

The Code of Muslim Personal Laws (CMPL), Women's Rights and the Conflict in Southern Philippines

I. Background

My presentation this afternoon will focus on the Code of Muslim Personal Laws (CMPL), as well as its comparison to the Philippine Constitution and other international principles and agreements pertaining to women's rights. It also provides a set of policy recommendations geared towards advancing and protecting Muslim women's rights that are essential in securing genuine peace and development for Muslim communities, and in nurturing non-discriminatory perspectives towards Islam in the Philippines.

But before I discuss the CMPL, let me just give you a cursory review of the context of the conflict: which is popularly known as the Mindanao problem but which we, in the Muslim communities of the southern Philippines, call as the Manila problem.

Mindanao is the second largest island group in the Philippines located in the southern area of the country. Its 23 provinces are now home to roughly a quarter of the country's population, which in 2006 numbered around 18.1 million. The social landscape of Mindanao has long been defined by diversity. After centuries of western colonization, state attempts at integration, and continuing migration, the region is now shared by 3 major groups set apart from each other by their religious and cultural traditions: the Christians, the Muslims or the Moros, and the Lumads or the Indigenous Peoples.

There are at least 13 ethno-linguistic groups indigenous to Mindanao that has adopted Islam as a way - life. The three largest and politically dominant are the Maguindanaon (people of the flooded plains) of the Cotabato provinces (Maguindanao, Sultan Kudarat, North and South Cotabato); the Maranaw (people of the lake) of the two Lanao provinces; and the Tausug (people of the current) of the Sulu archipelago. The remaining ten are the Yakan, Sama, Badjaw, Kalagan, Sangil, Iranun or Ilanun, Palawani, Melebugnon, Kalibogan and Jama Mapun. There is also a growing number of Muslim converts from various ethno-linguistic groups all over the Philippines.

In the Philippines, the terms 'Muslim' and 'Moro' have been used interchangeably to refer to the various ethno-linguistic groups. Whereas the term 'Muslim' refers to a universal religious identity, the term 'Moro' denotes a political identity

distinct to the Islamized peoples of Mindanao and Sulu. The Spanish colonizers originally used the term for peoples of Mindanao who shared the religion of the Moors who had once colonized Spain. The term 'Moro' was used in the same derogatory way as the epithet 'Indio' for Filipinos whom they converted to Christianity. It was MNLF Chair Nur Misuari who appropriated the term Bangsamoro as the political identity of the Muslims in the Philippines.

The Moro Rebellion

Whereas most people in the Philippines are Christians due to the 300-year colonial rule of Spain in the islands, the majority of the country's estimated five million Muslims lives in the south, and has maintained a separate identity, calling themselves Moros. After the Second World War, the Philippine government encouraged the settlement of what was then Muslim-dominated Mindanao by Christians from the north of the country. This policy continued practice established under US colonial rule, which "set unequal limits on private land ownership for Christians and non-Christians", thereby leaving Muslims in Mindanao "minoritized". Such measures fostered discontent among the Muslim population about land rights.

In the early 1970s, a full-scale armed conflict erupted between the Philippine government and the Moro National Liberation Front (MNLF). The conflict, which lasted from 1972 to 1976, displaced a large number of civilians. In 1978, the Moro Islamic Liberation Front (MILF) broke away from the MNLF, with which the government subsequently signed a peace agreement in 1996. In 1987, four of Mindanao's 23 provinces voted for and were granted autonomy, forming the Autonomous Region of Muslim Mindanao.

In 1997, despite the signing of an Interim Ceasefire Agreement the year before, hostilities continued. In 2000, following a series of violent incidents, the Philippine government declared all-out-war on the MILF, to which the MILF responded by declaring *jihad* against the government. Another full-blown conflict erupted in 2003. By 2005, a bilateral ceasefire was put in place, and both parties to the conflict announced, "negotiations are eighty percent completed".

A breakthrough in the peace negotiations was announced in November 2007 when the two parties prepared to sign an agreement on ancestral domain, but talks were stalled when the government pushed for inserting constitutional processes into the discussion. The peace talks went back on track from March to July 2008, resulting in the MOA-AD. The elation of many peace advocates over the prospect of signing an agreement quickly dissipated as the Supreme Court issued a TRO and thereafter declared the provisions of the agreement "contrary to the Constitution." This episode resulted in conflict and in the dislocation of almost 700,000 people.

This brief introductory discussion is intended to remind everyone that as I discuss the CMPL vis-à-vis national laws and international agreements, we have to take into consideration the fact that all these are transpiring in a conflict-affected area. Muslim Mindanao has continued to suffer from conflict and war resulting to the region becoming "the poorest of the poor."

II. The CMPL

In an attempt to appease Muslim separatists, Pres. Marcos issued Memorandum Order (MO) 370 in August 1973 that created a Research Staff to draft the Proposed Code of Philippine Muslim Laws (Majul, 1980 in Ibrahim, Siddique, and Hussain, 1985). A year later, Executive Order (EO) 442 designated Cesar Majul of the Institute of Islamic Studies of the University of the Philippines (IIS-UP) to lead the Presidential Commission in reviewing the draft code. The Order stipulated that "the realization of the aspiration of the Filipino Muslims to have their system of laws enforced in their communities will reinforce the just struggle of the Filipino people to achieve national unity"(Majul, 1980 in Ibrahim, Siddique, and Hussain, 1985).

Then in February 1977, he signed Presidential Decree (PD) 1083 or the Code of Muslim Personal Laws (CMPL) into law (Majul,1980 in Ibrahim, Siddique, and Hussain, 1985). The Code stipulated the establishment of Shari'a courts (AIJC, n.d.). Its enactment was an offshoot of the 1976 Tripoli Agreement that the Marcos government forged with the secessionist Moro National Liberation Front (MNLF).

Many Filipino Muslims viewed PD 1083 as a political and legal milestone that signified the inclusion of Muslim culture as an important aspect of a pluralistic Philippine society (Rasul, 2003 in AIJC, n.d.). For Pres. Marcos, however, it was a conciliatory measure "that acknowledged personal normative obligations without seriously undermining Philippine civil law" (Holbrook, 2009).

Aside from legally enabling the institutionalization of a Shari'a Court System and an Office of Juriconsult in Islamic Law, the CMPL contains five books and six legal areas (Holbrook, 2009):

1. Marriage, divorce, and parental authority	1. Muslim holidays
2. Wills and estates	2. Transfer of real and personal property
3. Establishment and structure of shari'a courts	3. Conversion to Islam

It aims to (AIJC, n.d.):

- Recognize the legal system of Muslims in the Philippines as part of the law of the land
- Make Islamic institutions more effective
- Codify Muslim personal laws
- Provide for an effective administration and enforcement of Muslim personal laws among Muslim Filipinos.(Art. 2)

III. Reforming the CMPL

Many of those who have studied the situation of Muslim women in the Philippines have noted that scores of Muslim women in the country had little or no knowledge of their legal rights. But what proved more serious than their legal illiteracy was the absence of personal autonomy caused by a culture infused with patriarchal customs and traditions. Such condition largely "affects the individual's ability to participate in every level of social life – from decision-making within her home and family, to education, employment and public office."

Isabelita Solamo-Antonio (2005) avers that with the Code's inception a decade before the 1987 Constitution that contains provisions on gender equality, "there is a case for looking whether Muslim women enjoy the same women's rights that have been won by the women's movement worldwide and in the Philippines."

The Code's provisions caught the attention of feminists and human rights activists within and outside the country. A 2003 study reveals that PD 1083 has no provisions that would "protect women from the abuse of certain rights by their husbands, particularly those pertaining to divorce and polygamy...a husband may divorce the wife without any reason" (Busran-lao, 2000 in Nandu, 2003 in ALG, 2005). In addition, the restoration of conjugal rights because of a court order also defies the woman's decision not to do so (Nandu 2003 in ALG, 2005).

The Country Report on Women (1986-1995) prepared by the National Commission on the Role of the Filipino Women (NCRFW, now known as the Philippine Commission on Women), the National Coordinating Committee for Beijing, and the Coalition of Government Organizations and Non-Government Organizations (GOs and NGOs) for the Beijing Conference on Women gives four discriminatory articles from the Code (ALG, 2005):

1. The restriction on subsequent marriage of a widow or divorcee;

2. The right of a man to take back his wife without need of a new marriage if they are reconciled during her *idda3*;
3. The right of a man to have more than one wife; and
4. The restriction on the wife to acquire property by "gratuitous title."

The Code likewise pays scant attention on the well being of women, as well as children, in these articles:

Art. 16 Marrying Age	Adolescents are solemnized to marry by virtue of a guardian's consent. Puberty is viewed as license for marriage even if the parties concerned are not ready to do so.
Art. 67 Child support after divorce	This limits, if not eliminates, the father's responsibility to support his own child simply because of a failed marriage. This implies that a dissolved marriage will likewise dissolve parental responsibility
Art. 71 Parental authority over children born out of wedlock	The law protects the man from being accountable to his illegitimate children simply because of the absence of marriage; yet, it leaves the woman to fend for herself and her child.
Art. 122 Participation of full brother.	The provision stipulates "...a brother to inherit double the share of a sister." This suggests that a person's genitalia the extent of his/her cultural and economic privileges.
Art. 162 Subsequent marriages	This allows the Shari'a Circuit Court to "decide whether or not to sustain" a wife's objection to her husband's petition for subsequent marriage.
Art. 180 Bigamy	Muslim men who have committed bigamy are not subject to the provisions under the Revised Penal Code of the country.

These provisions of the Code are clearly against some internationally accepted laws and agreements. For instance, the Universal Islamic Declaration on Human Rights of 1980¹ has clear provisions on protecting gender equality:

- Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

¹ The Declaration was first proclaimed in the 1980's by the Islamic Council at the International Conference on the Prophet Mohammad and His Message. The document was rooted in the belief that Allah alone is the law giver and the source of all laws. It espoused that the State has an obligation to establish an Islamic order, and that all laws must be based on the Qu'ran and the Sunnah, as compiled by Muslim scholars, jurists, and representatives of various Islamic movements.

- ❑ Each of the partners in a marriage is entitled to respect and consideration from the other.
- ❑ Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.
- ❑ No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

Even the Cairo Declaration on Human Rights in Islam signed by 54 Muslim-majority countries provides for equality:

- ❑ Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

CEDAW

When measured against internationally accepted principles of human and women's rights, the Code becomes problematic. A case in point is CEDAW. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), was adopted in 1979 by the UN General Assembly², and is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

Among the significant provisions of the Convention is contained in Article 2 that obligates the State to do the following:

- ❑ The constitutional guarantee of equality and non-discrimination binds both the state and non-state institutions and actors in a centralized system of government as well as in a federated system.
- ❑ All women within the jurisdiction of the state, whether they are citizens or not, are protected.
- ❑ If necessary, enact relevant law to give effect to the constitutional guarantee of equality and comply with obligations under the Convention.
- ❑ Set up effective mechanisms through which women can obtain redress if their rights are violated.
- ❑ Repeal all discriminatory laws and policies and abolish discriminatory customs and practices

² It came into force as a treaty on 3 December 1981, thirty days after the twentieth member State ratified it (as laid out in Article 27).

Furthermore, Article 5 obligates States to remove impediments to women's equality based on negative cultural and traditional attitudes and practices. Article 16 then mandates states parties "to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations;" (Art. 16, para. 1) "must ensure, on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution;" (Art. 16, para. 1[c])

It is also noteworthy to emphasize CEDAW's General Recommendation pertaining to "Equality in marriage and family relations":

- ❑ A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.
- ❑ Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.
- ❑ The Convention also considers that the minimum age for marriage should be 18 years for both man and woman.

Following the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child.

There is enough reason to warrant concern about existing discriminatory provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages. It is important for Muslims in my country to have an open discussion of these issues. Moreover, the State must also intensify dialogue with the Muslim community in order to remove discriminatory provisions from the Code of Muslim Personal Laws.

Given these discriminatory provisions as well as the general social and political conditions on our community, it is not a surprise that many of us who champion women's rights have expressed concern about the precarious situation of rural and indigenous women, as well as the Muslim women in the autonomous region of Muslim Mindanao, who lack access to adequate health services, education, clean water and sanitation services and credit facilities.

Another particular concern is the women's limited access to justice in cases of violence, especially in the conflict zones, and the lack of sanctions against the perpetrators of such violence.