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senator referred to the problem as when an individual Muslim refuses to concede that he is a part of the entire Filipino citizenry as he identifies himself by his religion.² Another Muslim writer believed that the Muslim problem in the spectacles of the Philippine government was a matter of seeing the Moro so backward, stubborn, savage, and uncivilized that they must be educated and civilized or westernized, and this means that they must be integrated into the mainstream of the Philippine society.³ A Christian Filipino identifies the Muslim "problem" as follows:

It is the problem of not being able to develop as progressively as the Christian. It is the problem of basic necessities; of not submitting to even the very minor workings of the government such as taxation. It is the problem of improper education; of Muslim leaders holding political power and yet denying positive development programs for their fellow Muslims. It is the problem of political struggles between the majority of Christian leaders who have no hold over their voting population and the Muslim minority having absolute hold over their own; of Muslims owning too many guns and Christians owning too many properties...It is the historical and psychological problem assuming the ideology of a movement to be independent of the Philippines; of the government neglecting peace and order, community, development, and road construction. It is primarily the problem of not understanding the Muslims.⁴

The problem of Muslims has been regarded as a political issue that can be understood from the realm of history. However, a critical analysis of its manifestations in successive governments and policies would suggest that the problem lies within the domain of mutual religious intolerance between the Christian majority and Muslim minority. There were various policies and laws formulated by successive governments to attract Muslims, hoping that someday, they would be integrated into the national body of politics. In those policies, however, there were no positive measures taken to ensure religious understanding between Muslims and Christians.

Islamic Legal Institutions and Mindanao Conflict

The main concern here is to trace the evolutions of the Islamic legal institutions and their validation within the Philippine government policies at the time of the conflict. The Mindanao conflict is nothing new, but a continuation of the 16th century problem that

² Domocao Alonto, "A Report of the Special Committee to investigate the Moro Problem, especially with regard to the Peace and order in Mindanao and Sulu," *Third Congress*, (1954): n.p.

³ Hamid Barra, *The Code of Muslim Personal Law in the Philippine*, (Iligan: Padilla Press, 1988), p. 2.

⁴ Rita G. Baltazar, "Islam and Secession," *Solidarity* iv, (April 1971), p. 70.

Muslims were motivated by an endeavor to defend their religion and homeland. Stuart Schlegel described the Muslim-Christian conflict as “the latest chapter in the long story of the struggle between the Crescent and the Cross in that archipelago, a struggle which has gone on already for four centuries.”⁵ The Arab countries, particularly Libya, expressed their deep concern when the Muslim minorities were religiously humiliated through several massacres.⁶ With these tragic situations, officials in Malaysia and Kuwait denounced the Philippine government not only for its biases against Muslims but also for its effort to annihilate them.⁷ Resolution on the plight of the Muslims in the Philippines was adopted during the Fifth Islamic Conference of Foreign Ministers held in Kuala Lumpur on June 21-25, 1974, which made an “appeal to peace states and international religious authorities, while recognizing the problem as an internal problem of the Philippines, to use their good offices with the Philippine government to ensure the safety of Filipino Muslims and the preservation of their liberties in accordance with the Universal Declaration of Human Rights.”⁸

Among the demands made by the Muslims during the series of peace talks and negotiations conducted to establish harmony between them and the Philippine government was the establishment of an Islamic judiciary. The first peace talk was held in Jeddah in January 1975. The meeting failed to attain its objectives when the Philippine panel did not give in to the following demands of the Moro National Liberation Front: First, to grant autonomy to the islands of Mindanao, Palawan, and Sulu. Second, the autonomous government of this new political unit was to be vested with control over the internal security of its islands. Third, the new government was to be vested with the power to accept any aid from Muslim countries for its economic, social, and cultural progress.⁹ Similar demands have been made during the second round of talks including a new demand for the establishment of an Islamic judicial and educational system. However, it was rejected again by the Philippine government. It shows the lack of sincerity on the part of the government in the negotiation for peace and order in Mindanao. Ex-Senator Ahmad Domocao Alonto claimed that throughout

⁵ Stuart A. Schlegel, “Muslim-Christian Conflict in the Philippine South,” *Mindanao Journal* x, (Oct. 1983-June 1984), p. 61.

⁶ The following are among the incidents where Muslims were massacred indiscriminately: a) Jabida massacre (1968), where 68 young Muslim recruits, while undergoing military training were treacherously massacred by the Philippine Army officers in the Corregidor Island. Only one survived; b) Manili Massacre (1971), 70 Muslim men, women, and children were killed inside the mosque; and 3) Tacub massacre (1971) at least forty Muslims were left dead on the road.

⁷ Cesar A. Majul, *The Contemporary Muslim Movement in the Philippines*, (Manila: Saint Mary’s Publication, 1978), p. 55.

⁸ Resolution N0. 18 of the Political Committee at the Fifth Islamic Conference of Foreign Ministers held at Kuala Lumpur, June 21-25. Quoted in Wan Kadir Che Man, *Muslim Separatism: The Moros of Southern Philippines and the Malays of Southern Thailand*, (New York: Oxford University Press Inc., 1990), p. 213.

⁹ Cesar A. Majul, *Contemporary*, p. 69.

the negotiation sponsored by the Islamic Secretaries, the Philippine government never intended to sincerely fulfill their commitments to the Islamic Conference.¹⁰

The negotiation resumed in Libya on December 15-23, 1976, and led to the signing of the so-called Tripoli Agreement. This agreement provides for the creation of a Muslim Autonomy region embracing 13 provinces in Mindanao and Sulu. The agreement states further that, in the areas of autonomy, the Muslims shall have the right to set up their courts, which implement the Islamic *Sharī'ah* laws. The Muslims shall be represented in all Courts including the Supreme Court. The representation of Muslims in the Supreme Court shall be upon the recommendation from the authorities of the Autonomy and the Supreme Court. Decrees will be issued by the President of the Republic for their appointments taking into consideration all necessary qualifications of the candidates.

In response to this agreement, then President Marcos signed into law on February 4, 1977, Presidential Decree No. 1083 otherwise known as the Code of Muslim Personal Laws of the Philippines.¹¹ This Code was enacted barely forty-three days after the signing of the Tripoli Agreement. To recognize the rights of the Muslims and with due respect to the Tripoli Agreement, the Aquino administration made some commitments to implement some important parts of what had been agreed by them. Considering this, the government came up with some general provisions in the New Philippine Constitution to justify the granting of autonomy to Muslim Mindanao.¹² The Regional Consultative Commission (RCC), representing multi-sectoral bodies was created to prepare a draft of the organic act to be utilized for the final legislation required for the implementation of the said autonomy. The Organic Act for the Autonomous Region in Muslim Mindanao (ARMM) was signed into law by then-President Aquino in August 1989 under the Republic Act 6734. The Organic Act defines the basic structure of government for the region consisting of an elective executive department and legislative assembly. Aside from this, it shall provide for special courts with personal, family, and property laws jurisdiction consistent with the provisions of the constitution and national laws.¹³ Furthermore, the Organic Act, within its territorial jurisdiction and subject to the provisions of the Constitution and national laws, shall provide for the legislative powers, among others, personal, family, and property relations, preservation and development of the cultural heritage, and other matters that as may be authorized

¹⁰ Ahmad D. Alonto, "The Repression Against the Muslim Minority in the Philippines," *A Memorandum for the Seventh Session of the Islamic Conference of Foreign Ministers* (Istanbul: n.p., April 25, 1976), p. 45, cited in Macapado A. Muslim, *The Moro Armed Struggle in the Philippines*, (Marawi City: University Press and Information Office, 1994), p. 131.

¹¹ Hamid Barra, *The Code of Muslim Personal Law in the Philippines*, p. 5.

¹² Macapado A. Muslim, *The Moro Armed Struggle in the Philippines*, p. 136.

¹³ Sec. 18, Art. X, 1986 Constitution of the Republic of the Philippines.

by law for the promotion of the general welfare of the people of the region.¹⁴ However, there is a need to emphasize that the Organic Act applies only to the four provinces that voted favorably for the creation of the Autonomous Region through the plebiscite called by the government as a “constitutional process.” The development and peace-making efforts by the Aquino administration, including the Republic Act 6734 have been criticized for its failure to restore the disturbed peace and order condition of Mindanao. According to Macapado Muslim, “Any objective evaluation done on Republic Act 6734 will reveal its unresponsiveness to the Moro Problem; it does not grant the autonomy it was intended to provide.”¹⁵

When Ramos assumed President in 1992, he sought to renew the peace talks with the MNLF. He announced reconciliation as a prominent policy of his government and created the National Unification Commission to initiate an abroad, comprehensive peace plan.¹⁶ After three years of several extensive and contentious committee meetings, the panels agreed to end the nearly thirty years of bloody conflict in Southern Mindanao. The final peace agreement was signed by President Ramos on September 2, 1996, and issued an executive order for the establishment of a Zone of Peace and Development in Southern Philippines. That order was due to the effectiveness of the Southern Philippines Council for Peace and Development as the transnational mechanism to implement the Tripoli Agreement. It was specifically agreed by the panels that, “the Southern Philippine Council for Peace and Development (SPCPD), in consultation with the Consultative Assembly (to be composed of elected officials in the area of the autonomy, utilizing funds from the National Government, shall monitor, promote and coordinate the development efforts in the area, including the attraction of foreign investment, especially from the OIC member countries and the members of ASEAN.”¹⁷ It was further agreed that in 1999, there would be the implementation of a special regional security force, the setting up of an educational system centering on the *madrasah* (or Islamic concept of education), and the establishment of the *Shari’ah* and judiciary courts.

After the signing of the peace agreement, Nur Misuari, the chairman of the MNLF was elected as governor for the Autonomous Region for Muslim Mindanao. Misuari formed his cabinet and started approaching member countries of the OIC for the promised support and financial investments in Mindanao to rehabilitate this war-ravaged territory.¹⁸ However, during the Misuari's governorship, there was nothing on record that marked the development of the Islamic legal institutions in the Autonomous Region for Muslim Mindanao.

¹⁴ *Ibid.*, Sec. 20.

¹⁵ Macapado A. Muslim, *The Moro Armed Struggle in the Philippines*, 168.

¹⁶ Federico V. Magdalena, “The Peace Process in Mindanao,” 250.

¹⁷ Manuel F. Almario, “Peace at Last,” *Philippine Graphic* (September 16, 1996): 41.

¹⁸ Federico V. Magdalena, “The Peace Process in Mindanao,” p. 254.

Government Policies for the Transformation of Islamic Legal Institutions

History tells us that from the early times of Philippine colonialism in the sixteenth century, most of the government's policies have been issued to Muslim minorities as part of various approaches used to settle the Mindanao conflict. After the Philippine independence, the government pursued the policy of peace and order, and the Muslims' integration into the mainstream of national life through the enforcement of enactments, executive orders, and Presidential decrees to eliminate tensions and breakdown of laws and order in some Muslim areas. Solutions were seriously considered, formulated, and given priority to bridge the chasm that separates Muslims from other Filipinos.

The government adopted the policy of attraction, reconciliation, and rehabilitation. The Presidential Task Force for the Reconstruction and Development of Mindanao (PTF-RDM) was created among other things to restore peace and order in the Moro region and to implement selective amnesty and rehabilitation.¹⁹ The National Commission on Muslim Filipinos (NCMF) was created to provide economic projects to the Muslim populace and to preserve the Islamic culture and heritage in the Philippines. It annually sponsored the national Qur'an reading competition and the Shari'ah Bar Review for those who want to take the Shari'ah Bar Exam given by the Philippine Supreme Court. There were demands for accommodation by the Muslims, especially in the application and enforcement of their personal laws and the recognition by the government of the cherished values and beliefs which they dearly guarded for centuries. The Muslim Personal Laws in the Philippines were codified and became part of the national laws on February 4, 1977, through Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.

The grave concern shown by the members of the OIC for the plight of the Muslims in the Philippines put pressure on the government to create the autonomous region of Mindanao. The creation of the Organic Act for Autonomous Region was able to improve the stained image of the government to some OIC member countries who were betrayed by the non-implementation of the Tripoli Agreement. The Regional Autonomy, for the first time, was recognized and incorporated under the 1987 Constitution of the Philippines. The Constitution provides the nature, framework, powers, functions, and limitations of the autonomy under Article X, Section 15-21. The 1987 Constitution provides that,

The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of

¹⁹ Wan Kadir Che Man, 79.

nominees from multisectoral bodies...The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.²⁰

This article is different from the revised proposal for full autonomy which was submitted by the Moro National Liberation Front to the government which provides in part:

The Autonomous Government shall have the power to enact laws for the establishment of a judicial system within the area of autonomy. *Sharī'ah* Courts shall be established in the area of autonomy for the Muslims.

The Autonomous Government shall have the right to repeal, modify, or alter existing *Sharī'ah* laws within the area of the autonomy. Muslims, Christians, and Highlanders shall be represented in all courts including the Supreme Courts except the *Sharī'ah* which is for Muslims only, upon recommendation of the autonomous government.

The Autonomous Government shall have the right to establish a Regional Supreme Court which shall have, among other powers/jurisdiction, exclusive appellate jurisdiction over appealed cases arising from the regular civil courts and *Sharī'ah* Courts in the area of autonomy. All pertinent matters shall be left to the autonomous government.²¹

The 1987 Constitution provides a different judicial system to the autonomous government. The Organic Act provides that the administration of justice in the Autonomous Region is vested in the Supreme Court, the Court of Appeals, and other courts established by law which shall continue to exercise their judicial powers as provided by the Constitution and national laws.²² The Organic Act mandates the creation of the *Sharī'ah* Appellate Court as provided under Section 2, Article 1X. The *Sharī'ah* Appellate Court shall have its seat in the autonomous government unless the Supreme Court decides otherwise.²³ In addition to this, the Legislative Assembly of the Autonomous Region, in consultation with the Supreme Court, shall determine the number and the territorial jurisdiction of the *Sharī'ah* Courts.²⁴

Other developments that have been introduced by the government include the following: (1) The Arabic language has been made one of the major languages to be used in predominantly Muslim areas as clearly provided in the 1971 Constitution of the Philippines; (2) A Presidential Decree was issued directing the use of Arabic as one of the subjects to be taught in appropriate elementary and high schools in Southern Philippines;²⁵ (3)

²⁰ Sec. 18, Article X, Constitution of the Philippines.

²¹ Proposal No. 7, Revised Moro National Liberation Front M. N. L. F. Proposal presented to the Government Panel on April 15, 1987.

²² Sec. 1, Art. 1X, Constitution of the Philippines.

²³ *Ibid.*, Sec. 11, Art. 1X.

²⁴ Sec. 2, par. 2, Article 1X, Organic Act.

²⁵ Ali G. Macawaris, "Muslim Society, Higher Education, and Development: The Case of the Philippines" in *Muslim Society, Higher Education and Development in Southeast Asia*, edited by Sharom Ahmat and Sharon Siddique, (Singapore: Institute of Southeast Asian Studies, 1987), p. 100.

Scholarships were granted to deserving *mujahid* returnees and their families to pursue their studies in higher institutions; (4) the establishment of the Amanah Bank; (5) the creation of the Maharlika Village in Manila; and (6) the building of the Quiapo Mosque in the Philippines' capital city. The development programs in Mindanao suggest that the Philippine government recognized the Muslims as a historically and culturally distinct community. But despite the government's concession for Muslims' development in the South, the basic goal of the struggle, to gain meaningful autonomy was never fully granted.

The Classical Legal Texts, the Earliest Evidence of Islamic Law in the Philippines

The contribution of Philippine leaders and intellectuals in the past as manifested in the *Luwaran* Code of Maguindanao and the *Diwan Tausug* of Sulu have been included in this study not only because of their historical value, but they serve as the primary sources of substantive jurisprudence on Islamic laws found in the Philippines, and its provisions are based on the work of the Muslim jurists and covered the customary laws of the Muslim minorities. They were the earliest evidence of the application of Islamic laws in the Philippines. It is quite evident that the major source of the *Luwaran* Code was the *Minhaj al-Talibin* which was based on the Shafi'i's School of Law. Concerning the Sulu Principal Code, some of the contents conformed with the *Qur'ān* and some tribal laws which are quite similar to the common practices in the Malay world.

It is believed that the *Luwaran* Code dates back to the eighteenth century,²⁶ but it is undated and described by some writers as "very old."²⁷ On the other hand, the earliest codification of Muslim law in Sulu was promulgated around 1740 by Sultan 'Azim-uddin.²⁸ Some Sultans tried to codify the customary law intertwined with the Shari'ah law in some areas without much distinction, but no evidence of these works seems to have been successful. While other sultans and their struggles to transform their society have shown strong support for the implementation and application of the *Luwaran* and the Sulu codes within their respective dominions. An intensive examination of the content of the *Luwaran* Code and the Sulu codes would reflect the immediate guidance of the Muslim judges on

²⁶ Mosher Yegar, *Between Integration and Secession: The Muslim Communities of the Southern Philippines, Southern Thailand, and Western Burma/ Mynmar*, (Lanham, MD: Lexington Books, 2002), 192. Najeeb Mitry Saleeby in his book, *Studies in Moro History, Law, and Religion*, (Manila, Bureau of Public Printing, 1905), pointed out that the exact date for compilation of the *Luwaran* of Maguindanao is not known, but there is an assumption that it was compiled much earlier in the Eighteen Century. However, the work of Cesar Majul and Michael O. Mastura, *Islam and Development: A Collection of Essays*, (Manila Philippines: OCIA Publications, 1980) seems to suggest that *Luwaran* was compiled in the middle of the eighteenth century.

²⁷ M. B. Hooker, *Laws of Southeast Asia*, (Singapore: Butterworth Co. Pte. Ltd., 1968), p. 407.

²⁸ Hamid Barra, *The Code of Muslim Personal Law in the Philippines*, p. 47.

cases related to the Islamic law of marriage and divorce, criminal law, evidence, and property laws. These laws were the result of a long and careful study conducted by a few Muslim intellectuals, comprised mostly of judges who were knowledgeable about the local *'adat* and *Shari'ah*. This indicates that before the enactment of those laws, the Muslims in the Philippines relied on a literate culture.

The historical value of the *Luwaran* Code of Maguindanao and *Diwan* Tausug has attracted the interest of both local and foreign researchers in the discovery of their origin and sources. It is quite remarkable that the texts of these codes are different and adopted by different tribes, and they had been implemented based on the level of their understanding of Islam. Both are regarded as the best official codes of the Muslim tribes in Maguindanao and Sulu. However, they came from similar sources, but they were compiled separately and independently.²⁹ The term *Luwaran* which means “selection” or selected was compiled before the middle of the eighteenth century by Mindanao judges.³⁰ However, Najeeb M. Saleeby³¹ profoundly claimed that the Mindanao copies of the *Luwaran* gave no dates at all, and nobody seems to know when this Code was made.³² A copy owned by Datu Mastura³³ was estimated to have been written in 1886, which Najeeb Saleeby believed to be copied from an older manuscript.³⁴ They believed that it was prepared and compiled by the judges who assisted the *datu* in the administration of justice in Maguindanao. Those judges were not known because no one was able to identify any of them. According to some historians in Mindanao particularly the Magindanaons, the origin of *Luwaran* can be attributed to the reign of Sultan Faqih Maulana Hamzah Khayr ad-Din (d.1710-1178), who was himself a prominent jurist.³⁵

The *Luwaran* was compiled based on the framework of several Arabic legal treatises. The Arabic was used as a basis, and the provisions were constructed in accordance with the whole fabric of the “... Maguindanao-Buayan-Kabuntalan society” of Mindanao.³⁶ It seems

²⁹ Najeeb M. Saleeby, *Studies in Moro History, Law and Religion*, (Manila: Filipiniana Book Guild Inc., 1976), p. 67.

³⁰ *Ibid.*, p. 68.

³¹ Najeeb Saleeby was a Christian Arab born in 1870 in Souk al-Gharb, a town very close to Beirut. He authored the "Studies in Moro History, Law and Religion" which was first published in Manila in 1905.

³² Najeeb, *Studies in Moro History, Law and Religion*, p. 68.

³³ Datu Mastura claimed that he is the great-grandson of Datu Mastura Hijāb bin Quadratullāh who owned one of the oldest copies of *Luwaran* which was written about 1886.

³⁴ Najeeb, *Studies in Moro History, Law and Religion*, p. 68.

³⁵ Michael O. Mastura, “*Shari'ah* and Codification: Islamic Legislation in Relation to Legal Reforms in the Philippines,” *Shari'ah Law Journal*, 4 (January 1987), p. 64.

³⁶ Michael O. Mastura, *Muslim Filipino Experience: A Collection of Essays*, (Ministry of Muslim Affairs, Manila: PDM Press Inc., 1984), p. 40.

that the whole legal provisions found in the *Luwaran* are principally guided and adopted from the *Minhaj al-Talibin* by the leading Shafi'i jurist Zakariyyah Yahya' bin Sharif al-Nawawi, and its condensed form is entitled *Minhaj al-'arifin*.³⁷ The grammatical and syntactical details were guided by the *Fath al-Qarib* by Muhammad Ibn Qasim al-Ghazi, *Mirath at-Tullab*, an abridgment of the classical *Minhaj al-Tullab* by Zakariyyah al-Ansari who extracted it from the *Tuhfah and Nihayah*, standard manuals of Shafi'i School.³⁸

The *Luwaran* Code has been considered one of the most authoritative sources of Islamic laws in Mindanao, not only because of the good refutations of the Muslim intellectuals who were instrumental in the development of the laws, but it could also due to the simple language used in every article. The *Luwaran* can be studied by anyone provided he speaks the Maguindanao dialect. It could be taken as a manual for the layman and those who know Islamic law and '*Adat*. It is undoubtedly considered an authentic and complete manuscript. It was upheld by the people of Mindanao as sacred next to the Qur'an and hadith. Because of this, it was widely circulated in all areas, speaking the Maguindanao dialect.³⁹ It has been noted that in the process of making the laws, Mindanao judges were motivated by their respective rulers, who had shown a considerable degree of flexibility in selecting the laws without compromising the local customs. In some circumstances, Muslim judges tried to modify or reinterpret the wording of the original sources to make it agree with the prevailing customs of their respective places. Sometimes, they add a new article that does not exist in Arabic but conforms to local customs and practices. Certainly, the *Luwaran* is regarded as the best specimen of Maguindanao literature due to the originality of its form.⁴⁰ The authorities found it socially relevant, and it was very convenient and helpful in the administration of justice due to its comprehensive subject matter that deals with property, slaves, transactions, partnerships, debts, nature of oaths, testimony, homicide, marriage, divorce, adultery, gifts, inheritance, wills, fines, and punishments. The Code, however, does not deal with Islamic rituals, moralities, and other aspects of Islamic law.

The position of the *Luwaran* Code in the legal history of Islam in the Philippines has indeed demonstrated an immense contribution to the transformation of the Islamic legal institutions and the Muslim communities in the Philippines. It may be claimed that it had great practical significance, and it forms the basis for any form of judicial proceedings. Its

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Hamid A. Barra, p. 48.

⁴⁰ Najeeb, *Studies in Moro History, Law and Religion*, p. 69.

importance lies in the fact that the influence of Muslim custom in the provisions of the *Luwaran* was less, and the Islamic law was more generally adhered to. Significantly, many of the provisions can be easily distinguished, having close affinities to Islamic practices, mainly in Shafi'i texts. A considerable number of Philippine Muslim intellectuals who are familiar with the language of Islamic legal texts were instrumental in the enactments of the *Luwaran* Code. They translated the Arabic legal treatises into their local dialects and implemented the laws together with their customary '*Adat*. The influence of the Shafi'i School of Law is manifested in every page of the Code. An easy explanation of this is the fact that this School is predominant in the surrounding Indonesian islands, which already have a long history of Islam. It may also be pointed out that the maritime contacts between the Muslims in the Philippines and those in the neighboring islands were quite intimate.⁴¹

It cannot be denied that any law which is a mixture of local '*Adat* and *Shari'ah* is not a guarantee for its perfection and the *Luwaran* Code is not an exception. Although many articles in the *Luwaran* are consistent with the *Shafi'i* School of Law, some components are purely local, while other provisions are intended to moderate harsh punishments provided in the standard texts.⁴² There are also some elements in the *Luwaran* which are not parallel to the classical texts. This can be easily noticed in the laws that pertain to fines. Concerning the implementation of the *Luwaran*, Saleeby observed that, in practice, not all laws of murder, adultery, and inheritance were strictly complied with.⁴³ However, during that time, whatever in the *Luwaran* stood as an ideal law for advocating the supremacy of the *Shari'ah* and recognizing the importance of the local '*Adat*. The translated version of Islamic law as embodied in the *Luwaran* serves as an important guide for the Mindanao *datus*, judges, and *pandita* who do not understand Arabic.⁴⁴ *Pandita* refers to the scholar who can read and write and perform the functions of a religious leader. The chief *pandita* is called the "*Datu Kali*" because he is the most competent expounder of the law and the best-fitted person in the community, to act as a *qadi* or judge.

The amalgamation in some of the provisions of the *Luwaran* is often described as containing rules of Muslim '*Adat* which was raised to the level of law. The '*Adat* of the Muslims in the Philippines has been understood as a system of rules because, in actual practice, custom and law were applied without distinction. However, the amount of weight

⁴¹ Cesar Adib Mahul, "The General Nature of Islamic Law and its Application in the Philippines," *Philippine Law Journal* 52 (1977), p. 381.

⁴² *Ibid.*, p. 382.

⁴³ Najeeb, *Studies in Moro History, Law and Religion*, p. 70.

⁴⁴ *Ibid.*, p. 68.

is to be given to provisions containing the rules of Islamic law. Examples of these are rules relating to marriage, divorce, and inheritance which are generally based on the *Shafī'i* School of Law. The substantive provisions of the *Luwaran* have been divided into articles and sections selected from Arabic books on law and religion. The articles were written separately from the Arabic marginal quotations and were numbered for convenience in references. There are about 100 Arabic marginal quotations used by Maguindanao judges as authority for the corresponding articles of the *Luwaran* they translated into their dialect. Some of these quotations conform to the order of the corresponding articles, while other quotations do not because of their ignorance of the real meaning of the Arabic texts and the proper articles where they should be quoted. All articles including the Arabic marginal quotations were translated into English by Najeeb Salleby, a Christian Arab and an American citizen who became the Superintendent of Schools in the Moro Province in 1906.⁴⁵ The provisions of the *Luwaran* were not strictly observed by the Muslims. There were cases where these laws, particularly those relating to murder, adultery, and inheritance as given in the Code were totally ignored or not strictly complied with.

Among Tausogs, the people of Sulu, there is the *Diwan* or the code, which provides the judgment procedures issued by the Sultan after consultation with influential headmen and religious leaders. The *Diwan* is an idealization of customary laws and religious judgment procedures. It standardized the punishment for various offenses and the amounts to be paid for blood. There are 2 kinds of *Diwan* Tausog: a) The Principal Sulu Code and b) the New Sulu Code. When Islam was accepted by the Sultan of Sulu, the teachings of Islam were easily accepted by the people. Their indigenous worldviews were gradually transformed and attuned in accordance with the prevailing teachings of the great scholars from the Arab and Malay world. Imbued with the desire to implement the teachings of Islam, the Sultan of Sulu tried to form a new system of government guided by certain laws. In 1740, the learned Sultan 'Azam-ad-Din tried to codify some selective aspects of Islamic law. But no evidence of this work seems to have survived.⁴⁶ The old Sulu Code was successfully codified by Sultan Muhammad "*Pulalon*" Fadl around 1850 which adhered closely to the classical texts, particularly on crimes and punishments.

It may be observed that due to in-depth impressions the Sulu Sultanate had of the Islamic culture, we find that leading *datus* and officials had to refer to the local '*Adat* laws before the promulgation of new laws. However, the Principal Sulu Code prepared by his

⁴⁵ *Ibid.*, p. xiv.

⁴⁶ Cesar, *Nature of Islamic Law*, p. 381.

successor Jamal al-‘Alam (reigned 1862-1881) gained wider acceptance because the punishments were relatively more moderate. The same Code was used by Sultan Harun without modifying any of its provisions. The Code was written by Asmawil, the chief clerk and minister of Sultan Jamal al-‘Alam. But the manuscript was secured by Shaikh Mustafa, former minister of Sultan Harun.⁴⁷ This Code only includes a short section on family laws. The Principal Sulu Code was a guide for the proper execution of the duties of the office in accordance with the law and rules of the Sulu Island and other areas within the jurisdiction of the Sultan of Sulu. It was concurred by all and is promulgated with the general consent of all the *datus*, *panglima*, and subordinate officers of the state.⁴⁸ This Code liberalized the penal provisions for abduction, theft, false claim, adultery, attempted murder, and consummated murder. The provisions also deal with the rules governing civil liabilities such as marriage by abduction, elopement, compulsory marriage, and other related cases.

The family law and other laws are not covered by the provisions of the Principal Sulu Code. At any rate, the fact stands out that the unwritten laws which were based on *adat* as complemented or supplemented by the Islamic laws were recognized in the absence of a written or codified law. This means that the *adat* laws represented by *Shari’ah* were applied in dealing with family laws. The New Sulu Code was drafted in 1902 by Haji Butu‘Abdul Baqi, the Prime Minister or adviser of the Sultan Jamal al-Kiram II (1894-1936).⁴⁹ It appears that the New Sulu Code was not for many political and social reasons, ever operative. The code is an arrangement of the old code with some modifications. However, it did not gain popular support, and it was so much objected to by the *datus* and chiefs that its general application became impossible. The people strongly opposed its adoption because it is viewed as another form of unjust taxation. Obviously, such an antagonistic view against the tax was opposed and reinforced by external influences. It happened that at the time of its enactment, the power of the Sultan was waning on account of the American occupation.⁵⁰

The New Sulu Code attempts to provide a guide for the proper execution of the duties of office in accordance with the law and rules concurred with by all, and promulgated with the general consent of all *datus*, ministers, *panglima*, and subordinate officers of Sulu Island. The subject matter of this Code is the same as in the Principal Sulu Code, but considerable attention is paid to the increase in fines for every offense committed. The provisions of the

⁴⁷ Najeeb, *Studies in Moro History, Law and Religion*, p. 98.

⁴⁸ *Ibid.*, p. 99.

⁴⁹ *Ibid.*, p. 104.

⁵⁰ Cesar, *Nature of Islamic Law*, p. 381.

New Sulu Code can be classified as follows: Theft (article I), murder (article II) adultery (article III), defamation (article IV), cases arising from no witnessed purchase (article V), false claims (article VI), unlawful or unauthorized exactions (article VII), debt (article VIII), fines (article IX) and unjust actions and decisions (article X).⁵¹

The Agenda of Legal Reform

It is the common belief of many Muslim intellectuals in the Philippines that one of the mechanisms to foster understanding among Muslims and non-Muslims is through the codification of Muslim Personal laws. For the Muslims, this was a response to their genuine aspirations in the recognition of their laws, which have been too long ignored by the government. For them, the four decades of experience under Christian and Western European concepts of personal status, property, and endowments is inexcusable. Hence, the national recognition of the application of Muslim personal laws has been a great success for a religious minority in achieving the right of its implementation in the Muslim community in a non-Islamic state. The Muslims' rights to enjoy their culture, practices, moral values, and religious beliefs, and to maintain that their ways of life are protected not only in the Philippine Constitution but also in the 1948 Universal Declaration of Human Rights. The codification of the Muslim personal laws is in accordance with the provisions of the Philippine Constitution on the due process clause and the free exercise of religious clause which are reinforced by the fresh mandate of the State. In other words, "the state shall consider the customs, beliefs, and interests of the national cultural communities in the formulation and implementation of state policies."⁵² In addition to this, Article XVII, section 3 (2) of the same Constitution provides that, "All...decrees...promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, binding and effective even after the lifting of martial law..." These articles justified the full sanction of the state in the enforcement of the Islamic legal system so that the Muslim populace would have a more organized way of life. With these articles, the enactment of the Code of Muslim Personal Laws (Muslim Code) stands on a strong constitutional base.

For the government, the codification of Muslim laws was undertaken under the spirit of religious freedom and cultural diversity in a unitary state. A considerable number of policymakers and government officials believed that it was codified in response to the barest demand for justice. This was based on the ill-will action of the government towards its

⁵¹ Najeeb, *Studies in Moro History, Law and Religion*, pp. 104-111.

⁵² Sec. II, Article XV, 1973 Constitution of the Republic of the Philippines.

cultural minorities, especially the Muslims in the South. But whatever the reasons for its codification, the Muslim Code became one of the positive domestic instruments for national understanding. In the pursuit of developing a discourse that promotes the objectives of the codification will eventually galvanize better recognition of Muslim laws and thus, its implications for national development will be appreciated. The codification of Philippine Muslim personal laws has undergone three formative stages. It began when the “Research Staff” was created to draft the Code of Muslim Personal Laws under Memorandum Order No. 370. The Staff completed its work and submitted the draft to the Office of the President on April 14, 1974. This was followed by the creation of the Presidential Commission to review the draft of the proposed Code of Muslim Personal Laws of the Philippines. The final stage can be attributed to the approval of the proposed Code on August 29, 1975, which was only signed into law on February 4, 1977, through Presidential Decree 1083. This was a commendable step taken by a Catholic country like the Philippines by allowing Muslims to be governed by the bulk of their religious family laws. At present, the Muslims in the Philippines are greatly guided by this Code despite their ethnolinguistic differences.

The codifiers explained the objectives of the Muslim Code as follows: (1) The Code recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective; (2) This Code codifies Muslim laws; and (3) It provides for an effective administration and enforcement of Muslim personal laws among Muslims.⁵³ The substantive provisions of the Muslim Code deal with the essential requisites and legal impediments to marriage, divorce, paternity and affiliation, guardianship, and custody of minors, support and maintenance, claims for customary dower (*Mahr*), betrothal, breach of contract to marry, solemnization and registration of marriage and divorce, rights and obligations between husband and wife, parental authority, and the property relations between husband and wife. The law of succession, testate or intestate has been included in the provisions of this Code. Another important feature of the Muslim Code is the creation of the *Sharī‘ah* courts and the office of the Jurisconsult or *Mufti* specifically enjoined to have an effective enforcement and administration of the Muslim law.

Formation of the Research Staff

The initial discussion on the codification of Muslim personal laws in the Philippines began in 1973 under the auspices of the Presidential Task Force for the Reconstruction and

⁵³ Muslim Code, Article 2.

Development of Mindanao and Sulu (PTF-RAD). The Office of the President created the Research Staff⁵⁴ under the PTF-RAD to come up with a draft of a proposed Code of Philippine Muslim laws. Among the functions of the staff were to undertake the following activities: (1) To survey, collect, and gather materials on Muslim laws from all available sources with particular emphasis on current Philippine laws affected by Islamic laws; (2) To collect and reconcile Philippine laws with Muslim laws; and finally, (3) To prepare a preliminary draft of the proposed Code of the Philippine Muslim laws (*Sharī'ah, Fiqh, 'Adat*, etc.), and its implementing agencies.⁵⁵

The Research Staff performed their assignment by conducting consultations, seminars, and dialogues with different Muslim sectors (such as leading '*ulama*', traditional *Qadi*, *Panglima*, and *Pandita*). The staff was under the leadership of two Muslim lawyers who were assigned as the Project Director and Assistant Director to define a structure that would accommodate the existing Muslim personal laws in the Philippine judicial context. Before the staff were appointed, the lawyers gave considerable thought to the structural problem by looking at the Muslim enactments governing the Muslims in Malaysia and Singapore.

Several opinions have been deliberated and heard on the legal method to be used in approaching the project. There were members of the staff who argued that the Muslim minority in the Philippines lived in a state of *Darul Aman* (contractual status) where laws were laid down according to the constitution based on public policy (*Siyasah*).⁵⁶ This principle was drawn from the constitutions of India and Singapore, where the Muslim minorities were governed by a simple decree relating to their personal status. On the other hand, few believed that the codification of the Muslim laws and customary laws was not possible. The Muslim minority in the Philippine secular state was not only in the status of adhering to *Taqlid* (doctrine of imitation), but they were devoid also of *Ijtihād*.⁵⁷ However, some members believed that the application of Islamic law in the Philippines could be done only through an administrative enactment considering that the *Sharī'ah* laws were already shaped and formulated by the Islamic *Fiqh* of the four schools of law. Based on this, the staff agreed on the recommendation to construct a body of *Majlis* who would administer the Muslim laws. This body was clearly emphasized in the announcement made by Ramos

⁵⁴ Memorandum Order No. 370 (1973).

⁵⁵ *Ibid.*

⁵⁶ Michael Mastura, "Shari'ah and Codification: Islamic Legislation in Relation to Legal Reforms in the Philippines," *Shari'ah Law Journal*, iv, (1987), p. 71.

⁵⁷ *Ibid.*

Cardenas⁵⁸ during the first seminar on the codifications of customary and Islamic laws in the Philippines, the staff,

...aims at two major innovations in the Philippines' legal system; the first is the establishment of an administrative body known as the *majlis Agama Islam*. This body will oversee the enforcement of Islamic law and the *adat* in Philippine Muslim communities. Under it shall be an arbitration council and *agama* courts, the latter being the traditional form of justice in Philippine Muslim society. The second innovation involves substantive law, and this covers the subjects of marriage, divorce, personal status, property and inheritance, and *waqf* and or endowments.⁵⁹

Part of the two-month fieldwork conducted by the Research Staff in eleven provinces in the South in late 1973 was the seminar on the codification of Muslim laws, which was held in Davao City on September 20-22, 1973.⁶⁰ The purpose of such an assembly was to resolve the urgency connected with the codification and the study of Muslim customary and Islamic laws. The historical backgrounds of the Muslims, their contemporary problems, and their legal precedents justifying the codification were presented in this first seminar. They also discussed how the Philippine Muslim concept might be secularized through the implementation of an Islamic judiciary system.⁶¹ The members of the Research Staff were able to trace, gather, and organize the additional data on Philippine Muslim personal laws, by having occasional trips to the Muslim provinces. In all these public activities organized by the Research Staff, the tri-sectoral elements of the national community involved namely, the Department of Local Governments and Community Development, the Presidential Assistant on National Minorities, Mindanao State University, Commission on National Integration, and the various local governments in the Muslim provinces in providing administrative and material support to the seminars and dialogues in the South and in the greater Manila area.⁶²

In March 1974, the Research Staff completed its work and submitted the draft to the President on April 14, 1974. In the explanatory note to the draft code, the Staff highlighted that,

...the draft Code does not seek to codify Muslim or Islamic substantive law for this should be another product of the codification effort, a second stage,

⁵⁸ Assistant Executive Secretary, Office of the President, Malacanang.

⁵⁹ Ramon B. Cardenas, "The Significance of Codification of Philippine Muslim Laws," *Studies on Muslim Laws (Shari'ah) and Customary Laws ('adat)* (Manila: Office of the Special Assistant on Cultural Communities, Department of Public Information, n.d.), pp. 8-9.

⁶⁰ Primer on Proposed Code on the Administration of the Philippine Muslim Law, published by the Office of the President, 1975, hereafter cited as *Primer*.

⁶¹ Michael Mastura, *Muslim Filipino Experience*, (Manila: Office on Muslim Affairs, 1984), pp. 191-197.

⁶² *Primer*, p. 283.

if we may. But in the preparation of the draft Code, the Research Staff has taken in every respect the Muslim law as supplemented, where applicable by customary ('*adat*') law to be its point of reference...It was far from the intention of the Staff to introduce into our jurisdiction something that may be found irrelevant to our existing conditions and situations for we have developed in our Muslim communities the rudiments of Islamic or Muslim law and customary ('*dat*') law.⁶³

The draft Code on the administration of Philippine Muslim laws comprised nine chapters, covering the preliminary provisions, the consultative council (*majlis*), the *Shari'ah* courts, marriage and divorce, property and inheritance, *waqf* and endowments, penal provisions, miscellaneous provisions, and the transitory provisions. This Code considered the four *Madhahib* (i.e. Shafi'i, Hanafi, Shafi'i, and Hanbali). It stressed the Shafi'i School of Law as the prevailing element in our jurisdiction.⁶⁴ It is sad to note that the high hopes of the Muslims in the draft Code were not feasible because the Code received a chilly reception from the highest members of the Supreme Court. The Research staff's project director, his assistant, and a former Muslim senator were made to appear before the Judiciary Code Committee to answer questions about the draft. The Code was scrutinized due to the oft-repeated fear by the government that the codification of Muslim laws might constitute a "state within a state." This problem was aptly summarized by a member of the Judiciary Code Committee as follows:

When you really integrate this (Muslim) system of law, the basis of which is entirely different from ours, are we not asking to curb out an exception? As it is different, I think we can integrate or curb our exceptions. Now, if it is because of the system's non-integrative nature, then we really want an exception. If it is an exception, then there is necessarily a creation of peculiarity leading to the unavoidable consequence of divisiveness. I noticed that the code creates a rather complete system. Are we not again tending to have a state within a state.⁶⁵

The Research Staff explained that the Muslims had no intent to create a separate state, but they only asked for a guarantee from the Christian Philippine government to be governed by their laws. If Islam guarantees every community to be governed by its law without being regarded as an autonomous force or a "state within a state," why can't the Muslims in the Philippines enjoy the same rights from the Christian government? The members of the Research Staff asserted that "the Muslims in the Philippines can be loyal citizens of our Republic so long as they enjoy full religious and civil liberty. There is never

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Michael O. Mastura, *Shari'ah and Codification*, p. 72.

any doubt that the Muslim communities have to preserve the critical portions of their personal laws.”⁶⁶ This shows that the ignorance of the members of the Supreme Court Judiciary Code Committee regarding Islamic laws was, to a great extent, responsible for the subsequent controversy. To resolve this controversy, the Office of the President created under Executive Order No. 442 the “Presidential Code Commission to Review the Code of Philippine Muslim Laws” on December 23, 1974. The Code Commission became an instrument for scrutinizing the provisions of the proposed Code to resolve the dissatisfaction of the government and to prevent the development of the state within a state.

The Impact of the Formation of Presidential Commission

It was provided under Executive Order No. 442 that the Presidential Code Commission was created with the rationale that, "the realization of the aspiration of the Filipino Muslims to have their system of laws enforced in their communities will reinforce the just struggle of the Filipino people to achieve national unity."⁶⁷ An eleven-man committee member of the Presidential Code Commission⁶⁸ was appointed under the chairmanship of Cesar Majul, the Dean of Islamic Studies at the University of the Philippines. Its members were representatives from different agencies, completely different from the members of the Research Staff, who prepared the draft Code. The Presidential Commission was composed of seven Muslim members, and the rest were non-Muslims. The non-Muslims were the representatives from the Supreme Court, the Department of Justice, the Law Center of the University of the Philippines, and the Catholic Hierarchy of the Philippines.

The Presidential Code Commission membership was criticized, due to the participation of non-Muslims in reviewing the proposed Code on Muslim Personal Laws. But according to Cesar Adib Majul:

The idea of having representatives from different government legal institutions, some who happened to be non-Muslims was meant to see to it that the Muslim personal laws to be codified fitted within the Constitution of the country. It was aimed at committing such government institutions to support the work of the Commission. The appointment of a Catholic to the

⁶⁶ Mastura and Buat, “The Introduction of Muslim Law into the Philippine Legal System, *Mindanao Journal* ii, nos. 3-4 (January-June 1977), p. 261.

⁶⁷ Paragraph 2 of the whereas clause of Executive Order No. 442, Dec. 23, 1974.

⁶⁸ The Executive Order provided for eleven members: The Dean of the Institute of Islamic Studies, Philippine Center for Advanced Studies, University of the Philippines, who was to serve as Chairman, a representative of the Supreme Court who was to be the Vice-Chairman, a representative of the Integrated Bar of the Philippines, a representative of the Department of Justice, a representative of the University of the Philippines Law Center, the project Officer of the former Research Staff which prepared the draft, a representative of the Catholic Hierarchy, two reputed Muslims representing the Muslim lawyers of the country, and two well-respected members of the ‘*ulama*’.

Commission to represent the religious majority in the country was intended to dramatize the fact that there was national unity behind the move to give Muslims the legal right to be governed by the personal laws of the *Shari'ah*.⁶⁹

In reviewing the draft Code, conferences, meetings, and seminars were held by the Presidential Code Commission for consultations. The first plenary meeting of the Commission was held at the Philippine Center for Advanced Studies, University of the Philippines, on May 23, 1975, attended by all commissioners except the two members, Ustadh 'Ali 'Abdul 'Aziz and Bishop Bienvenido Tuftud, both of whom never attended any session.⁷⁰ The members of the Presidential Commission then divided the work amongst themselves by creating two committees, one to review the administrative provisions and the other to examine the substantive provisions of the proposed Code. Several meetings were held for more consultations. On June 20, 1975, another meeting was held in Quezon City attended by twenty-five senior Muslim lawyers (all trained in Philippine national law, but not in *Shari'ah*), who were encouraged by the members of the Presidential Commission to express their views and opinions to improve the draft Code. They reported that the meeting was productive with supportive participants offering suggestions for improving the draft Code, especially those about constitutional principles.⁷¹ The Presidential Commission also initiated and held consultations with learned '*Ulama*' on July 23-24, 1975. The twenty-six '*ulama*' who were present in the two-day conference appreciated the government's effort in the codification of the Muslim personal laws. The participants including the representatives of the Converts to Islam Society of the Philippines gave their opinions dealing with the *Majlis*, *Mufti*, *Bayt al-Mal*, *Waqf*, *Zakat*, judges of *Shari'ah* courts, divorce by *Talaq*, plural marriage, the rights of women, and the right of a non-Muslim wife to inherit from her Muslim husband.⁷²

In August 1975, efforts were made by the Presidential Commission to evaluate, revise, and prepare its final report to the President. The Committee that was assigned to review the administrative provision of the draft Code excluded some recommended administrative policies, which are purely religious matters. These are the consultative Council or *majlis* with its special committees, the Office of the *Mufti* and the Legal Committee, the Board of '*Ulama*', and such other matters as the administration of the *waqf* and endowment, the collection of *Zakat* and *Fitrāh*, and the administration of mosques and

⁶⁹ Cesar Adib Majul, "Problems in the Implementation of *Shari'ah* Personal laws in Muslim Minority Countries in the Far East," *Islam and Comparative Law Quarterly* 6, No.1 (March 1986), p. 129.

⁷⁰ Hamid A. Barra, p. 55.

⁷¹ *Report of the Presidential Commission to Review the Code of Filipino Muslim Laws*, (n.p.: August 29, 1975), pp. 2-4.

⁷² *Ibid.*, pp. 5-6.

madrasah.⁷³ Some of the administrative agencies retained in modified form were the *Shari'ah* courts, the *Agama* Arbitration Council, the Office of the *Mufti*, or the Office of the Jurisconsult in Islamic laws. On the other hand, the Presidential Committee reviewed the substantive aspect. However, after finding that the substantive provisions were inadequate, its knowledgeable members were asked to derive the pertinent provisions of the Code from their research and through their knowledge of the customs and traditions of the Muslims to organize a comprehensive and coherent Muslim legal system.⁷⁴ On August 28, after reviewing the final draft, the Presidential Commission's report was prepared for submission to the Office of the President. It was stated in this report that the reviewing of the "Proposed Code on the Administration of Philippine Muslim Laws of 1974," the Presidential Commission was guided by the following five principles, to wit:

- 1) Of the Islamic Legal System, which is considered a complete system comprising civil, criminal, commercial, political, international, and purely religious laws, only those that are fundamentally personal in nature were to be codified;
- 2) Of the personal laws, those relative to acts or practices which are absolute duties under Muslim law were to be included, and those Muslim laws consider forbidden and demand unconditional punishment were to remain prohibited;
- 3) Where the provisions of the law on certain subjects were too complicated for a Code, only the fundamental principles were to be stated, and the details left to the judges for proper implementation;
- 4) No precept, fundamental though it might be, was to be incorporated in the Code where it appeared to be contrary to the principles of the Constitution of the Philippines; and
- 5) No precept was to be included unless it was based on the principles of Islamic law, as expounded by the four orthodox (*Sunni*) schools.⁷⁵

The Presidential Commission introduced fundamental changes and concluded in its report that, "For all practical purposes, it may be said that, with reference to the draft Code reviewed by the Commission, this Code is almost in its entirety a new one."⁷⁶ The difference between the "Proposed Code on the Administration of Philippine Muslim Laws of 1974"

⁷³ Hamid A. Barra, p. 57.

⁷⁴ Report of the Presidential Commission to Review the Code of Filipino Muslim Laws, p. 8.

⁷⁵ Code of Muslim Personal Laws of the Philippines (Metro Manila, Philippines: Office on Muslim Affairs, 1983), p. vi. In this study, the Code of Muslim Personal Laws of the Philippines will be referred to as the "Muslim Code".

⁷⁶ Report, pp. 8-9.

drafted by the Research Staff and the "Code of Muslim Personal Laws of the Philippines" prepared by the Presidential Code Commissions was summed up as follows:

Where the draft Code was procedural, the final Code is substantive. Where the draft Code preserves Philippine Muslim customs, the final Code prescribes behaviors consistent with Islam as it is practiced in the Middle East. Where the draft Code created a semi-autonomous judicial structure, the final Code creates a small easily controlled compartment within the existing Philippine judicial system.⁷⁷

The Proposed Code of Muslim Personal Laws was finally submitted to the Office of the President for approval on August 29, 1975. The draft Code, with minor changes in the proposed number of *Sharī'ah* courts and the procedure for appeal, was signed by the President into law on February 4, 1977, through Presidential Decree 1083 without a single amendment to any of the substantive provisions of the Code as prepared by the Presidential Code Commission.

Code of Muslim Personal Laws in the Philippines

The Muslim Code comprises 190 articles arranged in five books. *Book One* contains general provisions that consist of articles 1-7. Articles one and two refer to the title and purposes of the Code. The remaining articles deal with the construction of the Muslim Code and the definition of terms. *Book Two* deals with Persons and Family Relations. Articles 8-12 deal with civil personality (*shakhsiyyah madaniyyah*), articles 13-70 contain the law on marriage and divorce, articles 71-77 explain the parental authority, articles 78-80 deal with custody and guardianship, articles 81-87 provide the rules on the registry of marriage, divorce, and conversions and the last article in book two refers to other acts affecting civil status. *Book Three* consists of articles 89-136, dealing with successions both testamentary and intestate succession. The rules governing the settlement and partition of estate have been discussed in the last three articles of this book. *Book Four* takes procedural matters regarding the jurisdiction and also the creation of *Sharī'ah* courts, the *Agama* Arbitration Council, and the jurisconsult in Islamic law. The last part of the book deals with miscellaneous and transitory provisions such as Muslim holidays, communal property, customary contracts, conversions, penal provisions on bigamy, and other specific offenses, and transitory provisions.

The provisions of the Muslim Code could be constructed and interpreted in accordance with the Qur'an, *Sunnah*, *Ijma'*, and *Qiyas* as enunciated in the Code which reads:

⁷⁷ Carter Bently, "The Islamic Law in Christian Southeast Asia: The Politics of Establishing Shari'ah Courts in the Philippines" *Mindanao Journal*, Vol. x, Nos. 2-4 (October 1983-June 1984), p. 43.

“1) In the construction and interpretation of this Code and other Muslim laws, the court shall take into consideration the primary sources of the Muslim laws. 2) Standard treatises and works on Muslim laws and jurisprudence shall be given persuasive weight in the interpretation of Muslim laws.”⁷⁸ It can be seen that the Muslim Code was derived from the principles of the four Islamic schools of thought. The Code provides that, “Should there be any conflict among the orthodox (*Sunni*) Muslim schools of law (*Madhahib*), that which is in consonance with the Constitution of the Philippines, this Code, public order, public policy, and public interest shall be effective. The Muslim schools of law shall, for purposes of this Code, be the Hanafi, the Maliki, the Hanbali, and the Shafi’i.”⁷⁹ For example, the various grounds stipulated by the four schools. Provisions that deal with a woman's right to claim a divorce from her husband or petition the courts to grant her a divorce are found under Articles 50-53 of the Code. In the words of Majul, the different grounds given by the four schools through which a married woman could petition a court for judicial divorce are:

Among the Hanafis, practically the only reason for a woman to petition for divorce was the sexual impotence of the husband such that he could not consummate the marriage. Among the Shafi’is, cruelty was a good ground for divorce; while among the Hanbalis, desertion or lack of support as well as certain stipulations in the marriage contract were practically the only reasons. Among the Malikis, however, the wife could have many reasons: the husband's desertion, lack of support, cruelty, sexual impotence that had developed even after marriage, and incurable or chronic diseases that can harm the wife or family.⁸⁰

It shows that the Muslim Code does not restrict itself to the opinions of one school of law. It shows its readiness to adopt any of the interpretations of the *Madhahib* not contrary to the principles of the Constitution of the Philippines. This rule, however, does not apply to the settlement and administration of the estate of the deceased. The Code provides that, “1) In every petition for probate of will or for the settlement of the estate of a decedent, all matters relating to the appointment of administrator, powers, and duties of administrators or executor, and the court shall take into consideration the school of law (*Madhab*) of the decedent. 2) If the decedent’s *Madhab* is not known, the *Shafi’i* school of law may be given preference together with the special rules or procedures adopted in pursuant of this Code.”

In a few other cases, the Muslim Code adopted the technique of *Takhayyur*⁸¹ which is identical to the modern legislation in other Islamic countries. There is a provision adopted

⁷⁸ Muslim Code, Article 4.

⁷⁹ *Ibid.*, Article 6.

⁸⁰ Cesar A. Majul, *Nature of Islamic Law*, p. 387.

⁸¹ *Takhayyur* is the technical term for selection of rules from the various schools of law to apply to different acts.

by the Muslim Code, which does not exist in any known school of Islamic jurisprudence. However, it is a special law that was borrowed from the modern laws of Syria, Tunisia, Morocco, and Egypt. This provision is known as "bequest by operation of law."⁸² It is a law that solves the problem of the exclusion of the orphan and grandchildren of the testator by a provision prescribing an obligatory bequest in their favor equaled to what the parent would have inherited had he survived, provided that it does not exceed the bequeathable third. One important section of the Muslim Code is that it diminished the importance of Muslim customary laws. In other words, the *'adat* practices of the Muslims in the Philippines play a minor role. Thus, the Muslim Code provides that:

Muslim law and *adat* not embodied in this Code shall be proven in evidence as a fact. No *adat* which is contrary to the Constitution of the Philippines, this Code, Muslim law, public order, public policy, or public interest shall be given any legal effect.⁸³

The application of the Muslim customary laws has not been entirely ignored by the Muslim Code, particularly, in dealing with the administration or disposition of communal property which provides that, "Except as otherwise provided in this Code, the communal property shall be administered or disposed of, in accordance with Muslim law, *adat*, and special provisions of law."⁸⁴ Despite this concession, the customary law is subordinated to the principles of Islamic law. The Code did not go into questions of penal matters except the penal provisions on bigamy and other specific offenses. The scope of the contents of the Code is restricted to persons and family relations. The application of these provisions is restricted to parties who are both Muslims. In case of a marriage between a Muslim and a non-Muslim, if the male party is a Muslim and the marriage is solemnized in accordance with Muslim law, the Muslim Code shall apply. However, if there is a marriage between a Muslim and a non-Muslim that is solemnized according to Muslim law or not based on the Muslim Code, will be governed by the Civil Code or the Family Code of the Philippines.⁸⁵ The Code specifically provides under Article 3(3) that, "the provisions shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a non-Muslim." This provision was not found in the final draft submitted by the Presidential Code Commission, but it was added by a non-Muslim member of the said Commission, which serves only to confuse the readers.

⁸² Muslim Code, Article 107.

⁸³ *Ibid.*, Article 5.

⁸⁴ *Ibid.*, Article 174 (1).

⁸⁵ *Ibid.*, Article 13 (1-2).

The Muslim Code does not apply to Muslim aliens, although, the word “Muslim” is defined under Article VII as “a person who testifies to the oneness of God and the Prophethood of Muhammad (peace be upon him) and professes Islam.” It must be pointed out that the standpoint of the statutory construction provides that when the law does not distinguish, we should not distinguish what does not apply to aliens who are Muslims. With this, the legislative intent must be ascertained by considering the title and preamble of Presidential 1083 as an aid in its interpretation. The title of the Code reads as follows, “A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and Other Purposes.”⁸⁶ The Preamble of the Decree provides that the enforcement, with the full sanction of the state, the legal system of Muslims in the Philippines shall redound to the attainment of a more ordered life amongst them.⁸⁷ In addition to this, Executive Order No. 442 (Dec. 23, 1974) provides that the Code of Muslim Personal Laws was promulgated to fulfill, “the aspiration of the Filipino Muslims to have their system of laws enforced in their communities.” It can be concluded from the foregoing, that the provisions of the Code apply only to Muslims in the Philippines, except where the other party is a Filipino Muslim as provided in the Muslim Code. In the case of *Awadhi v. Aslih*,⁸⁸ the Supreme Court held that the Fourth *Shari’ah* District Court had no jurisdiction over the parties or their marriage, nor over the custody and guardianship of their children due to the following admitted facts: The plaintiff husband is not a Filipino Muslim but a national from Kuwait who resided at 49-7 Pamaong Extension, Tagbilaran City, Bohol, not in Marawi City where the *Shari’ah* Court is located. The defendant wife’s (herein petitioner Jocelyn Rulona) is a non-Muslim Filipino citizen (a Roman Catholic Christian). Their marriage was not solemnized in any part of the Philippines as they were married in Kuwait. They did not reside within the Fourth *Shari’ah* District, embracing the provinces of Lanao del Norte and Lanao del Sur, and the cities of Iligan and Marawi.⁸⁹ Both the plaintiff and the defendant resided in the province of Bohol. Therefore, the Fourth District *Sharī’ah* Court had no jurisdiction over the case.

Implementation of Islamic Legal Reform Through the Shari’ah Courts and the Jurisconsult

Prior to the creation of the *Sharī’ah* Courts, the Muslims brought their cases to the *Agama* Court after the abolition of the Tribal Ward Court created under the Organic Act of the Moro Province

⁸⁶ *Ibid.*, Article 1.

⁸⁷ *Ibid.*

⁸⁸ G. R. No. 81969 (Philippine Supreme Court Report).

⁸⁹ Muslim Code, Article 138 (d),

during the American era. The *Agama* Court was not sanctioned by the State. However, the parties preferred to bring their cases before it as the judgment rendered by it was deemed binding and final for the parties. The reason for this was due to their traditional adherence and confidence in the native tribunal of their forefathers.⁹⁰ It was also governed by simple procedure and without delay in rendering judgment. The *Agama* Court and the *Sharī'ah* Courts differ in their scopes of jurisdiction. The former court exercised arbitration of disputes among Muslims over cases related to customary laws and Islamic laws. However, its existence was not legally recognized by the government. Whereas, the *Sharī'ah* Courts have been recognized by the Philippine Government but with limited jurisdictions as provided under Presidential Decree 1083 and the Organic Act for Autonomous Region in Muslim Mindanao (ARMM).

The adoption of the Code of Muslim Personal Laws through Presidential Decree 1083 did not only codify the Muslim personal laws, nor did it merely recognize the legal system of the Muslims as part of the law of the land, but it also, more importantly, provided for an effective administration and enforcement of Muslim personal laws through the establishment of the *Sharī'ah* Courts in the Philippines.⁹¹ The *Sharī'ah* Courts became part of the Philippine judicial system subject to the administrative supervision of the Supreme Court. It is enunciated under Article X(1) of the Constitution of the Philippines that, "The judicial power shall be vested in one Supreme Court and such inferior court as may be provided by law...1. The *Sharī'ah* Court...". The Muslim Code was only implemented 8 years after its inception as part of the National laws due to the following reasons: Firstly, nobody was interested in its implementation as the Office of the President did not issue any word for its implementation and the Judiciary Code Committee denied any responsibility in implementing it because their jurisdiction only covered supervision of *Sharī'ah* courts once they operate. Secondly, there was an utter lack of judges qualified to man the five *Sharī'ah* District Courts and fifty-one *Sharī'ah* Circuit Courts created under the law. The said shortage was due to the following reasons: (1) under Philippine laws, no person can be a judge unless he is a member of the Integrated Bar of the Philippines (IBP); (2) the vast majority of Muslim lawyers who are members of the IBP only know the Philippine's legal system but not the Islamic law and its juristic procedures; (3) many of the learned 'ulama' were knowledgeable in Islamic law, but they did not appear to be well versed in the national laws or possibly ignorant of the Philippine

⁹⁰ Michael O. Mastura and Musib Buat, "The Introduction of Muslim Law into the Philippine Legal System", *Mindanao Journal*, vol. iii, Nos. 3-4 (January-June 1977), p. 106.

⁹¹ C.D. Moson, "*Shari'ah* Courts: Their Relation to the Development of Islamic Law in the Philippines", *Mindanao Law Journal*, Vol. 2 (March 1987), p. 23.

Constitution. Muslim lawyers have received their legal education from the universities of the Philippines, while many members of the ‘ulama’ have studied at the universities of Egypt and Saudi Arabia.⁹² This was an unanticipated problem that could be solved and compromised by considering the qualifications of *Shari’ah* judges provided under the Muslim Code and the Organic Act (ARMM), which was approved as law on August 1, 1989.

The *Shari’ah* Circuit Courts were in several provinces: (a) Six courts in the Province of Sulu; (b) eight in the Province of Tawi-Tawi; Ten in the provinces of Basilan, Zamboanga del Norte and Zamboanga del Sur, and the cities of Dipolog, Pagadian and Zamboanga; (d) twelve in the provinces of Lanao del Norte and Lanao del Sur and the cities of Iligan and Marawi City; (e) fifteen in the provinces of Maguindanao, North Cotabato and Sultan Kudarat and the City of Cotabato. The territorial jurisdiction of each of these courts has been fixed by the Supreme Court based on the geographical contiguity of the municipalities and the cities concerned, including their Muslim population.⁹³ All *Shari’ah* Courts are governed by the special rules or procedures (*Ijra’at Mahakim Shari’ah*) which have been promulgated by the Supreme Court⁹⁴ *en banc* in its resolution on September 20, 1985. The content of these rules was restricted to basic rules, including the rules on oath (*yamin*), supplemental proceedings on civil cases and special offenses, and arbitration proceedings through the *Agama* Arbitration Council. The Supreme Court cannot be deprived of its jurisdiction over certain cases even though the power to define, prescribe, and apportion the jurisdiction of various courts is vested in the National Assembly. The Office of *Mufti* (Juriconsult in Islamic law) has been established under the administrative supervision of the Supreme Court to assist in the administration of Islamic law. The President of the Philippines appointed the *Mufti*, a person of good moral character and proven integrity, and an eminent scholar in the *Qur’ān* and *Hadīth* and Islamic jurisprudence for a term of seven years. The *Mufti*, shall, on the written request of any interested party, have the authority to render legal opinions, based on recognized authorities, regarding any question relating to Muslim laws. He may also consider and act on every such request unless, in his opinion and for good reason, the question need not be answered.⁹⁵ With the task assigned to the *Mufti*, his position stands as equally important as the *Shari’ah* courts in the administration of the Muslim personal laws in the Philippines.

⁹² Cesar A. Majul, *Problems in the Implementation of Shari’ah*, p. 131.

⁹³ *Ibid.*, Article 150.

⁹⁴ Muslim Code, Article 148 and 158.

⁹⁵ *Ibid.*, Article 166.

Conclusion

In conclusion, the development of the Muslim legal system in the Philippines has been a gradual yet significant journey. Initially, the integration of Islamic institutions and laws was hindered by colonial rule, with the Spanish and American regimes failing to fully recognize or accommodate Muslim legal practices beyond personal matters. Despite these challenges, the resilience of the Muslim community in the southern Philippines allowed Islamic laws to persist, particularly in family and personal affairs. The eventual codification of Muslim Personal Laws in 1977, followed by the establishment of Shari‘ah courts, marked a major step toward the recognition of Islamic legal systems within the national framework. The creation of the Autonomous Region in Muslim Mindanao further empowered local governance, allowing for the development of Islamic education and justice systems. International support and Islamic solidarity contributed to an awakening of Muslim consciousness in the Philippines, helping to break down prejudices and integrate Muslims into the national narrative. The evolution of the Muslim legal system represents both a struggle for cultural preservation and a victory for the Muslim community’s aspirations for self-determination and equality within the broader Philippine society. The development of Islamic legal institutions in the Philippines is deeply rooted in the intellectual contributions of Philippine Muslim scholars, whose influence has shaped the legal frameworks such as the Luwaran of Maguindanao and the Diwan Tausog. These legal texts, though distinct in their application, collectively represent the flexibility and adaptability of Islamic law within the cultural and legal context of the Philippines. The creation of the Muslim Personal Laws Code was a significant achievement in integrating Islamic law into the Philippine national framework, specifically in family law. However, the Code’s limitations—particularly its exclusion of broader aspects of Islamic law and its misalignment with certain Islamic principles—underscore the ongoing challenges in achieving a fully functional Islamic legal system in the country. The gradual evolution of Islamic jurisprudence in the Philippines, supported by the recognition of the *Shari‘ah* Courts and the passage of the Organic Act for the Autonomous Region in Muslim Mindanao, reflects the nation’s acknowledgment of cultural pluralism and the legitimate aspirations of the Muslim minority. Despite the imperfections, the establishment of Islamic legal institutions and the recognition of the Muslim Code as part of the Philippine legal landscape marks a significant step toward reconciling religious and cultural diversity within a non-Islamic state. To achieve further progress, Muslim intellectuals, scholars, and political leaders must collaborate to address the gaps in the current legal framework, promote research in Islamic law, and foster a deeper

understanding of Islamic teachings. The ultimate success of these endeavors depends on the commitment of both the government and the Muslim community, particularly in ensuring that the application of Islamic law remains true to its core principles while contributing positively to the nation's broader goals of unity, peace, and development.

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