



Review of the Legal and Institutional Framework on the holding of the 2022 Parliamentary Elections in the BARMM

SUMMARY

*This policy paper was developed by **Atty. Luie Tito F. Guia** for the project "Enhancing Political Dialogue for Inclusive Peace in the Bangsamoro" (EnPoLD Bangsamoro) of the Institute of Autonomy and Governance (IAG). Atty. Guia is former Commissioner of the Commission on Elections, and has consulted as an election expert in several countries in Asia, Africa and Eastern Europe. Views here do not reflect the position of the Commission on Elections.*

The key points of this review are:

- The enactment of Republic Act No. 11054 or the Bangsamoro Organic Law (BOL) brought a lot of promise to the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), in part because of the introduction of a parliamentary system of regional government and the proportional representation design in electing parliament ministers.
- The decision to prescribe a parliamentary form of government is premised on having stable and functioning political parties. It is for this reason that the BOL mandates the design of an electoral system that encourages "the formation of genuinely principled political parties" and increases incentives for political parties, rather individuals, to succeed electorally.
- The system of proportional representation or "PR" is intended to engender a party-centric political environment and a more inclusive political process.
- Under the BOL, existing national parties, as well as existing local parties within BARMM, but whose coverage are only province-wide or smaller, are not allowed to participate in the PR election. Groups must register regional political parties with the Bangsamoro Regional Office.



- Concerning the requirement for the Bangsamoro Transition Authority (BTA) to design a district allocation for the first elections in the region, having a different district configuration for the parliamentary seats in the BARMM from the district configuration for seats in the House of Representatives presents a problematic situation for election administration
- The organic laws enacted under Article X, Section 10 of the Constitution stand at a slightly privileged status than ordinary statutes. An organic law for an autonomous region "is more than an ordinary statute because it enjoys the affirmation by a plebiscite."
- The electoral system that the Bangsamoro Government "shall adopt" and which must be consistent "with national election laws," under Article IV, Section 4 of the BOL, is that which the Bangsamoro Electoral Code must embody.
- The BARMM government must already come up with an "electoral system" before the 2022 Parliamentary elections.
- The BOL and the Bangsamoro Electoral Code would embody political and broad electoral policies. Both will serve as bases for COMELEC's rules and regulations governing the conduct of elections in BARMM.
- The Bangsamoro Electoral Code is an opportunity to update and codify all the scattered provisions of existing laws applicable to BARMM and merge them into a more organized, logical, and coherent presentation.
- The BOL itself provides a fall back in case the BTA fails to enact a Bangsamoro Electoral Code for the 2022 elections. It prescribes the use of subsisting laws on election in said eventuality.
- It is apparent in the BOL that the Bangsamoro Electoral Office or "BEO" is not an office independent of COMELEC.
- By default, the Office of the Regional Director of COMELEC functions as the Bangsamoro Electoral Office. The COMELEC, though, may need to establish the Office formally, be it the existing COMELEC field office in the BARMM headed by the Regional Director. Or it may decide to establish a new parallel office that can perform the specialized functions necessary to execute the requirements that will be embodied in the Bangsamoro Electoral Code, particularly as regards political party registration.
- BEO functions as the registrar of regional political parties in the BARMM.
- Should the BARMM government fail to enact the Bangsamoro Electoral Code, the first parliamentary elections in 2022 can still take place under subsisting election laws. Yet, it would not have the home-grown feel and characteristics that the elections should have consistent with the objectives of the BOL.

The key recommendations are:

- The Bangsamoro Electoral Code should be enacted soonest and must contain, among others, the following:
 - o A clear statement that only BARMM regional political parties are allowed by the BOL to participate in the parliamentary elections. In any case, should the BARMM government have a different opinion on this, the same should also be set out clearly in the Code.
 - o The Code must include clarification of the meaning of “regional political parties” as to how the term can be operationalized.
 - o A requirement that all registered regional political parties to submit a status and update report annually similar to a resolution that COMELEC recently adopted.
 - o Rule on how regional political parties must order the name of the nominees in their list, which can consider the so-called Zipper System or any of its variations.
 - o Rules that will govern a situation when any of the nominees would die, become incapacitated, disqualified, or would withdraw. Again, these matters are among those that the BTA may need to include in the Bangsamoro Electoral Code.
 - o The rules will govern the elections in the sixty-three barangays from North Cotabato to address their unique “geographic situation.”
 - o The manner of election of ministers for the Reserved and Sectoral Seats in Parliament must be included
 - o The BARMM law on *Initiative* can be included.
 - o Other recommendations are in the table attached as Annex “A” to this paper.
- The BTA should follow the district allocation for the House of Representatives, or if it ever must do a re-districting scheme, the BTA must, as much as possible, align the scheme with legislative district scheme of the House of Representatives.
- The BARMM government and the COMELEC should establish a Technical Working Group to draft the Bangsamoro Electoral Code.

Background and Introduction

The passage of the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao and its eventual ratification offers fresh hope to the Bangsamoro people.¹ It replaced the government structure prescribed by earlier organic laws. The new system of government and method of electing political leaders introduced by the law are significant departures from the old design. The hope is that this new system would finally bring about the kind of government that would give the people in the region meaningful autonomy.

The organic law is an offshoot of the peace negotiations between the Philippine government and the Moro Islamic Liberation Front (MILF). The new scheme hopes to end a long-drawn conflict brought about by the pursuit of a separate and independent political entity for the Bangsamoro people. It is the document that embodies the commitment of the national government of the Philippines to recognize the right of the Bangsamoro people to meaningful autonomy, and of the MILF, representing the Bangsamoro people, to, in turn, recognize the sovereignty and territorial integrity of the Philippine Republic.

This backdrop highlights the critical nature of ensuring that the new autonomy set up in the region succeeds. The BOL is the latest of three versions, the earlier of which were thought to be either inadequate or have failed to bring peace that the Bangsamoro people have long aspired for. It is therefore vital that this third iteration sees itself through up to its full fruition. The 2022 first Parliamentary election is a crucial milestone in this regard.

After the ratification of the BOL, the President appointed eighty individuals to compose the Bangsamoro Transition Assembly or “BTA,”² which the organic law has tasked to perform the lawmaking role of the Parliament until the election of the regular ministers in the scheduled May

2022 elections. President Rodrigo R. Duterte appointed Ahod B. Ebrahim, Al-Haj, as the Interim Chief Minister.³

The BOL directs the BTA to provide the building blocks for the new Bangsamoro autonomous government by mandating it to pass priority Codes.⁴ These are laws that are necessary to provide the basic legal and regulatory framework for the operation of the autonomous BARMM government. One of the priority Codes is the Bangsamoro Electoral Code. Just recently, the BTA received from the BARMM cabinet, the proposed Administrative Code, the Civil Service Code, and the Local Government Code for its consideration. As of the writing of this paper, however, the Bangsamoro Electoral Code has yet to be finalized.

It is not surprising that stakeholders in the region are anxious about the Bangsamoro Electoral Code. The Code is critical in shaping the initial power structure in the BARMM. For one, the BOL requires the Electoral Code to provide the manner and procedure for the election of BARMM Parliament ministers. The enactment of the Bangsamoro Electoral Code is important to the people in the BARMM territory, considering that it will guide groups who might want to run for the Parliamentary elections

Congress has seen fit to prescribe that BARMM should have a parliamentary system and that one-half of the ministers in the Parliament should be elected by way of a proportional representation (PR) system. The BOL chose this electoral design presumably to engender the development of programmatic political parties that will run the BARMM government. The BOL hopes that the innovation would veer BARMM away from the highly personalistic and elitist politics that held sway in the region. The novel features of the BARMM government excite political reformers, including those from outside of BARMM. The implementation of the PR system in the region would be a

showcase of how such a system, which experts claim to provide a more meaningful democratic representation,⁵ can work.

This paper aims to review and analyze the BOL along with the other laws that comprise the legal framework of Philippine elections. It will attempt to clarify election law principles as they relate to the ground realities of election management. It will examine the provisions of the Omnibus Election Code, and relevant amendments, particularly the portions that have probable bearing in the drafting of the Bangsamoro Electoral Code. It will, likewise, look at the extent of the participation of COMELEC in the process, considering its mandate in the Constitution as the institution solely responsible for administering all electoral exercises in the Philippines. Finally, the paper will offer recommendations on how the drafters should structure the Bangsamoro Electoral Code and on what matters may be included therein.

The Autonomous Regions Under the 1987 Constitution

To be an “autonomous” region under the 1987 Philippine Constitution is to be a region that has its own “structure of government”⁶ appropriate to its distinct “historical and cultural heritage and economic structure.”⁷ The autonomous region, however, should still be within the sovereignty of the State. Other local government units that are not among those the Constitution recognized as regions that can be “autonomous,” cannot have their own structure of government. They must follow the uniform structure provided under the Local Government Code.⁸

The structure of government in autonomous regions consists “of the executive department and the legislative assembly, both of which shall be elected and representative of the constituent political units.”⁹ The Legislative Assembly can enact laws for the region.¹⁰ The executive department of the regional government, on the other hand, is empowered to enforce and administer the laws passed by the Assembly.

The Constitution identifies Muslim Mindanao as among the two regions endowed with the right¹¹ to be recognized as “autonomous.” The other is the Cordillera region in northern Luzon.

The Organic Laws of Muslim Mindanao

The initiatives to establish an autonomous region in the Cordilleras failed because the organic laws for its creation, Republic Act No. 6766¹² and Republic Act No. 8438,¹³ were unable to get the necessary ratification in plebiscites conducted on January 30, 1990 and March 7, 1998, respectively.¹⁴

On the part of Muslim Mindanao, however, there have since been three versions of the organic law.

Republic Act No. 6734

The first of these versions is Republic Act No. (RA) 6734,¹⁵ enacted on August 1, 1989. This law came out of an effort to comply with the Constitution’s mandate for Congress to pass an organic law within eighteen (18) months from the organization of both houses of the first Congress.¹⁶ Said law created the Autonomous Region in Muslim Mindanao¹⁷ (ARMM).

Under RA 6734, a Regional Legislative Assembly, composed of members in which every legislative district in the region has three representatives,¹⁸ exercises legislative powers. The legislative districts referred to in the law correspond to the congressional districts for the House of Representatives in the national Congress. There is also a provision in RA 6734 that grants BARMM residents the power to propose and enact laws through a system of initiative and referendum.¹⁹

The members of the Regional Legislative Assembly are elected directly by popular vote.²⁰ They have three-year terms of Office and that each member can only serve a maximum of three successive terms.²¹

A Regional Governor, on the other hand, exercises executive power.²² The voters elect the Regional Governor directly.²³

Said law likewise mandated that there be a Regional Vice-Governor who should possess the same qualification and term of office as that of the Regional Governor. Like the Regional Governor, the Vice Governor must also be elected by direct vote of the voters in the region.²⁴ If the Governor appoints the Vice-Governor as a member of the Cabinet, the Commission on Appointment need not confirm said appointment,²⁵ unlike those of other members of the Cabinet.

The COMELEC, consistent with its power and functions under the Constitution as the sole body tasked to enforce and administer all laws relative to elections,²⁶ was charged with managing the polls in the ARMM every three years. For the same reason, COMELEC ran the plebiscite that ratified RA 6734 that resulted in the creation of ARMM, at least for the four provinces that voted favorably.

RA 6734 identified the thirteen provinces and nine cities whose voters voted on November 17, 1989, in a plebiscite on whether they approve of RA 6734.²⁷ Only the provinces of Maguindanao, Lanao Del Sur, Sulu, and Tawi-Tawi, however, voted in favor of the law and, therefore, the only ones that composed the first ARMM.

COMELEC conducted the first election in the ARMM in March 1990 for Regional Governor, Vice-Governor, and Legislative Assembly members.

Considering that the terms of office of those elected in March 1990 were to end on March 31, 1993, COMELEC conducted the second ARMM election on March 25, 1993. To ensure, however, that there will be no vacuum should the proclamation of winners be not completed by March 31, Congress enacted a law providing a hold-over authority for the incumbents. This means that they may hold on to their offices until their successors qualify. This law, RA 7647, also outlined the procedure to be observed

by the Boards of Canvassers at the different result consolidation stage.

On December 29, however, Congress passed a law resetting the election scheduled in March 1996 to September 9, 1996, and allowed the elected officials of the incumbent ARMM administration to hold-over to their positions until the election of their successor. The law, RA 8176, also changed the commencement of the terms of office of the elected ARMM officials from noon of March 31 to the noon of September 30, but maintained the uniform three-year length of the terms of office.

The September 9, 1996 election was the first election that used what was then called a "computerized election system" on a pilot basis.²⁸ It elected then MNLF chair, Nur Misuari. It is of note that the election was around the time that the government finalized a peace agreement with the MNLF led by Nur Misuari.

On March 4, 1999, Congress enacted RA 8753 that set the regular date of the ARMM election on the second Monday of September and every three years after that. This law also nullified the then existing list of voters in the ARMM and called for a general registration and set it on 8-9 May 1999.

The terms of Office of Regional Governor Nur Misuari and the rest of the officials elected with him were supposed to end on September 30, 1999. However, Congress passed another law, RA 8753, postponing the scheduled election on September 13, 1999, and reset it to the second Monday of September 2000.

Again, on September 1, 2000, Congress came up with another law, RA 8953, changing the date of the regular election schedule in ARMM to the second Monday of May 2001, simultaneous with the regular schedule of national elections and every three years after that.

Republic Act No. 9054

In March 2001, the second version of the organic law for ARMM came into being.²⁹ Just like RA 6437, this law was also submitted for approval of the people residing in identified provinces and cities in Mindanao in a plebiscite held on August 14, 2001. RA 9054 is a more comprehensive version of the organic law. The title itself reveals that it is an expanded version of RA 6437. Congress, however, has referred to RA 9054 as an amendment to RA 6437.

In RA 9054, Congress reiterated and carried over the ARMM government structure provided under RA 6437. The Regional Legislative Assembly, which is composed of three members elected by popular vote from each of the legislative districts in the region,³⁰ holds legislative power. The innovation this time is that the sectoral representatives in the Assembly can number up to fifteen percent of the total number of elected members.³¹ The sectoral representatives were to come from the following sectors: agricultural, labor urban poor, disable, indigenous cultural communities, youth, and women sectors,³² although the Assembly may decide to provide representation from other sectors.

Like in RA 6437, Congress in RA 9054 granted executive power to the Regional Governor, whose qualifications for office are the same as those provided in the former law. He or she should be a natural-born citizen, a registered voters of the region, at least thirty years of age on the day of elections, able to read and write, a registered voter on the day of voting, and a resident of the region for at least one year as of the day of the election.³³

There is also a Regional Vice Governor, but the change in RA 9054 is that they are elected as a tandem directly by the qualified voter of the region. This means the vote for either is to be counted as a vote for the other.³⁴

RA 9054 also increased the number of Cabinet members from nine in RA 6437 to

ten, with six of them coming from indigenous cultural communities and shall come from the various cities and provinces of the region.³⁵

The law maintained the three-year terms of office for all the elected officials. It also kept the maximum of three terms for all the Regional Assembly members and increased the same for the Regional Governor and Vice Governor from two to three terms.³⁶

As in RA 6437, COMELEC is the one tasked to administer elections in the ARMM.³⁷ Also, the law directed COMELEC to conduct a convention for the election of sectoral representatives to the Regional Legislative Assembly and to formulate rules and regulations in the election of sectoral representatives to the Regional Assembly that will ensure equitable participation.³⁸

The highlight of RA 9054 is the expansion of the coverage of the ARMM from the four provinces to fourteen provinces, and nine to thirteen cities.³⁹

On June 22, 2001, Congress passed RA 9140, setting the date of the plebiscite for the approval of RA 9054 on August 15, 2001. It also amended the portion in RA 9054 that scheduled the first election under said law to the Second Monday of September 2001, and instead set the same to November 26, 2001.⁴⁰ The result of the plebiscite was that only the province of Basilan and the city of Marawi were added to the original ARMM because it was only these provinces, along with the four original provinces of ARMM that voted favorably for RA 9054.

On September 21, 2004, Congress passed a law setting the regular date of the ARMM election to the second Monday of August 2005 and every three years after that.⁴¹ The start of the terms of the elected ARMM officials was correspondingly adjusted.⁴²

On August 11, 2008, the elections in the ARMM became the subject of the pilot-test of two automated election technology.⁴³ COMELEC employed a Direct-Recording

Electronic system in Maguindanao, a system that did not use paper ballots, and a paper-based Optical Mark Reader system in the four other provinces of ARMM.⁴⁴

On June 30, 2011, during the incumbency of President Benigno C. Aquino, Jr., the President approved a law, RA 10153, that synchronized the regular election in the ARMM with the regular general elections every second Monday of May starting in the year 2013 and subsequent ARMM elections every three years after that. The law gave the President the authority to appoint officers-in-charge to fill vacant positions left by those whose terms of office have already expired. It also mandated the appointed members (the officers in charge) of the Regional Legislative Assembly to study and review RA 9054 and submit their recommendation within six months. Incidentally, President Aquino has considered the then-existing ARMM as a failed experiment and called for the passage of a new Organic Law for Muslim Mindanao.⁴⁵

Congress then came up with Joint Resolution No. 17, "authorizing" COMELEC to again nullify the ARMM voters list and conduct another general voter registration. This action was intended to address the persistent belief that the voters' list in the ARMM remained bloated and that COMELEC needed to undertake a re-listing that will start from zero in the region.

Meanwhile, the then-ongoing peace negotiations with the MILF achieved significant progress. Among the consensus reached was the need to reform ARMM with the enactment of a new organic law. Then came the draft Bangsamoro Basic Law.

However, a clash between the Special Action Force of the Philippine National Police (SAF-PNP) and MILF fighters in 2015 in Mamasapano, Maguindanao derailed the process. The encounter led to the killing of forty-four members of SAF-PNP. The incident generated a public backlash, to which the failure to pass the BBL at that time was attributed. Hence, it was in the incumbency of President Duterte that an organic law, now

called Bangsamoro Organic Law, came to fruition.

The foregoing narration is intended and deliberate. It is part of this paper's review of RA 11054. The aim is to highlight and illustrate the continuing and periodic interventions by the national government. The infamous Maguindanao massacre, where scores of journalists and supporters of a candidate were shot and killed in 2009, highlights the sorry situation. This characteristic made ARMM elections a high-security risk for election administration, and contributed, rightly or wrongly, to the reputation of ARMM as the basket case of Philippine elections. Stories of voting, counting, and vote tabulation fraud has become regular.

Moreover, many put on issue the integrity of the voters' list in the region on many occasions. It was not surprising that policymakers had twice sought the nullification of voters' list and the holding of general registration of voters. The annulment of the voters' list was done despite the introduction of biometrics technology and the Automated Fingerprint Identification System (AFIS).⁴⁶

It is interesting to add, however, that all the experiments COMELEC conducted in evaluating technologies that it can introduce for Philippine elections happened in the ARMM region. As pointed out earlier, COMELEC conducted the pilot-test of "computerized elections" in the ARMM in 1996.⁴⁷ It also piloted tested a paper-based optical mark reader counting system and one that uses direct recording electronic voting machines in the ARMM in 2008. This proceeds from the notion, albeit flawed, that if the system can make it in ARMM, it can make it everywhere.

As can be seen, the region had been subjected to various political and electoral experiments in constant search for the right formula that will work and produce the kind the autonomy the region deserves. Unfortunately, the previous experiments were seen as failures. This is why the

enactment of RA 11054 brought a lot of promise for ARMM. It was a result of a tedious, long-drawn, and careful process. It took two administrations to work on it. The level of consultation, as well as the degree of participation of stakeholders, were higher and more intense than those that attended the two previous organic laws. The expectation, therefore, is that the BOL will provide a better framework for a lasting, effective, and meaningful autonomy in the region.

The Government Structure of the BARMM under Republic Act No. 11054

Parliamentary System of Government

The statements in the *General Principles and Policies* of the BOL is clear and straightforward. It says that the region “shall have a democratic system that allows its people to freely participate in the political process.”⁴⁸ It is also categorical in prescribing that BARMM “shall have a parliamentary form of government.”⁴⁹

The decision to prescribe a parliamentary form of government is premised on the need to develop stable and functioning political parties. It is for this reason that the BOL mandates the design of the electoral system must encourage “the formation of genuinely principled political parties.”⁵⁰ Likewise, the BOL, reiterating the Constitution’s mandate, expresses the necessity of allowing the evolution of a “free and open regional political party system... according to the free choice of the people.”⁵¹

In other words, the BOL re-engineered the BARMM government structure and electoral processes to increase incentives for political parties, rather individuals, to succeed electorally. As stated above, the aim is to reduce the negative impact of candidate-centric politics in the region and allow broader political participation. Only a few political families and clans have dominated politics in the region, and this reform aims to broaden the democratic base.

The ministers of the Parliament, from whom the Chief Minister and Deputy Chief Ministers will come, must be citizens of the Philippines, able to read and write, at least twenty-five years old on the day of the election and a registered voter of the BARMM.⁵² The terms of office of each minister is three (3) years, just like the members of the Regional Legislative Assembly under the previous organic laws.⁵³ Also, each of the ministers can serve a maximum of three terms of office.⁵⁴

There is a *Wali*, who is the ceremonial head of the Bangsamoro government. The *Wali* only performs ceremonial duties like opening the session of Parliament, administering oaths, dissolving the Parliament after an advice of a vote of no confidence from the Chief Minister, and attending public ceremonies. Effectively, he has no power in the government. A resolution of the Parliament chooses the *Wali* from a list of names submitted by a Council of Leaders.⁵⁵

The decision to prescribe a parliamentary form of government is not without legal issues. The wordings of the Constitution can connote that the executive and legislative branches of the regional government should be separate,⁵⁶ following the familiar national government set up – the executive branch is independent of the legislative branch and that the two should check and balance each other. On the other hand, a parliamentary system of government, in principle, fuses both the executive and legislative functions into one body, in the sense that the holder of executive power should come from, and must continually bear the support of, the Parliament, the entity that holds legislative power.

A petition in the Supreme Court questioning the constitutionality of RA 11054⁵⁷ argues that the BOL deprives the people in the region the right to elect their chief executive directly. In a parliamentary setup, it is the Parliament that elects the Chief Minister,⁵⁸ who, in turn, is the Chief Executive and head of the Bangsamoro government.⁵⁹

Nevertheless, the prescription for a parliamentary form of government for the Bangsamoro region may find a basis in the Constitution, which states that autonomous regions must have their own government structure.

System of Proportional Representation

Another novel innovation in the government structure of BARMM, which the BOL introduced, is the system of proportional representation or "PR." Under this scheme, instead of electing individual candidates to represent a constituency, the voters will vote for political parties of their choice. The proportion of votes obtained by a political party vis-à-vis the total votes for all the parties that participated in the election determines the number of seats that will be allocated to the party.

Reformers believe that the PR system is an electoral system that is suited for a party-centric political environment and one that tends to engender a more inclusive political process. The system, particularly the closed list type, is said to be a gold standard for political party strengthening.⁶⁰ It is also an electoral systems design where gender balance, for instance, will be better assured.

As applied in the BARMM, the BOL provides the broad guidelines for the system of PR to operate:

Article VII

Bangsamoro Government

....

Section 7. *Classification and Allocation of Seats.* – The seats in the Parliament shall be classified and allocated as follows:

- (a) *Party Representatives.*
 - One-half of the members the Parliament shall be representatives of political parties who are elected through a system of proportional representation based on the Bangsamoro territorial jurisdiction

Any organized group in the Bangsamoro Autonomous Region may register as a political party with the Bangsamoro Electoral Office, with qualifications to be prescribed by the Bangsamoro Electoral Code

Each registered political party shall submit to the Bangsamoro Electoral Office before the election a manifestation of intent to participate in the parliamentary election of party representatives in the Bangsamoro Autonomous Region, incorporating therein a list of nominees, ranked from one (1) to forty (40), from which party representatives shall be chosen in case they obtain the required number of votes. No person shall be nominated in more than one list.

The number of seats allocated for each political party shall be based proportionately on the percentage of votes obtained by each political party as against the total votes cast in the Bangsamoro Autonomous Region for the election of party representatives.

Any elected party representative who changes party affiliation during the representative's term of Office shall forfeit the seat in the Parliament; Provided, That if the elected party representative changes party affiliation within six (6) months before an election, the same person shall not be eligible for nomination as party representative under the new party or organization.

...

As provided, a voter will not be voting for an individual candidate. Instead, he/she will be selecting a political party. The ministers

of Parliament under the PR system will come from a list of nominees that each political party shall prepare before election. Voters do not get to choose the ministers directly, including the Chief Minister, unlike under the previous versions of the organic law, where the voters get to elect the Governor, the chief executive, directly.

The PR system is akin to the procedure under the *Party-List System of Representation* in the House of Representatives, where political parties are voted on instead of individual candidates.⁶¹ The only difference is that in the PR system in the BARMM, there is no limit on the number of seats that political parties are entitled to, as it is dependent on the number of votes the party obtains. The Philippine style party-list system,⁶² on the other hand, has a fixed maximum of three seats for every party, regardless of the number of votes they would obtain.

There is, however, a possible legal issue that may be raised as regards the PR system. Article IX-(C), Section 7 of the Constitution declares that “(n)o votes cast in favor of a political party, organization or coalition shall be valid, except for those registered under the party-list system as provided in” the Constitution. In the PR system, voters elect Political Parties, and this system is not the party-list system provided under the Constitution. Nevertheless, advocates may argue that the autonomous regions can have their own “structure of government”⁶³ and are therefore exceptions to the above-stated rule.

“Qualifications” of Political Parties

Article VII, Section 9 of the BOL states that only regional political parties “duly accredited by the Bangsamoro Electoral Office, as approved by the Commission on Elections, shall participate in the parliamentary elections in the Bangsamoro Autonomous Region.” This means that existing national parties, as well as existing local parties within BARMM, but whose coverage are only province-wide or smaller, are not allowed to

participate in the PR election. The matter of limiting qualified parties to BARMM regional parties is one essential item that needs to be set out clearly in the Bangsamoro Electoral Code to guide prospective election contestants and challengers. Should the BARMM government have a different opinion on this, such should also be set out clearly in the Code for the same reason.

It would also be advisable to clarify the meaning of “regional political parties.” The clarification can be included in the Bangsamoro Electoral Code. The Party-list law defines a Regional Party to be one with a constituency that is “spread over the geographical territory of at least a majority of the cities and provinces comprising the region.”⁶⁴ In the absence of a more specific law that applies to non-party-list political parties, COMELEC is generally guided by this definition in evaluating a petition for registration of regional political parties outside of the party-list system.

The term “constituency,” however, is not easy to operationalize. COMELEC equated having constituency to having presence in certain territories. In turn, having presence was interpreted usually to mean having mirror organizations or organized branches in the constituent territories, which organizations or chapters should be discernable by proof of existence. These are also matters that can help populate the Bangsamoro Electoral Code, particularly in compliance with the BOL mandate for the Code to provide the qualifications of political parties.

COMELEC came up with a resolution that requires all registered political parties to submit a status and update report of the organization annually. The BARMM government might find the same useful in drafting the Bangsamoro Electoral Code.

Party Nominees

Considering that the BOL fixed the number of seats in the Parliament at eighty (80), the seats available for Political Party under the PR system is forty (40). The forty seats

allocation is the reason why the political parties that will participate in the PR system must name 40 nominees. Theoretically, a party can obtain as much as 40 seats if it gets all the votes.

One matter that the Bangsamoro Electoral Code needs to address is the rule on how political parties must order the name of the nominees in their list. Usually, the priority in getting the seats in the Parliament will follow the order in the list. This is where the mandate of the law on involving women and the youth in the electoral nominating process can come into play.

The ordering scheme may include the so-called *Zipper System*, where the order of the names in the nominees' list would factor gender and democratic balance.⁶⁵ For instance, the list should contain alternating entries, such that when the first nominee is from one gender, the following should come from another gender, and so on. Other demographic groupings can be included in designing an inclusive *Zipper* mechanism.

It is also necessary, moreover, to craft rules that would govern a situation when any of the nominees would die, become incapacitated, disqualified, or would withdraw. Again, these matters are among those that the BTA may need to include in the Bangsamoro Electoral Code.

Parliamentary District Seats

As only fifty percent of the parliamentary ministers are subject to the PR system, the BOL provides that forty percent (40%) shall come from those elected from a single-member parliamentary district, and ten percent (10%), for the reserved seats. Effectively, the voters or BARMM will vote at least twice in parliamentary elections - one for the individual candidate for the parliamentary district seat for his/her district, and the other, for the PR system.

In the current state of the BOL, there are thirty-two (32) Parliament ministers elected to the 32 single-member parliamentary

district seats. There is not much issue here considering that region will elect ministers under the same plurality system that uses the *First-Pass-The-Post* plurality method of determining election winners.. The region elected previous members of the regional assemblies under this system.

What can give rise to operational issues is the BOL directive to the BTA to determine the allocations of parliamentary district seats for the first parliamentary election.⁶⁶ Since the enactment of RA 6734, the districting in the BARMM have always been the same as the districting in the House of Representatives. The Congressional districts and the Regional Legislative Assembly districts refer to the same geographical territories. This scheme is ideal, particularly in organizing and managing a simultaneous and synchronized national and local elections.

However, having a different district configuration for the parliamentary seats in the BARMM from the district configuration for seats in the House of Representatives presents a problematic situation. Please note that voters in the BARMM will still vote in the national and local elections, which includes the position of district representatives in Congress. Complications will arise in designing ballot papers, election returns, statements of votes, and certificates of canvass, as well as in planning and implementing ballot allocation, printing, and distribution. The process of vote consolidation and tabulation could also become complicated.

COMELEC could organize two parallel elections held on the same day. Each voter would be given two ballots to fill-up; there would be two sets of vote tabulation processes and two sets of canvassers to set up – one for the national elections and one for the BARMM elections. This is a procedure that would not only be logistically and operationally complicated for election managers; it would be utterly confusing to the voters. The lengthy ballot paper containing the names of more than a hundred candidates is complicated enough.

How much more can it become complicated and confusing for voters when the procedure gives them two ballots?

A practical solution would have been to separate the parliamentary elections in the BARMM from the national and local elections. This solution, however, is constitutionally impermissible. The synchronization of election is not a matter that is decided by COMELEC or even by Congress. Synchronization of elections is a constitutional requirement.⁶⁷ While ARMM elections used to be held separately from the national and local elections, the Supreme Court, in the case of *Kida vs. Commission on Elections*,⁶⁸ declared that even elections for the autonomous regional government should be synchronized with the national and local elections.

It is advised that the BTA follows the district allocation for the House of Representatives, or if it ever must do a re-districting scheme, the BTA must, as much as possible, align with the scheme with that of the House of Representative.

What the BTA must do instead is to decide how the voters from the sixty-three barangays in North Cotabato that are now part of BARMM can be represented in the BARMM parliament. They can either be constituted as a separate district, or they can be joined with adjacent territories or districts.

One other vital side issue relates to how the BOL would treat the sixty-three barangays as BARMM constituent units, which is a matter that the BARMM Local Government Code can provide an answer.⁶⁹ This issue, however, will have implications in organizing elections in those areas.

The Reserved and the Sectoral Representatives' Seats.

The BOL reserves ten percent (10%) of parliament seats to the sectoral representatives, non-Moro indigenous peoples and settler communities. Under the

current setup of the Parliament, that would be eight (8) seats.⁷⁰ The non-Moro indigenous people's group and settler communities are each entitled to two seats. The rest of the seats are reserved for Women, Youth, traditional leaders, and the *Ulamas*.⁷¹ The BOL mandates the Parliament to determine the manner of election of those who will become ministers through this route. It is, however, the BTA that will determine the allocations of reserve and sectoral seats for the first Parliamentary elections in BARMM in 2022.

Along with the manner of electing those who will occupy the reserved seats, it is essential to decide who would be allowed to vote for the sectoral representatives. Must the voting be limited to those that belong to the sector? Here, we can see that voters in BARMM can vote up to three times for the Parliament members if they are members of sectors. This method, however, will present difficulty in the current template of designing elections under an automated election set up. COMELEC must have reliable data as to who among the voters belong to what sector.

The Bangsamoro Organic Law and the Existing Election Laws

Ensuring meaningful exercise of the right to political participation is the overarching objective of political reform. The principal focus of this review is the BOL as it relates to the other laws that comprise the legal framework of Philippine elections and how it can facilitate the realization of the objectives of reforming politics in ARMM.

It is essential to clarify the stature of the BOL as a law in relation to the hierarchy of laws. There have been discussions about whether specific provisions of the BOL are consistent with constitutional intent. The pending petitions in the Supreme Court raising issues on the BOL bear this out. This paper will not answer those questions definitively but will present a perspective that hopes to illustrate where BOL and the consequent Bangsamoro Electoral Code lie in the hierarchy. The perspective will, in

turn, hopefully clarify the issue of what the BARMM government may include in the Bangsamoro Electoral Code. Hopefully, it can also help in defining the roles of the BTA, the COMELEC, the and Bangsamoro Electoral Office, or "BEO."

Congress enacted the BOL as a statute in the same way that it enacts other legislations. From that perspective, BOL is, therefore, at the level of a statutory law. The power of Congress to enact laws is plenary and absolute, subject only to the limitations imposed by the Constitution. Congress can pass, amend, and repeal laws in the exercise of its sovereign power.

However, the passage of the BOL by Congress is an express mandate of the Constitution that cannot be disregarded and ignored. Article X, Section 18 of the Constitution commands Congress to produce organic laws that will prescribe a "structure of government"⁷² for each of the autonomous regions, appropriate to each one's distinct "historical and cultural heritage and economic structure."⁷³ The existence of two autonomous regions within the territorial jurisdiction of the Republic is an intrinsic part of the overall design of the Philippine government structure.

The organic laws enacted under Article X, Section 10 of the Constitution, thus, stand at a slightly privileged status than ordinary statutes. Moreover, it is more than an ordinary statute because it enjoys the affirmation by a plebiscite.⁷⁴ An ordinary statute, whether general or special, cannot amend an organic act that provides for an autonomous region which under the Constitution may only be created, and therefore, changed, through a plebiscite called for the purpose.⁷⁵ What is certain is that, after the 1987 Constitution, it is the BOL which serves as the basic law or the "constitution" in the region endowed with the right to be autonomous.

If the BOL, which is a statute in the hierarchy of laws, is the "constitution" of the BARMM, where do the laws passed by the BARMM parliament, like the Bangsamoro

Electoral Code, stand?

As pointed out above, the Bangsamoro Electoral Code is one of the priority Codes that the BTA should be enacting.⁷⁶ The others are the Bangsamoro Administrative Code, the Bangsamoro Revenue Code, the Bangsamoro Local Government Code, and the Bangsamoro Education Code. The Bangsamoro Electoral Code is subordinate to the BOL.

Where then should the Bangsamoro Electoral Code be situated vis-à-vis the rules and regulations on election, which the Constitution vest exclusively on COMELEC? It becomes necessary to examine what the BOL says about the Bangsamoro Electoral Code.

The Bangsamoro Electoral Code

The electoral system that the Bangsamoro Government "shall adopt" and which must be consistent "with national election laws," as referred to in Article IV, Section 4 of the BOL, is that which the Bangsamoro Electoral Code must embody. This implies that the BARMM government must already come up with an "electoral system" before the 2022 Parliamentary elections.

The BOL also states that it is the Bangsamoro Electoral Code that shall prescribe the qualifications of organized groups desiring to register as regional political parties for the parliamentary elections in the BARMM.⁷⁷

Effectively, the Bangsamoro Electoral Code will be among the bases of COMELEC in designing the rules and regulations that it must promulgate "for the conduct of the election. It is clear that the directive of the BOL to COMELEC, about the first BARMM parliamentary elections in 2022, is to enforce and administer its rules and regulations according to national laws, this Organic Law, and the Bangsamoro Electoral Code."⁷⁸ The BOL and the Bangsamoro Electoral Code embodies the political and

broad electoral policies in the BARMM. At the same time, COMELEC designs the rules and regulations governing the conduct of elections in BARMM based on said broad political and electoral policies. Never does this relationship imply that the Bangsamoro Electoral Code occupies a higher position in the hierarchy of laws than the election rules and regulations the responsibility of enacting, which the Constitution lodged with the COMELEC. The Bangsamoro Electoral Code is an extension of the BOL when it comes to producing broad electoral policies. The purpose of the COMELEC rules, on the other hand, is to implement these policies.

COMELEC's constitutional power is to "enforce and administer all laws and regulations relative to conduct election, plebiscite, initiative, referendum and recall."⁷⁹ Although the Constitution also expressly grants COMELEC the power to "decide, except, those involving the right to vote, all questions affecting election," these questions relate to mere procedural concerns, like "determination if the number and location of polling places, appointment of election officials and inspectors, and registration of voter."⁸⁰ The rule-making power of COMELEC on questions affecting elections does not include defining substantive policy issues. In other words, COMELEC implement laws that define substantive policies; it does not make them.

An ideal election code should be flexible enough to allow an election management body to adapt to changing ground realities and in responding to unforeseen exigencies. However, it should also have adequate and precise standards and parameters that would guide implementation. Furthermore, it should have a precise accountability mechanism to identify where responsibilities for every action and decision lie.

An ideal electoral code should contain the following: 1) re-statement of electoral principles will provide conceptual framework for the rest of the Code; 2) identification of who can vote, as well as voter list management and registration process; 3)

the qualification of candidates and political parties that will participate in the elections, the process of registering candidates and political parties, and the and nominations; 4) the rules on campaigns and political financing, including disclosures and reportorial requirements; 5) the process of organizing elections, particularly, the determination of the number and location of polling place and the designation of election workers; 6) the voting, counting, vote tabulation, the proclamation of winners process; 7) the process of complaints adjudication and election dispute resolution; 8) sanctions for violations of election laws and rules; and 9) the administrative aspects of election management, which includes the organizational set up of the election management body, the basic principles of its operations, the extent of its powers, functions, and all other administrative matters, like procurement, hiring, contracting, as well as its engagements with other institutions in pursuance of its mandate.

The Bangsamoro Electoral Code is much simpler to prepare than the ideal electoral Code because the enabling law itself substantially limits its scope by stressing that the "electoral system" should be consistent with national election laws. The Bangsamoro Electoral Code must not depart from those that are already in existing election laws.

The primary election law is still the Omnibus Election Code.⁸¹ It is of 1985 vintage. It was intended to govern the snap Presidential elections in February 1986 and succeeding election after that. Take note that the Omnibus Election Code even came earlier than the 1987 Constitution.

Among the other significant election laws are 1) Electoral Reforms Law of 1987 and the Synchronized Election Law of 1992;⁸² 2) the Party-List Election Law;⁸³ 3) the Continuing Registration Act,⁸⁴ as amended by the Mandatory Biometrics Voter Registration Law;⁸⁵ 4) the Automated Election Laws;⁸⁶ 5) the Fair Election Act, which is practically the electoral campaigns law;⁸⁷ 6) the Overseas

Voting Laws;⁸⁸ 7) the Election Service Reform Law, which makes it voluntary for public school teachers to serve in elections;⁸⁹ and the 8) the Law of Accessible Polling Places for Persons with Disabilities and Senior Citizens.⁹⁰

What one can readily notice in the listing above is that there is no separate law that addresses political party registration and regulation. Only the Party-List election law comes close. The Omnibus Election Code provisions relating to political parties is limited to Sections 60, 61, and 62, which merely pertain to defining what political parties are and how they can be registered. The bill that hopes to develop and strengthen political parties in the country has been pending in Congress since 2003.

While the contents of the Bangsamoro Electoral Code should be consistent with BOL and existing national election laws, it could be an opportunity to update and codify all the scattered provisions of existing laws and merge them into a more organized, logical and coherent presentation. The codification of election laws, even if just for the BARMM, would facilitate better understanding of election laws and rules, not only for lawyers representing political contestants, but for the general public.

Incorporated as an annex to this paper is a table that outlines the recommendations of matters that drafters may include in the Bangsamoro Electoral Code. It includes electoral laws and rules that the Code drafters may adopt the regional law on *Initiative* the BARMM parliament must adopt, according to Article VII, Section 5 (e) of the BOL, may be included in the Code.

It is, however, noteworthy that the BOL itself provides a fall back in case the BTA fails to enact a Bangsamoro Electoral Code for the 2022 elections. It prescribes the application of subsisting laws on election in said eventuality. COMELEC would then have to rely on the same laws that guide it in managing other elections. The challenge, however, is that the BOL prescribes a

new design as regards registration and management of political parties that may not have adequate statutory bases in the current body of laws. Be that as it may, the ideal remains to be that there must be a Bangsamoro Electoral Code that will define the electoral policies. And, in turn, the Code provides the guidance COMELEC can use for it to promulgate rules and regulation reflective of the electoral system design specifically chosen for BARMM by the BARMM government.

The Bangsamoro Electoral Office and the COMELEC.

The matter of the Bangsamoro Electoral Office or "BEO" is more straightforward. It is not an office independent of COMELEC. The BOL is quite clear about this as Article VII, Section 40 of the BOL states that:

SEC. 40. *Bangsamoro Electoral Office.* – The Commission on Elections shall establish a Bangsamoro Electoral Office under its supervision and control, which shall implement and enforce its orders, ruling, and decisions. The budget of the Bangsamoro Electoral Office shall be part of the yearly budget of the Commission on Elections.

It is COMELEC that will establish the BEO. The Office is under its supervision and control of COMELEC. Its resources depend on the budget granted to the poll body. The Office does not answer to the BARMM government but only to COMELEC. It is an office within the structure of COMELEC that will perform purely administrative functions. It will not have a quasi-judicial role, as the Constitution lodges the same only on COMELEC.

By default, the Office of the Regional Director of COMELEC as constituted under the Administrative Code of 1987, functions as the Bangsamoro Electoral Office.⁹¹ The COMELEC, though, may need to establish the Office formally. It can be the existing COMELEC field office in the BARMM headed

by the Regional Director. It can also be a new parallel office that can perform the specialized functions appropriate to requirements that the Bangsamoro Electoral Code will prescribe, particularly on regional political party registration.

What then is the intent of the BOL when it gave the BEO the responsibility to “register”⁹² and “accredit” regional political parties?⁹³ It means that the BEO functions as the registrar of regional political parties in the BARMM. Operationally, the BEO may be tasked to receive petitions for registration of political parties, receive evidence in support of the petitions, and draw up recommendations on the merits of the petitions. The recommendations would then have to be approved by COMELEC. The records of approved registration will then have to be turned over to the BEO because the Office appears to be the one tasked to keep the registry of political parties in the region. The process just described may be among those that would be included in the rules and regulations that COMELEC will enact under Article VI, Sec. 13 of the BOL.

Prospects for the 2022 Parliamentary Elections in the BARMM

The Constitution sets the national and local elections on the 2nd Monday of May 2022. It cannot be scheduled on any other day, except when Congress chooses to.⁹⁴ Further, the Constitution requires elections to be synchronized from the President down to the last elective municipal official. Regional elections in autonomous regions are also required by the Constitution to be held simultaneously with the national and local elections.⁹⁶ That being said, the elections on the 2nd Monday of May 2022 or May 9, 2022 is a certainty. It is not a moving target. It is a fixed goal for election planning, particularly for COMELEC.

The 2022 elections, however, offers a difficult scenario for COMELEC. The global COVID-19 pandemic is anticipated to be still around by that year. Information reveals that

the poll body is still exploring options that will make voting, including the preparatory activities and those that happen after, compliant with pandemic protocols like physical distancing, wearing masks, and providing hygiene tools supplies in public establishments.

The pandemic is making COMELEC preparations for the elections in 2022 more challenging. The quarantines and lockdowns now are slowing down its activities when it should be speeding things up. The lockdowns set back the period for registration of voters by more than half a year. COMELEC has also been occupied with finalizing its budget and plans for the 2022 elections.

Against this backdrop, it is essential to realize that for the 2022 BARMM parliamentary elections not to hit a critical snag, the BARMM government and COMELEC must engage each other in deciding how the elections is to be organized. The establishment Technical Working Group (TWG) between the two institutions is very strongly recommended. TWG would facilitate the drafting of a sound and technically adequate electoral Code for the BARMM, or at least would clarify all the other issues related to preparing for the 2022 elections

The ideal situation, of course, which is what the BOL itself has envisioned, is that the BARMM government come up with its Bangsamoro Electoral Code soonest. This will align the preparation for the elections by COMELEC with how the BARMM would want their elections to be. The BARMM government should take full advantage of the innovations introduced in the BOL by defining for itself the kind of elections it wants to have.

Of course, there is a fall back should the BARMM government fail to pass the Bangsamoro Electoral Code. The BOL says that if the BARMM government fails to enact its election code, subsisting national election laws would be applicable for the first Parliamentary Elections in 2022.⁹⁷ COMELEC would promulgate the rules that would

govern the elections. The poll body, through its BARMM regional office constituted as the BEC, would organize and conduct the elections. Prospective BARMM regional parties that intend to participate in the parliamentary elections can file petitions for registration before the COMELEC in Manila under existing rules for party registration. The parliamentary elections would still take place, but it would not have the home-grown feel and characteristics that it should have. The BARMM government should not waste the opportunity to craft, on its own as an autonomous political entity, an electoral process that is consistent with aspiration of the Bangsamoro people.

¹ Congress enacted Republic Act No. 11054 or the Bangsamoro Organic Law, which President Rodrigo R. Duterte approved on July 27, 2018. Subsequently, the Commission on Elections (COMELEC) declared the same ratified in a plebiscite held on January 21 and February 6, 2019.

² REP. ACT NO. 11054, art. XVI, sec. 2

³ See REP. ACT NO. 11054, art. XVI, sec. 3

⁴ *Id.*, art. XVI, sec 4 (a)

⁵ Paul D. Hutchcroft, *Electoral System Redesign: An Opportunity for Effective Political Reform in the Philippines*, in Paul D. Hutchcroft, ed., *Strong Patronage and Weak Parties: The Case for Electoral System Redesign in the Philippines*, Mandaluyong City: Anvil Publishing, 2019, p. 24.

⁶ CONST. art X, sec. 18.

⁷ *Ibid.*, sec. 15

⁸ REP. ACT. NO. 7160 (1991)

⁹ CONST. art X, sec. 18

¹⁰ *Id.*, sec. 20

¹¹ See JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, 1139 (2009)

¹² *An Act Providing for an Organic Act for the Cordillera Autonomous Region.* (1989)

¹³ *An Act to Establish the Cordillera Autonomous Region.* (1997)

¹⁴ Miriam Coronel Ferrer, *Cordillera Autonomy*

in *Ways of Species*, ABS-CBN News, 9 April 2010, Available at: <https://news.abs-cbn.com/insights/04/08/10/cordillera-autonomy-miriam-coronel-ferrer>

¹⁵ REP. ACT. NO. 6734 (1989)

¹⁶ CONST. art X, sec. 19.

¹⁷ REP. ACT. NO. 6734, art 1, sec. 1

¹⁸ *Id.*, art. VII, sec. 4

¹⁹ *Id.*, sec. 1

²⁰ *Id.*, sec. 4

²¹ *Id.*, sec. 5

²² *Id.* art. VIII, sec 1

²³ *Id.*

²⁴ *Id.*, sec. 4

²⁵ *Id.*

²⁶ CONST. art IX-C, sec. 2 (1)

²⁷ REP. ACT NO. 6734, art. II, sec. 1 (2). The provinces were Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur. The cities included Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa, and Zamboanga.

²⁸ REP. ACT NO. 8046

²⁹ REP. ACT NO. 9054. (2001)

³⁰ *Id.*, art. VI, sec. 2

³¹ *Id.*, sec. 3

³² *Id.*

³³ *Id.*, art. VII, sec. 1, 3.

³⁴ *Id.*, sec. 4

³⁵ *Id.*, sec. 2

³⁶ *Id.*, sec. 7

³⁷ *Id.*, art. XVIII, sec. 7

³⁸ *Id.* sec. 12

³⁹ *Id.*, art. II, sec. 1 (2). There are the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, Saranggani, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur, and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Kidapawan, Marawi, Pagadian, Puerto Princesa, Digos, Koronadal, Tacurong, and Zamboanga.

⁴⁰ Rep. Act. No. 9140 (2001)

⁴¹ REP. ACT. NO. 9333 (2004)

⁴² *Id.*

⁴³ See REP. ACT. NO. 9369 (2007)

⁴⁴ Subsequently, and as a result of the pilot test, COMELEC decided to adopt a paper-based precinct-level optical scan system for use in

national elections. This technology has been used in every election (except barangay elections) since then.

⁴⁵ Amita O. Legaspi, Palace calls ARMM a 'failed experiment', GMA News, February 15, 2011, Available at: <https://www.gmanetwork.com/news/news/nation/213067/palace-calls-armm-a-failed-experiment/story/>

⁴⁶ The AFIS process involves matching biometrics data obtained from voters (fingerprints) of with those of the entire voter population in the country. The aim is to rid the list of multiple registration of the same persons. Theoretically, therefore, the problem of the supposed bloated lists of voters could have been answered by applying AFIS matching and ordering the delisting of those whose name appear in more than one list. The challenge however is that the data available in the records of the election offices are so inadequate and that the list is so bloated that the assessment was that starting from the beginning is the best and only way to solve the problem

⁴⁷ See REP. ACT NO. 8046

⁴⁸ REP. ACT NO. 11054, art. IV, sec. 3

⁴⁹ *Id.*

⁵⁰ *Id.*, sec. 4

⁵¹ *Id.*, art. 7, sec. 9, in relation to Article IX-C, Section 6 of the Constitution, which provides: "A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article."

⁵² REP. ACT NO. 11054, art. VII, sec. 12

⁵³ *Id.*, sec. 11

⁵⁴ *Id.*

⁵⁵ *Id.*, art. VIII, sec. 3

⁵⁶ CONST. art. X, sec. 18

⁵⁷ Mike Navallo, Sulu to Asks SC to void Bangsamoro Organic Law; Stop Plebiscite, ABS-CBN News, October 31, 2018. Available at: <https://news.abs-cbn.com/news/10/31/18/sulu-asks-sc-to-void-bangsamoro-organic-law-stop-plebiscite>

⁵⁸ REP. ACT NO. 11054, art VII, sec 31

⁵⁹ *Id.*, sec. 32

⁶⁰ Paul D. Hutchcroft, *supra*.

⁶¹ See REP. ACT. NO. 7941

⁶² See ATONG PAGLAUM, ET. AL. V. THE COMMISSION ON ELECTIONS, G.R. No. 203766, April 2, 2013, which decision is a consolidated decision of the petition with this title and 53 other petitions.

⁶³ CONST., art. X, sec 18

⁶⁴ Rep. Act No. 7942, sec 2 (c)

⁶⁵ Socorro L. Reyes, Gender and the Electoral System: What Works for Women, in Paul D. Hutchcroft, ed., *supra*, p. 81-82

⁶⁶ REP. ACT NO. 11054, art. VII, sec.7 (b)

⁶⁷ OSMENA V. COMMISSION ON ELECTIONS, G.R. Nos. 100318, 100308, 100417, and 100420, July 30, 1991 199 SCRA 750.

⁶⁸ G.R. No. 196271, February 28, 2012. (Resolution of Motion for Reconsideration)

⁶⁹ REP. ACT NO. 11054, art. XV, sec. 4

⁷⁰ *Id.* art. VII, sec. 7 (c)

⁷¹ *Id.*

⁷² CONST. art X, sec. 18.

⁷³ *Id.*, sec. 15

⁷⁴ JOAQUIN G. BERNAS, S.J., *Supra.*, p. 1142

⁷⁵ See PANDI V. COURT OF APPEALS, G.R. 116850, April 11, 2002.

⁷⁶ REP. ACT NO. 11054, art. XVI, sec. 4 (a).

⁷⁷ *Id.*, art. VII, sec. 7 (a)

⁷⁸ *Id.*, art. XVI, sec. 13.

⁷⁹ CONST. art IX-C, sec 2 (1)

⁸⁰ *Id.*, sec. 2 (3)

⁸¹ BATAS PAMBANSA BLG. 881 (1985)

⁸² Rep. Act No. 7166 (1992)

⁸³ Rep. Act No. 7941 (1995)

⁸⁴ Rep. Act No. 8189 (1996)

⁸⁵ Rep. Act. No.10367 (2013)

⁸⁶ Rep. Act No. 8436 (1998), as amended by Rep. Act No. 9369 (2007)

⁸⁷ Rep. Act No. 9006 (2001)

⁸⁸ Rep. Act No. 9189 (2003) and Rep. Act. No. 10590 (2013)

⁸⁹ Rep. Act No. 10756 (2016)

⁹⁰ REP. ACT NO. 10366 (2013)

⁹¹ EO No. 292, Book V, Title I, Subtitle C, Chapter 3, Sec. 11 (1).

⁹² See REP. ACT NO. 11054, art. VII, sec. 7 (a)

⁹³ *Id.*, sec. 9

⁹⁴ Const. art VI, sec. 8, art. VII, sec. 4, art. XVIII, sec.1, 2 and 5.

⁹⁵ Osmena, *supra*.

⁹⁶ Kida, *supra*.

⁹⁷ Rep. Act No. 11054, art. XVI, sec. 4 (a)

Outline of Recommendations on the Structure and Contents for the Bangsamoro Electoral Code

	Sections	Proposed Contents / Law Source
I	Statement of General Principles	<ul style="list-style-type: none"> • Refer to Const. art. X • Refer to RA 11054, art. II, sec. 2 – BARMM is free to pursue political development and the following: <ul style="list-style-type: none"> • Id. sec. 3 – BARMM shall have a democratic political system that allows its people to participate freely in its political processes • Id. - BARMM shall have a parliamentary system of government • Id., sec. 4 – Electoral System shall be consistent with national election laws, allows for political participation, encourage the formation of genuinely principled political parties, and ensure accountable • Id. art. VII, sec. 9 - a free and open regional party system shall be allowed to evolve. • This portion may include a statement identifying the areas covered by the BARMM, including the barangays from the various municipalities in Sultan Kudarat that voted to be part of BARMM.

II	Voters, List of Voters and Voter Registration	<ul style="list-style-type: none"> • I suggest that there be a statement that the qualified voters in BARMM shall be those whose respective names appear in the Permanent List of Voters of the cities and municipalities covered by ARMM. • The Code may also have to decide on a policy treating the voters from the barangays in Sultan Kudarat that joined the BARMM, consistent with the BARM Local Government Code. If it is to separate them from the municipalities and Sultan Kudarat, COMELEC needs to extract the names of voters from the municipal list. • RA 8189, as amended by RA 10367 – for the management of the voters list and the procedure for registration. • The inclusion of overseas voters/remote voters who are registered voters of the region as among those who can vote may be considered, although this may present logistical difficulties. • Provide procedures for accessible registration process for Persons with Disability and Senior Citizens, Indigenous Peoples from remote communities, and Persons Deprived of Liberties (PDLs), as well as Internally Displace Person • Refer to pertinent COMELEC Resolutions, particularly on those relating to PWDs and Senior Citizens, Indigenous Peoples, PDLs, and IDPs.
----	---	--

III	Candidates and Political Parties	<ul style="list-style-type: none"> • RA 11054, art. VII, sec.12. – The qualification for persons to be a member of Parliament • BP 881 (Secs. 63-78), RAs 6646, 7166, 8436, as amended by RA 9369 – for the process of filing certificates of candidacy and the effects of false representation in the certificate, as well of nuisance candidacy • The qualifications of political parties that will participate in the proportional representation system. Some of the questions/issues BTA may address include the following: <ul style="list-style-type: none"> • Will the national parties be allowed to participate in the parliamentary elections? Refer, however, to sec. 9, art. VII of the BOL, which only refers to regional political parties. • Will regional parties that are branches or connect with a national political party be allowed to participate in the parliamentary elections? • Will there be a requirement on the number of members that a party must have, or the number of chapters it must have for it to be qualified as a Regional Political Party? • What does it mean to have a constituency or branches in certain territories so that presence, as a requirement of the organization, can be established? • Will there be a requirement on the composition of the ruling committee of a party to comply with gender, age (for youth sector), ethnic, or geographical balance? • Refer to the Constitution and the RA 7941 on what the law requires for the registration of a political party. • Constitution, BP 881, secs. 60-62, and the COMELEC Rules of Procedure – on the procedure for registering political parties.
-----	----------------------------------	--

		<ul style="list-style-type: none"> • Refer to pertinent COMELEC Resolutions on the subject including the recent one requiring registered parties to submit an annual report of their organizational status and financial reports and suggesting that cancellation of registration may be resorted to if violations are committed • Provide the process of nomination for seats in Parliament, depending on the votes obtained by the party. • Consider the requirement of the BOL for the inclusion of women agenda, and the involvement of women and youth in the electoral nominating process of the political parties <ul style="list-style-type: none"> • Will a minimum percentage of vote be required for a political party? What formula will be used to fill up remaining seats, should there be any? • Will it be a closed list system, where voters do not get to choose the order in the nominee list or an open list system, where the voters may be given the power to choose the number of nominees? The language of the BOL, however, seem to require a closed list system • Provide procedure governing election for the reserved seats intended for sectoral groups <ul style="list-style-type: none"> • Identify who will vote for the sectoral representatives for the reserved seats • Identify who among the groups can nominate persons for the reserve seats in the Parliament, and what the nomination process is.
IV	Campaigning and Political/Campaign Finance Regulations	<ul style="list-style-type: none"> • RA 9006 – The campaign rules that can just be reiterated in the Code. • Refer to BP 881 (Sections 94 to 112) as amended by RA 7166 on expenditure cap – on matters relating campaign/political finance.

V	Organizing and Preparing Elections	<ul style="list-style-type: none"> • This relates to clustering of precincts, establishing voting centers and polling places, recruitment and appointment of members of the electoral board and the boards of canvassers • Provide a policy on how the barangays in Sultan Kudarat can be treated. The elections are synchronized with the election of national and local officials outside of arm. The distribution of supplies and the materials used will be affected. The vote tabulation process will also be affected. Will a separate ballot for the parliamentary election be considered? • Preparation of the accessible voting venues for PWDs and Senior Citizens, IPs, PDLs and IDPs under RA 10366, and pertinent COMELEC resolutions • Refer to BP 881 (Secs. 149 to 189), as amended or modified by RAs 6646, 7166, 8846, 9369)
VI	Voting Counting, Vote Tabulation Process up to proclamation of election winner	<ul style="list-style-type: none"> • Merge the applicable provisions BP 881, RAs 6646, 7166, 8436, and 9369 and outlined in it a concise and coherent manner. • Consider the possibility of allowing as an option a separate ballot for the BARMM parliamentary election or provide a procedure therefor as an alternative should the same be adopted.
VII	Complaints and Election Dispute Adjudication Process.	<ul style="list-style-type: none"> • Generally, adopt by reference to the pertinent provisions BP 881, and other elections laws • There may be a statement that complaints may have to be first filed before the BEO before it can go the COMELEC in Manila
VIII	Sanctions	<ul style="list-style-type: none"> • Generally, adopt by reference what is provided by BP 881 and the subsequent laws • The Code may consider graduated administrative sanctions that COMELEC may be imposed on regional political parties that will violate the laws and the rules

IX	Law on Initiative	<ul style="list-style-type: none"> • Refer to RA 6735, COMELEC Resolution No. 106
X	Administrative Matters	<ul style="list-style-type: none"> • Focus mainly on the relationship between the BEO and COMELEC, particularly. • The Code may impose more responsibility on the BEO, but there must be a recognition that all the latter's actions and decisions are reviewable by COMELEC.

Implemented by:



INSTITUTE FOR
AUTONOMY AND
GOVERNANCE

Supported by:

