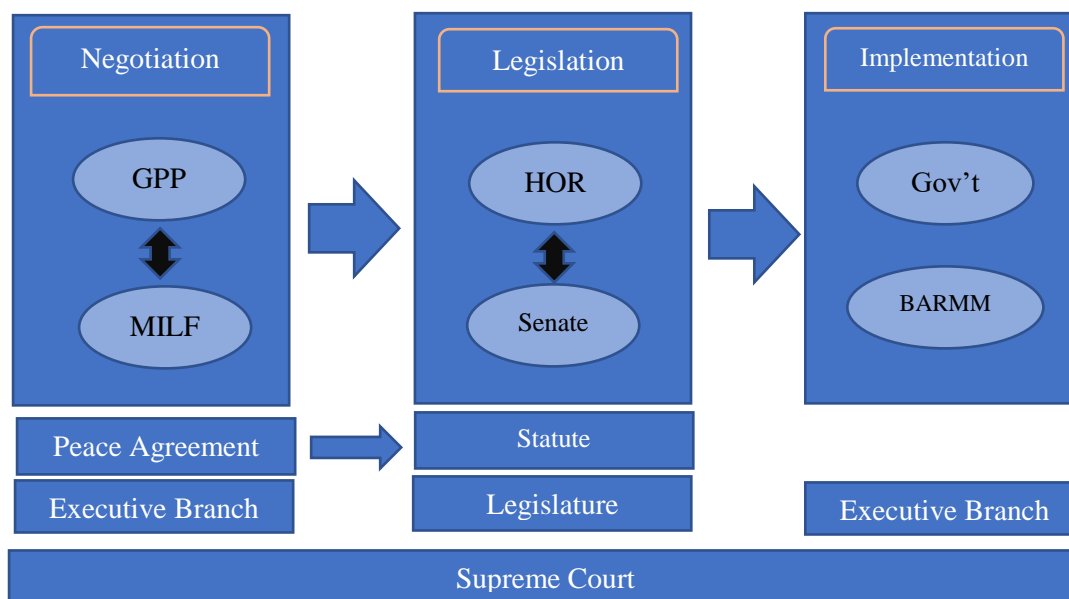
offices were replaced by the National Commission on Indigenous Peoples after the IPRA was signed in 1997.

The rights and well-being of the moros and the lumads as indigenous peoples were not only protected by the 1987 Philippine Constitution but also by executive orders and statutes that created offices for their welfare. These goes beyond recognition of diversity. It also institutionalizes the services that will be given to these groups and the recognition of their contribution to the Philippines state.

III. The Philippine Government-MILF Peace Process and Second-Order Minorities

It is argued that the lumads are marginalized in the peace process between the Philippine government and the MILF. Moreover, without a provision in the BARMM recognizing the rights of the lumads, this marginalization will continue. These are the concerns of the literature on second-order minorities (Barter, 2015; Paredes, 2015; Espesor, 2019). Using this literature, it is contended that the moros (first-order minorities) will and can marginalize the lumads (second-order minorities). This contention is unfounded using an institutional perspective. Firstly, there are so many opportunities in the peace process where the rights of the lumads could be advanced. Secondly, in analysing the legislative process, it could be seen that the interests of the lumads were protected. Lastly, even if there is intention by the government peace panel (GPP) or the MILF to marginalize the lumads in the peace process and in the implementation of the OLBARMM, the minority rights of the lumads could still be defended as they are safely enshrined in the 1987 Philippine Constitution.

Figure 1: Government-MILF Peace Process



The peace process with the MILF offers many opportunities to advance the minority rights of the lumads. While the formal peace negotiations may be exclusive to the peace panel formed by the president, groups that promote lumad rights could promote lumad rights through the legislature and even during the implementation of the OLBARMM. Briefly, a sketch of the peace process would be explained and then it would be followed by a discussion of how the lumad groups could and would have engaged the peace process.

After the signing of the Final Peace Agreement between the Philippine Government peace panel and the MNLF in 1996, the peace process between the Philippine Government and the MILF began. The MILF negotiated with five different presidential administrations from 1997 to 2014 when the Comprehensive Agreement on the Bangsamoro (CAB) was signed. The negotiations were primarily between the MILF and GPP. The

Malaysian government became third party facilitator during the administration of Gloria Macapagal - Arroyo, internationalizing the peace process. There were also various actors allowed to observe during the negotiations but those allowed in the negotiating table were the members of the GPP and the MILF.

This paper is using GPP rather than the usual GPH which refers to the Philippine Government or Government of the Philippines because the ones negotiating with the MILF are appointees of the President who is the head of the Executive Branch of government but not of the whole Philippine government. The Philippine government is made up of three co-equal branches of government, the different constitutional commissions, and the local governments. The members of the GPP represent the appointing president and not the whole of the Philippine government which includes the bicameral Philippine Congress and the Supreme Court of the Philippines. The Philippine

Congress and the Supreme Court of the Philippines have different roles in the peace process or roles that could affect the peace process. The Legislature and the Supreme Court may act contradictory to the agenda of the Executive Branch of government.

The provisions of the CAB which the GPP negotiated need to be translated into a statute that would create offices, allot funds for those offices to function, and allot funds to projects that need to be implemented. Without this enabling law, it would be difficult for the Executive Branch of government to fulfil its obligations in the CAB. According to the CAB, a draft bill will be prepared by an MILF - led Bangsamoro Transition Commission (BTC) which will be submitted to the Legislature. The draft bill will undergo the legislative process which will include an approval of both Houses of the Legislature, i.e. the House of Representatives and the Senate. If both houses approve the draft bill, it will be sent to the Office of the President for signature. Since the OLBARMM has been signed by President Duterte, the peace process enters the implementation stage of the peace agreement. In this stage, the national government and the BARMM are expected to implement programs that will hopefully bring peace.

The Supreme Court of the Philippines has the power of judicial review. With this power, the Supreme Court can declare unconstitutional the actions of both the Executive Branch of government and the Legislature. For example, cases against the CAB were filed asking the Supreme Court to declare the CAB unconstitutional. The cases were eventually dismissed by the Supreme Court (Reformina, 2016). The

Supreme Court can use its power as the final interpreter of the 1987 Philippine Constitution as it makes decisions on cases filed in its office. This means that while the Executive Branch negotiates with the MILF, its negotiators are limited by the mandate given to the President by the 1987 Philippine Constitution. Moreover, as the legislators craft the enabling law, they are also limited by the mandate given to them by the 1987 Philippine Constitution. The actions of the Executive Branch and the Legislature regarding the peace process that are outside of their respective mandates can be declared by the Supreme Court as unconstitutional. The OLBARMM and its implementation by the national government and the BARMM can be challenged in the Supreme Court.

The sketch of the peace process discussed above is based on how the government should work according to the 1987 Philippine Constitution. The negotiations and the implementation of the OLBARMM are functions of the Executive Branch of government and the crafting of the OLBARMM is the function of the Legislature. While the peace process is ongoing, the Supreme Court waits for cases to be filed to ascertain whether the actors in the peace process acted according to the constitution. All of these are part of the principle of checks and balances in a presidential form of government.

The interests of the lumads could be advanced in the negotiation stage by working with the National Commission on Indigenous Peoples that is mandated to advance the interests of indigenous peoples in the Philippines including the lumads of Mindanao. The NCIP, like the office of the GPP is under the Executive Branch of government. The GPP could

also be directly approached by the different lumad groups. In a position paper submitted by the GPP to the Senate Committee on Local Government, the GPP conducted 32 consultations with IPs between October 2010 to May 2015 in various venues and fora. The GPP also argues that the draft law that they proposed to the Legislature “amply provides for recognition, protection and promotion of IP rights and interests in the Bangsamoro” (GPH Peace Panel, 2015).

The literature on second-order minorities paints a different picture. Paredes (2015) argues that the lumads are “largely invisible” and mere “bystanders” in the peace process. They are “politically weak” and their participation is mere “minority tokenism”.

Moro and government negotiators have always paid lip service to Lumads as beneficiaries in the final outcome of the peace process, even going so far as to appoint Lumad representatives to the Bangsamoro Transition Commission (hereafter Trans Com), but their legitimacy as major stakeholders is regularly belittled. (Paredes, 2015, p.167)

At the same time, she also acknowledges that the lumads were assigned “consultant” status in the peace negotiations and that some Moro leaders have recognized the Mamalu-Tabunaway pact in 2012.

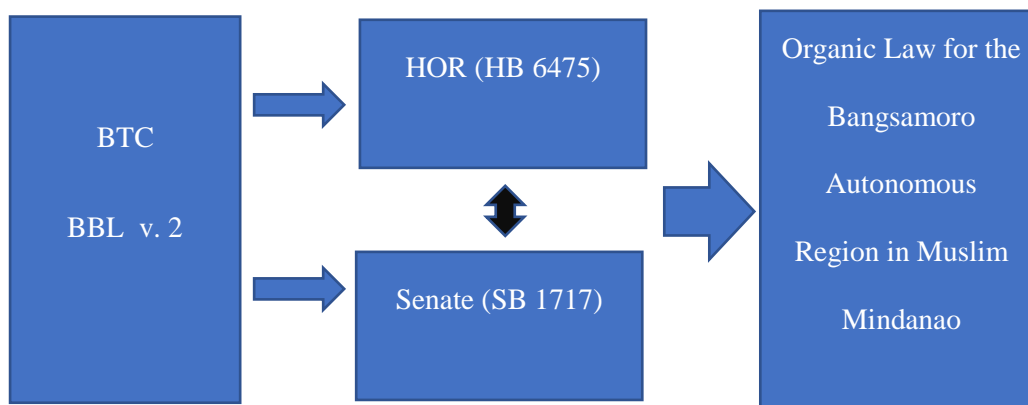
There is a need to understand that the negotiations are between the Philippine government and the MILF and therefore primacy would be given to both parties to the conflict. While a more inclusive peace process is ideal, minimizing the actors in

the peace negotiations make the process more efficient. While the Philippine government and the MILF are the main actors, it does not mean that other actors are excluded. Paredes herself admits that the lumad groups were given roles and the peace panel has reported 32 consultations with IP groups. The GPP as representatives of the President in the negotiations could also represent the lumad groups. It is therefore necessary then that various channels be utilized by lumads to influence the negotiations. There is no exclusion in the larger peace process and the limited participation of the lumad groups in the negotiating table can be justified. If there was marginalization in the peace negotiations, the peace process has other avenues in which lumad rights could be further advanced.

IV. The Legislative Process and the Rights of the Lumads

The interests of the lumads were advanced and protected in the Legislature. If we analyse the process of the signing into law of the OLBARMM, it can be observed that in terms of the recognition of the rights of the lumads, the OLBARMM has provisions that are not in the bill proposed by the Bangsamoro Transition Commission called the Bangsamoro Basic Law (BBL). The BBL was submitted to the legislature for consideration. In fulfilling their mandates, the legislators must ensure that the law they craft would be constitutional and in harmony with other national laws. They could not diminish the constitutionally guaranteed rights of the lumads and it could not run counter to the IPRA which spell out those rights.

Figure 2: OLBARMM in the Legislative Process



In order to know how the Legislature has advanced and protected the interests of the lumads, the contents of the BBL, the House of Representatives Bill 6475 (HB 6475), Senate Bill 1717 (SB 1717), and the OLBARMM must be compared. In terms of the purposes of the law (Please refer to Table 1) , it can be observed that the OLBARMM version recognizes not only the aspirations of

Muslim Filipinos but also of all the indigenous cultural communities in the autonomous region. This is not in the BBL or in HB 6475. However, it is in SB 1717. It can be argued that in this particular provision, the Senate has influenced the bicameral Congress to include in the purposes of the law the aspirations of the lumads

Table 1: Purpose of the bill/law

BBL	HB 6475
Article I, Section 3. Purpose. – The purpose of this Basic Law is to establish a political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and their aspiration to chart their political future through a democratic process that will secure their identity and posterity and allow for meaningful self-governance.	Article I, Section 3. Purpose. - The purpose of this Basic Law is to establish a political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and their aspiration to chart their political future through a democratic process that will secure their identity and posterity and allow for meaningful self-governance within the framework of the Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines.
SB 1717	OLBARMM
Article I, Section 3. Purpose. - The purpose of this Basic Law is to establish the Autonomous Region of the Bangsamoro, provide for its basic structure of government in accordance with the provisions of the 1987 Constitution in recognition of the justness and legitimacy of the	Article I, Section 3. Purpose. - The purpose of this Organic Law is to establish a political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and the aspirations of Muslim Filipinos

<p>cause of the Bangsamoro people and aspiration of the Muslim Filipinos and all the indigenous cultural communities for meaningful self-governance.</p>	<p>and all indigenous cultural communities in the Bangsamoro Autonomous Region in Muslim Mindanao to secure their identity and posterity, allowing for meaningful self-governance within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.</p>
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In Article IV of the OLBARMM where the general working principles of the autonomous region is enumerated, the rights of the non-Moro indigenous peoples are to be recognized and promoted by the autonomous region (Please refer to Table 2). This provision is not in the BBL and

SB 1717 but it is in HB 6475. Moreover, in Section 10 of OLBARMM, the freedom of the indigenous peoples to keep their identity is also recognized. This provision could not be found in Article IV of the BBL, HB 6475, and SB 1717.

Table 2: Declaration of the Rights of Non-Moro Indigenous Peoples

BBL	HB 6475
	<p>Article IV, Section 9. Declaration on the Rights of Non-Moro Indigenous Peoples. - The Bangsamoro Government shall recognize and promote the rights of the non-Moro Indigenous Peoples within the framework of the Constitution and existing Laws.</p>
SB 1717	OLBARMM
	<p>Article IV, Section 9. Rights of Non-Moro Indigenous Peoples. - The Bangsamoro Government shall recognize and promote the rights of non-Moro indigenous peoples within the framework of the Constitution and national laws.</p> <p>Section 10. Freedom of Choice. - The freedom of choice of all people within the Bangsamoro Autonomous Region shall be respected. Indigenous peoples shall have the freedom to retain their distinct indigenous and ethnic identity in addition to their Bangsamoro political identity. There shall be no discrimination on the basis of identity, religion, and ethnicity.</p>

However, the recognition of the rights of indigenous peoples has been consistent from the BBL to the OLBARMM (Please refer to Table 3). The right to native titles, customs and traditions, political structures, basic services among others are guaranteed by the OLBARMM

and can also be found in the BBL. In addition to this recognition is the establishment of a ministry for indigenous peoples in the Bangsamoro government and the reiteration of the state's commitment to the international documents pertaining to the rights of indigenous peoples and to the IPRA.

Table 3: Rights of Indigenous Peoples

BBL	OLBARM
<p>Section 4. Indigenous Peoples' Rights. – The Bangsamoro Government recognizes the rights of the indigenous peoples, and shall adopt measures for the promotion and protection of their rights, the right to their native titles and/or <i>fusaka inged</i>, indigenous customs and traditions, justice systems and indigenous political structures, the right to an equitable share in revenues from the utilization of resources in their ancestral lands, the right to free and prior informed consent, the right to political participation in the Bangsamoro Government including reserved seats for the non-Moro indigenous peoples in the Bangsamoro Parliament, the right to basic services, and the right to freedom of choice as to their identity consistent with the United Nations Declaration of the Rights of Indigenous Peoples and the United Nations Declaration on Human Rights and subsisting laws on indigenous peoples in the Bangsamoro.</p>	<p>Article IX, Section 3. Indigenous People Rights. - The Bangsamoro Government recognizes the rights of the indigenous peoples and shall adopt measures for the promotion and protection of the following rights: (a) Native titles or <i>fusaka inged</i>; (b) Indigenous customs and traditions; (c) Justice systems and indigenous political structures; (d) Equitable share in revenues from the utilization of resources in their ancestral lands; (e) Free, prior and informed consent; (f) Political participation in the Bangsamoro Government including reserved seats for the non-Moro indigenous peoples in the Parliament; (g) Basic services; and (h) Freedom of choice as to their identity. The Bangsamoro Government shall create a ministry for indigenous peoples and shall have the primary responsibility to formulate and implement policies, plans, and programs to promote the well-being of all indigenous peoples in the Bangsamoro Autonomous Region in recognition of their ancestral domain as well as their rights thereto. Any measure enacted by the Parliament shall in no way diminish the rights and privileges granted to indigenous peoples by virtue of the United Nations Declaration of the Rights of Indigenous Peoples and the United Nations Declaration on Human Rights, and other laws pertaining to indigenous peoples in the Bangsamoro Autonomous Region. This Organic Law shall not in any manner diminish the rights and benefits of the non-Moro indigenous peoples in the Bangsamoro Autonomous Region under the Constitution, national laws, particularly Republic Act. No. 8371, otherwise known as the "Indigenous Peoples' Rights Act of 1997."</p>

The representation of non-Moro indigenous communities in the Council of Leaders is ensured through Article VI, Section 9 of the OLBARM. This has been consistent all throughout the legislative process as it is in the BBL, HB 6475, and SB 1717. Moreover, the

provision also recognizes the non-Moro indigenous groups customary laws and indigenous processes when it comes to representation. Their representation in the Bangsamoro Parliament is also guaranteed by the OLBARM (Please refer to Table 4).

Table 4: Lumads in the Bangsamoro Parliament

BBL	HB 6475
<p>Article VII, Section 6 (3). Reserved Seats; Sectoral Representatives. – Sectoral representatives, constituting ten percent (10%) of the Members of Parliament, including two (2) reserved seats each for non-Moro indigenous people and settler communities. Women, youth, traditional leaders, and the <i>ulama</i> shall also have one reserved seat each.</p>	<p>Article VII, Section 6 (3). <i>Reserved Seats; Sectoral Representatives.</i> - Sectoral representatives, constituting ten percent (10%) of the Members of Bangsamoro Parliament, including two (2) reserved seats each for non-Moro indigenous peoples and settler communities. Women, youth, traditional leaders, and the <i>ulama</i> shall also have one reserved seat each.</p>
SB 1717	OLBARM
<p>Article VII, Section 6 (c). Reserved Seats; Sectoral Representatives. - Sectoral Representatives, constituting ten percent (10%) of the members of Parliament, including two (2) reserved seats each for non-Moro indigenous peoples and settler communities. Women, youth, traditional leaders, and the Ulama shall also have one (1) reserved seat each.</p>	<p>Article VII, Section 7 (c) Reserved Seats and Sectoral Representatives. - Reserved seats and sectoral representatives shall constitute at least ten percent (10%) of the members of the Parliament, which shall include two (2) reserved seats each for non-Moro indigenous peoples and settler communities. Women, youth, traditional leaders, and the Ulama shall have one sectoral seat each: Provided, That the reserved seats and sectoral; representatives shall in no case be less than eight (8) seats.</p>

If the legislative process is analysed, the lumad groups could find allies in either or both the House of Representatives (HOR) and the Senate. The committee hearings usually involve inviting experts and stakeholders to share their views regarding a proposed piece of legislation. Jesuit priest and anthropologist Albert Alejo (2014) for example argued in the HOR Ad Hoc Committee on the Bangsamoro Basic Law that the IPRA is a peace agreement of the Philippine government with the indigenous groups in the Philippines. Aside from the committee deliberations, lumads as citizens could demand from their representatives to advocate for their interests in the legislature and in any piece of legislation that is salient to them.

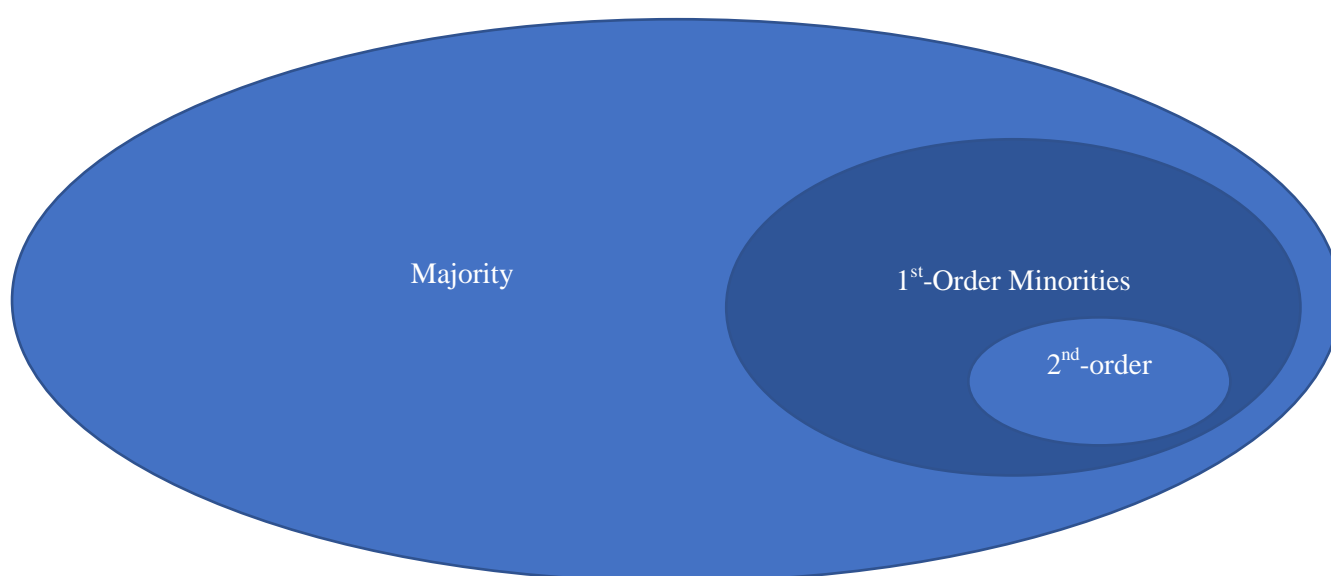
V. Lumad Rights Are Protected by the 1987 Philippine Constitution

Lumads as minorities in the Philippines are protected by the 1987 Philippine Constitution. The various provisions of the Philippine Constitution mentioned earlier in this article would protect the rights of the lumads with or without the OLBARM. These rights are further enhanced by the passage of the IPRA in 1997. Institutionally, these rights cannot be diminished even with the passage of a statute that would strengthen the autonomous region for the moros of Mindanao. In the previous sub-section, it was demonstrated that OLBARM is not only recognizing the rights of the indigenous peoples in the autonomous region as provided for by the BBL but also further strengthened by provisions added in the OLBARM by the legislators.

Why are there claims that there is “no place for ‘IPs’ in the future Bangsamoro” (Paredes, 2015) or that there will be “perpetual exclusion of second-order minorities” (Espesor, 2019)? In the case of the moros and the lumads, it might stem from the definition of second-order minorities and the assumptions behind such minorities.

Barter (2015) defines second-order minorities as the secessionists’ minorities. In the case of the conflict between the Philippine government and the MILF, the MILF are the secessionists, and their minorities are the lumads. The lumads are second-order minorities. Figure 3 seems to represent the idea of second-order minorities and first-order minorities situated within the majority.

Figure 3: First-Order Minorities and Second Order Minorities



In the literature on second-order minorities, the marginalization and exclusion of the second-order minorities come from (1) the majority and (2) from the first-order minorities that will become majorities when they have gained independence. This is problematic in the case of the Philippines because the MILF negotiated in various times for a separate state but has finally agreed to an arrangement of an enhanced autonomy. Institutional perspective, the lumads are as much national minorities like the moros. In the context of the conflict and the peace process, while there is a clash in the

Barter (2015) has distinguished between separatism and secessionism and the MILF is properly a separatist group rather than a secessionist group. Secessionists would eventually withdraw from their host states while separatists only aim to reduce the control of host states. Separatists could not have their own minorities because they are under the jurisdiction of the national state. The lumads therefore are not second-order minorities by definition. Using the exercise of rights of both minorities, one does not have an edge over the other only because it has the capacity to bear arms or they are numerically superior than the

other. They are of the same status as minorities, indigenous peoples in the Philippines.

Moreover, as Filipinos, both moros and lumads are citizens of the state who have equal rights. Their culture are recognized and protected by the state. This is true of other indigenous groups and ethnic groups in the Philippines including the Christianized ones. Both moros and lumads are recognized as agents who could contribute to the building of the Philippine nation.

Even if the lumads were marginalized in the peace process by the peace negotiators as claimed by Paredes, the government peace negotiators do not represent the whole government. At best, they only represent the president being their principal. The Philippine government as defined by the 1987 Philippine Constitution goes beyond the peace negotiators and the Executive Branch of government. This marginalization will eventually be tempered in the Legislature or checked by the Supreme Court. These institutions ensure that the Executive Branch protect the constitutionally

guaranteed and legally protected rights of minorities.

VI. Conclusion

The peace negotiations between the GPP and the MILF has sparked fears of the further marginalization of the lumads in the enhanced autonomous region for the moros. They were not given a seat in the negotiating table and there was no explicit recognition of indigenous people's rights in the early versions of the BBL. It has been argued in this paper that these fears are unfounded because one, the peace process is not limited to the peace negotiations and therefore, there are many ways that lumad rights can be advanced and protected. Two, an analysis of the legislative process reveals how the legislators have advocated for the rights of indigenous peoples by strengthening the OLBARMM's provisions on the rights of indigenous groups. Lastly, even if the lumads were marginalized in the peace process, the 1987 Philippine Constitution, the IPRA, and the other government institutions would continue to advocate for the lumads.

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