



## DECOLONIAL STUDIES PROGRAM

UP CIDS POLICY BRIEF 2023–04

# Decolonial Approaches to Legislation in the Bangsamoro Context

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## Why decolonize?

Decolonization is a continuing phenomenon. This process did not stop when former colonial imperial powers decided to let go of their colonies outside the West. The struggle for decolonization continues because colonialism continues to persist in other ways: in modes of thinking, worldviews, and everyday practices, among others. In addition, coloniality is not only present in terms of relationships between former colonizers and colonies. The scourge of colonial thinking and doing things is also present at multiple levels between and within national contexts.

## Why does BARMM need to decolonize?

The Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) needs to decolonize because of three reasons:

1. **The Bangsamoro region is a victim of colonial injustice.**

The discussion on the history (or histories) of Mindanao and the

Bangsamoro region is inseparable from the scourge and legacy of colonialism brought by foreign powers and the non-Muslim national government in Luzon.

In 1899, after the Spaniards sold the Philippines to the United States, American military operations began to establish contacts with the so-called “Moroland” in the southern Philippines. To forge amicable relations and instill peace in Mindanao, the American colonial government pursued written (e.g., the Bates Agreement) and verbal deals with various sultanates and chiefdoms in the region (e.g., the Sultanate of Sulu, and Mindanaoan and Basilan *datus*). At first, the sultans and *datus* viewed the agreements as an opportunity to preserve peace and their own leadership in their respective territories. However, the increasing presence of Americans in the region resulted in violent conflicts due to the increasing alienation of Moros from political and economic processes in

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the region. As a result, in 1903, the American colonial government created the Moro Province in the hopes of addressing the conflict.

However, despite the introduction of new institutional arrangements, the governance of Moro Province continued to marginalize the voices of the Moro people, especially in terms of administrative policies against local culture and the Islamic religion. These policies negatively affected Moros' education, political participation, and legislation. Unfortunately, this alienation did not end after the Philippines received independence in 1946. National political elites continued to replicate colonial modes of administration in Mindanao, particularly among Bangsamoro communities (Gowing 1968). This led to the emergence of separatist movements in the region. This phenomenon not only claimed several lives but also hampered the development of Bangsamoro and the whole of Mindanao.

**2. The Bangsamoro region was given a certain degree of political autonomy by the Philippine government.**

Even before the creation of BARMM in 2018, the Bangsamoro region was allowed to enjoy its right to self-determination through the now-defunct institution of the Autonomous Region of Muslim Mindanao (ARMM). However, while given certain political freedoms, ARMM failed to realize the opportunities of political autonomy since the institution only continued the pre-existing political institutions and practices that were present before its creation in 1989.

BARMM should not waste the opportunity of increased political autonomy granted by the national government. The region can do so through crafting and passing sound legislation, policies, and rules that

directly address the needs of the Bangsamoro people. The regional government should take advantage of its unique local culture and heritage, and discover the beauty and virtues of its indigenous political systems and practices, which can be utilized to further empower local citizens.

**3. The Bangsamoro people must resist the replication of colonial ideas on politics, which may potentially defeat the purpose of BARMM's creation.**

While the Bangsamoro Organic Law stipulates the institutional design of the BARMM government, BARMM officials should exhaust all efforts to avoid repeating the past mistakes of ARMM. As mentioned in number 1, the national government only continued the mistakes of the American colonial government and did not truly acknowledge the differences between Christian majority groups and Muslim minorities. Mindanaoan Muslims were forced to subscribe to Luzon- and/or Christian-centric rhetoric in all aspects of life, especially in terms of basic social institutions such as family, education, and policymaking— including legislation. The close affinity between national politicians based in Luzon and the local political elite in Mindanao enabled the replication of the historical administrative mistakes of failing to acknowledge that Muslims in Mindanao have their own inherent way of doing politics to address their development and chart their political destinies.

**Why do we need to decolonize legislation in the Bangsamoro region?**

Since BARMM is a newly created institution, the Bangsamoro Transition Authority (BTA) Parliament is tasked to create laws that will define its structures, as well as other laws governing the lives of citizens residing inside the region. If the Parliament's legislations merely recycle or copy the legislation of the national

government, or if it were to fail to address the local needs of the people, then such practice would defeat the very purpose underpinning the political autonomy granted to the Bangsamoro region.

### **How can we decolonize the legislation in the Bangsamoro region?**

Before we discuss ways to liberate Bangsamoro legislation from its colonial chains, we need to acknowledge that colonialism pervades Philippine legislation. This is because the American legal system is the primary reference for current and previous constitutions of the Philippines. By looking at the American system as a model, with a few modifications, the Philippine national government adopted both the Christian and secular elements of the American political system. This benchmarking, in turn, further alienated the Moros, who already had their own legal systems before their nonconsensual merger with the rest of the Philippines. Furthermore, the legal system of the national government and the national Constitution still had to be followed despite its incongruence with the practices of the Moro people. Problems in education and land rights are a direct result of this obligation. As an example of colonial education, books written by Christian authors and without care for Moro culture are distributed to Moro students. Regarding land rights, Moros are forced to deal with their ancestral land being seized, as well as differing definitions of land ownership.

Consequently, the creation of BARMM was also benchmarked to the institutional configurations of the national political system, consequently perpetuating colonial thinking and practices in the region.

To liberate BARMM from the colonial legacies hindering its development and the self-realization of the Bangsamoro people, the following ways are suggested:

- a. **Overhaul the current legal education and design a Bangsamoro-centered curriculum for legal studies.**

The legal curriculum must be checked for colonial influences. In overhauling the curriculum, both content and pedagogy must be examined. We recommend the following guide questions for the consideration of BARMM's honorable legislators interested in championing the development of the region's legal studies:

- Whose works are cited and used as references?
- Who is teaching? What is their background? What is the legal paradigm they profess and practice?
- What is the pedagogy used in these classes?
- How can we engage people in thinking about participating in legislative processes?

Legislators need to address these questions because legal education in the Philippines is heavily influenced by Christianity, particularly by the Canon Law of the Roman Catholic Church. Parroting the philosophy, logic, and discourses of the legal system at the national level is incompatible with BARMM, especially since the region was given political autonomy due to its Islamic heritage.

One good example of redoing the legal curriculum is including local thinkers or adopting the thinking of Moro scholars. This can be done as long as they are congruent with local ways of thinking to address the region's developmental trajectory.

- b. **Make legal language understandable to the public.**

The language used in legislation is often inaccessible to the general public. Therefore, they are unable to understand the law. Keeping the law esoteric and incomprehensible to the people is one of the vestiges of colonialism because of its lack of inclusion, which serves to uplift only

the elite. Giving the common person an avenue for understanding the law is key to peoples' empowerment, which is necessary for economic and social development.

In addition, as mentioned in the previous section, legislators need to critically consider the raised guide questions. This is necessary, especially because legal education in the Philippines is anchored on the philosophy of Western Christianity, which in turn is continually reinforced in most of the leading law schools in the Philippines, many of which are Manila-based universities owned by Catholic religious orders. For instance, why do we need to copy and parrot Latin legal maxims even though Latin is not an indigenous language in the Bangsamoro region? In fact, the Roman Catholic Church—the only institution in the world that uses Latin for its everyday operations—accepted the inclusion of local and indigenous languages in its rituals and the intellectualization of theology and religious laws. If the institution that played a part in the colonial history of the world is now promoting decolonization, then BARMM should not fall into the trap of imitating what is practiced in the Philippine capital. In fact, BARMM must be empowered to transform its legal system by promoting and investing in legal parlances that are comprehensible to the common Moro citizen.

**c. Empower and incentivize the average person to participate in public discussions and policy consultations.**

BARMM needs to ensure the creation of participatory institutions that will comprehensively encompass the views, concerns, interests, and demands of every policy stakeholder. At the national level, legislation is usually crafted through public consultations and the formation of technical working

groups (TWGs). To a certain extent, these practices indeed promote public participation. However, they tend to have a gatekeeping effect, especially as articulated by this question: “Who selects the persons who will participate?” BARMM should invest in rediscovering indigenous ways of political participation present among the cultures of every ethnolinguistic group living in the region, and carefully study how these practices can be integrated into the existing political institutions of the region.

**d. Provide more spaces for scholars and policy experts.**

Ensuring legislation holistically covers all issues is part of decolonization. Having experts and scholars from different fields tackle an issue addressed by legislation helps immensely in ensuring that the law is made for the common good.

In the Philippine Congress, legislation always involves the creation of TWGs. Despite their adherence to the word “technical,” these groups tend to prioritize certain professions, sectors, and expertise due to various reasons—logistics, schedules, limited knowledge, and so on. BARMM should not imitate these tendencies.

In addition, BARMM should recognize the works, opinions, and suggestions of its local experts. Academics, researchers, and experts based in BARMM have more authority to discuss and determine the needs of local citizens, as they are immersed and embedded in local communities, unlike experts based outside the region—especially experts from Manila and outside the Philippines.

**e. Accommodate and normalize local indigenous worldviews and languages.**

Ultimately, the inclusion of local and/or indigenous knowledge in legislation



is important, and ideal in ensuring the law fits the ways of the people. The most relevant example of indigenous knowledge being extremely useful in legislation pertains to environmental issues. Because they identify with the environment and the land, indigenous peoples must be included when addressing issues related to land ownership, rights, and management. Legal systems can also be changed to adopt aspects of indigenous legal systems, such as *agama* or customary laws in Mindanao, in order to replace colonial lines of thought and make laws more attuned to the local ways of life.

People of the Bangsamoro region have a sense of identity strongly different from the “Filipino” identity, which is entrenched in Christian thinking. Only when Bangsamoro legislation is decolonized can the people enjoy laws that align with their culture and ways of life.

Moreover, legislators of the Bangsamoro should practice decolonial thinking in their policymaking in three ways:

- *A regular self-assessment, in which legislators are enjoined to critically reflect on their own and others’ positionality.* Here, legislators must deeply think about and evaluate their positions in society. Their identities and experiences in life have a role to play in their motivations and vested interests in legislation, which, in turn, affects their relationship to power inequalities. Gender, economic status, education, ethnicity, and employment, among other privileges, shape the policymaking process. Legislators may be part of the subjugated, or they may be part of the subjugators. Through constant assessment of the self and constantly considering and understanding the positionalities of others in society, lawmakers are able to better identify which parts of the law benefit or harm the
- common good. Also included here is the evaluation of the region’s relationship with the national government and external powers. These entities, which lie outside the Bangsamoro region, still influence policymaking in the region.
- *A critical and thorough reassessment of current legal systems in order to identify what is colonial; and what should be removed, retained, or added.* Because of the history of the Bangsamoro with American-style policies and the benchmarking of Bangsamoro law along the still-colonial national law, there is a need for close reevaluation of the current legal system. To reexamine the current legal system and to identify the coloniality within, it is imperative to decolonize the knowledge that shapes these systems. Knowledge may, in fact, be colonial when it is based on foreign thinking. Once one is acquainted with a noncolonial perspective, it is easier to decolonize the senses.
- *A focus on the common good and listening to affected populations.* Since foreign research is often used as the basis of policy making, legislators in the Bangsamoro region must fund, invite, and pay much more attention to research done by people who have an intimate understanding of local ways of life. Scholarship and research work done by those who understand the realities of the Bangsamoro region firsthand are much more insightful in this context. In addition to paying attention to this kind of research, it is also important for legislators to listen to their constituents by holding public consultations, inviting the general public to share their lived experiences, promoting indigenous knowledge and even traditions, and working on existing political structures that cause inequality.

Giving the Bangsamoro people many opportunities—through which they can air their grievances and suggest ways to tackle an issue—helps make legislation much more accessible and decolonized. Also important is creating holistic laws through interdisciplinary action and inclusion of indigenous knowledge systems, as mentioned earlier.

However, decolonizing legislation in the Bangsamoro context is not without danger. Legislators should be very careful as to not risk a repeat of subjugation and oppression via the uncritical promotion of traditions and local culture. Decolonization does not automatically mean completely returning to precolonial systems, as tradition can also be used oppressive ways. It is imperative that legislators pay attention to the current needs of the people and not be blinded by an imagined past. The core principle of decolonizing legislation—inside and outside the Bangsamoro context—is embracing and uplifting local voices and knowledge systems. To summarize, the genuine inclusion of the people is the basis of decolonization.

## Acknowledgments

This policy brief is based on “Decolonial Approaches to Legislation,” a seminar-workshop conducted by the University of the Philippines Center for Integrative and Development Studies (UP CIDS) Decolonial Studies Program (DSP), in partnership with the Bangsamoro Transition Authority (BTA) Policy Research and Legal Services (PRLS), held on 3–4 December 2022. The roster of speakers included Dr. Nassef Manabilang Adiong (Director, PRLS); Ms. Saima Mamalo (Staff, PRLS Legislative Measures and Legal Assistance Division); Mr. Vincent Casil (Supervising Legislative Staff Officer II, PRLS Legislative Research Division); and Mr. Kebart Licayan (Staff, PRLS Legislative Research Division). Atty. Archill Capistrano (Assistant Professor, University of the Philippines Cebu) facilitated the workshop.

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