

REPORT

Philippines, MILF and Shari'ah Courts

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ABSTRACT

Southern Mindanao is tormented by violence of different scales since 1950's. While intriguing and interesting at the same time the presence of multiple judicial systems in this area is rather unknown to the rest of the world. This piece of writing, originally planned to be a research report, explores the presence and reasons for the rise of multiple judicial systems as an alternate justice system in Muslim Mindanao. Further this paper argues that while coexistence is risky, it is not much of an option to this conflict stricken area of Philippine archipelago.

INTRODUCTION

Shari'ah law is not just a legal system but also a moral system, a structure for living life as a devout Muslim. Jurists refer to the Holy Quran, the Sunna (the sayings of Prophet Mohammed) and the consensus of scholars and the elders of Muslim community, to determine 'divine will' for Shari'ah law. Shari'ah law was the system in Mindanao for centuries, even before Miguel López de Legazpi (although Ferdinand Magellan arrived here in 1521, colonisation is said to have started when Legazpi established the first settlement in 1565 in Cebu) landed in Philippines in 1565. What makes judicial set up in Mindanao unique is the presence of different types of Shari'ah courts in the area. While on one hand there is no denial that these are parallel systems¹, there is also no negation to the fact that these systems enjoy some sort of higher credibility². This report outlines the findings regarding the presence of three separate Shari'ah Courts in Muslim Mindanao.

MILF SHARI'AH COURTS IN PHILIPPINES

Shari'ah courts were established formally in modern Philippines by President Marcos through his presidential decree making power in 1977³ (Peace Review, 2011). This was a part of an eventually unsuccessful attempt by the

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1. The presence of all three systems were not usually openly acknowledged. A deep research on the ground and scan through various local Newspapers identifies the presence of certain extrajudicial judicial systems.
2. Thomas McKenna asserts in his book that "...residents relied on MILF courts on more consequential cases (McKenna, 1998)
3. The legislation known as 'Presidential Decree 1083' is also known as the 'Code of Muslim Personal Laws of the Philippines'.

dictator to appease the Moro's and solve the 'Moro problem'. Besides the 'Manila system', which is entrusted to deal with civil cases involving Muslim parties, Researchers have found the existence of three other judicial systems in the Muslim areas of Mindanao⁴.

Reports from the 1990s indicate that the Moro Islamic Liberation Front, hereinafter the "MILF") had initially deemed these Shari'ah courts as Islamic courts in their jurisdiction, but the air of suspicion towards any process initiated in Manila⁵, coupled with the failure of Manila to fulfil the expectations of the South, proved enough reasons for rise of discontent against the working of the new born system. This discontent among people towards the working of these 'Shari'ah courts' resulted in the birth of an alternative system in the mid-90s. Reports from the heartlands of Moro Movements (Earlier Moro Insurgency) suggested that people at grassroots disapproved the Government of Philippines (GPH) Shari'ah courts claiming that they were not implementing the 'true Islamic Shari'ah Laws'. In September 1995, Reuters reported that an unnamed MILF official admitted the existence of a court that will hear on criminal offences. He also declared that from now on Shari'ah law will apply to Muslims in the southern Philippines. Later Nur Misuari⁶ indicated that Christians will be allowed to be governed by Christian law in the new system (Reuters, 1995, UNHCR time line). This announcement if true was the first indication regarding the presence of alternative legal system in the region.

The MILF also created a new Military Shari'ah court in November 2010. This was primarily to deal with cases involving the military men of the MILF (BIAF) and to deal with crimes committed by other members of its military establishment thus it avoids any overlap with the jurisdiction of the regular MILF Shari'ah courts. The new system consists of a five member bench from the MILF top-level command with the Chairman from Lanao Del Sur. The

4. From the first one established by MNLF followed by MILF system and most recently the Bangsamoro Islamic Freedom Fighters (BIFF) courts all three existed in some parts of last four decades (not simultaneously). The presence of all three systems were not usually openly acknowledged, and it is deep researches at ground level which identified the presence of these systems

5. All five Shari'ah district court judgeships and 39% of circuit court judgeships remained vacant

6. Nur Misuari is leader of former militant group Moro National Liberation Front.

military court comes under the purview of the MILF Supreme Court. With the setting up of a military court, the MILF itself now has three tracks in resolving conflicts, including a reconciliation committee and the Shari'ah courts.

With time, the legal establishment have started to build an enforcement mechanism. (Jacinto, 2009, Timonera, 1997) Before the biggest MILF headquarters, Camp Abubakar in Matanog Maguindanao, was ransacked by Armed Force of Philippines (AFP) during the all-out-war ordered by President Joseph Estrada, the Shari'ah court of the MILF had reportedly convicted a number of rape suspects who were jailed in a detention cell at the camp.

BIFM SHARI'AH COURTS- ONE MORE INTO THE FOLD

The third brand of Sharia courts was established by Kato's group (BIFM). The 'Phil star'⁷ reported the circulation of text messages on Kato's henchmen punishing 5 men for having concubines in Datu Saudi. *'W bether illegal or not, the Sharia justice system is being imposed by the jihadist Bangsamoro Islamic Freedom Movement (BIFM) of Saudi-trained cleric AmerilOmbraKato'* reported Mindanao Cross (Mindanao Cross, 2012). Abu Misry Mama, spokesman of Kato, recently confirmed that they have indeed been handling criminal (include theft, murder and homicide) and civil cases based on Islamic jurisprudence (Mindanao Cross, 2012). As the MNLF and the MILF have declared on Umbra Kato's group as not acceptable, this new tier of Shari'ah courts is an entirely new strain (ABS-CBN news, 2011).

One of the most important factors to be noted is that civilians unanimously support and encourage the existence of any mode of judiciary. These are clear from the words that appeared in a newspaper article about the same in which an anonymous barangay official admitted “in a way, it helps” be it government, MILF or BIFM. Citizens want order in the society and not the “law of jungle”. The community of Cotabato still recall how a Christian complainant went to the MILF Shari'ah court after repeated failure of the Philippine National Police (hereinafter the “PNP”) to act on a complaint of alleged rape and how the MILF guerrillas managed to track them down and lock them in the jails of camp Abu-Bakr before they were freed by government in 2000. Such failures of government and the ability of the

7 *AFP still confident MILF can deal with Umbra Kato* August 2011

MILF/BIFM to implement their law will take the masses far away from Manila. If any system is successful in enforcing and interpreting some law in this conflict affected area, it is giving that sigh of relief to common men. Mindanao Cross recalls how these alternate systems are providing justice to illiterates and poor who were literally denied entry in the earlier systems (Mindanao Cross, 2012). Reports also points to another interesting fact, the existence of a judicial system of the same model under the MNLF in their revolutionary heydays although not reportedly fundamentally as strong as the MILF and the BIFM (Mindanao Cross, 2012). This acceptance given by people to any form of law in the land shows how badly people caught up in the violence crave for some sort of order in the society. This recognition to alternative systems is not an attempt to belittle the efforts of GPH but rather an assumption emanating from the understanding of limitations of a government and the peoples need for order based society living in a geographical area affected by insurgency.

CONCLUSION

While now we are more or less sure that there exist other systems of Shari'ah Courts, it would be interesting to see how they coexist. There are a few differences to this new system from the government Shari'ah Courts. Shari'ah law is not applicable to non-Muslims. This is a basic principle in the Quran. In Islam, "There is no compulsion in religion; unto you your religion, unto mine my religion". Reports from the field suggests that although the MILF Sharia'h courts primarily deal with cases involving Muslims, it also takes up cases with Christian parties if they pledge to abide by the court's decisions. But if the reports are of any indication, the system has already executed Christians at least in a couple of occasions (Jacinto, 2009).

While the Shari'ah system from the *Presidential Decree 1083* was aimed at solving the civil cases among Muslims in the south, the new system is applicable to both civil (land, family, adultery, marriage disputes, Ridos) and criminal (theft, kidnapping, rape, murder) cases.⁸

Both the GPH and the MILF panels also agreed that the people should be actively engaged in "determining the role of Shari'ah courts and the Islamic principles of justice and fairness in the region to promote the efficient administration of justice." The MILF from their part have even gone to the

8. Al Jacinto, 2009 reported incident where MILF rebels hold suspected kidnapper of 4-year-old boy.

level of expressing willingness to help the government maintain peace and order in Muslim dominated communities⁹ (Minda news, 2004). There is no doubt that the MILF hierarchy is expecting much out of the new system as evident from the words of Ghazali Jaafar, the MILF's vice-chairperson for political affairs when he told 'Business World' that "We have the reconciliation committee and the MILF's Shari'ah courts that are looking into various issue of concern."

As far as the author knows at the point of writing, the government haven't accepted or denied the existence of the MILF Shari'ah courts or for that matter any of the other parallel judicial systems. This go well with the peace agreement signed last year, but in the event of a change in status quo, government could declare that the existence of any such courts as illegal and this may give rise to potential hostilities. These new systems are seen as a mechanism that will ensure human rights and liberties for its inhabitants. While all this is for good if done, the setting up of this new system could be concluded as an attempt of the MILF to gather legitimacy in all fronts thereby ensuring that the organisation is the sole contender to be the leader of a new state. Thus the new branch of the MILF can be expected to work inside its perimeter and hope it would remain without a direct confrontation with government. These new systems can be found filling the vacuum left by the absence of losses made by the regular system. While on one hand this unique system is a model for coexistence of two opposite forces in the larger interest of welfare of the people, these systems should be dealt with care, as any miscalculation could be apocalyptic.

9. This could be seen as an attempt to find acceptance to this new system.

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