



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

PHILIPPINE CONSTITUTION  
ASSOCIATION (PHILCONSA),  
represented by its President Ferdinand  
Martin G. Romualdez, FRANCISCO S. TATAD,  
ARCHBISHOP RAMON C. ARGUELLES,  
ARCHBISHOP ROMULO T. DE LA CRUZ,  
ARCHBISHOP FERNANDO R. CAPALLA,  
and NORBERTO B. GONZALES,  
Petitioners,

G.R. No. 218406

-versus-

PHILIPPINE GOVERNMENT (GPH),  
represented by MARVIC M.V.F. LEONEN,  
and MIRIAM CORONEL FERRER,  
MORO ISLAMIC LIBERATION FRONT,  
FLORENCIO B. ABAD, and  
COMMISSION ON AUDIT,  
Respondents.

X-----X

TANGGULANG DEMOKRASYA  
(TAN DEM), INC., represented by its  
President TERESITA DAZA BALTAZAR,  
PILAR L. CALDERON, RIZALITO YAP  
DAVID, ROSITA K. IMPERIAL, MA.  
SALOME A. MABLE, SERAFIN G.  
OCAMPO, and ELENA SAN AGUSTIN,  
Petitioners,

G.R. No. 218761

-versus-

PHILIPPINE GOVERNMENT (GPH),  
represented by MARVIC M.V.F. LEONEN and  
MIRIAM CORONEL FERRER, and  
MORO ISLAMIC LIBERATION FRONT,  
represented by Mohagher Iqbal,  
Respondents.

X-----X

*[Handwritten signature]*

Decision

2

G.R. Nos. 218406, 218761,  
204355, 218407, and 204354

**REV. VICENTE LIBRADORES AQUINO,  
REV. MERCIDITA S. REDOBLE,  
and INTERNATIONAL MINISTRIES FOR  
PERFECTION AND PARTY AGAINST  
COMMUNISM AND TERRORISM, INC.  
represented by its President,**

**G.R. No. 204355**

Petitioners,

-versus-

**GPH PEACE PANEL CHIEF NEGOTIATOR  
ATTY. MARVIC M.V.F. LEONEN,  
HON. SECRETARY TERESITA QUINTOS-  
DELES, PRESIDENTIAL ADVISER ON THE  
PEACE PROCESS, HON. PAQUITO L. OCHOA,  
EXECUTIVE SECRETARY, and MEMBERS OF  
THE GPH PEACE PANEL,**

Respondents.

X-----X

**JACINTO V. PARAS,**

**G.R. No. 218407**

Petitioner,

-versus-

**MIRIAM CORONEL FERRER,  
SENEN C. BACANI, YASMIN BUSRAN-  
LAO, MEHOL K. SADAIN, and  
TERESITA DELES,**

Respondents.

X-----X

**REV. ELLY VELEZ PAMATONG, ESQ., G.R. No. 204354**

Petitioner,

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
PEREZ,  
MENDOZA,  
REYES,

-versus-

*[Signature]*

**GOVERNMENT OF THE REPUBLIC  
OF THE PHILIPPINES PEACE PANEL  
ON BANGSAMORO, REPRESENTED  
BY ITS NEGOTIATORS,  
MARVIC M.V.F. LEONEN, and  
PRESIDENT BENIGNO S. AQUINO III,**  
Respondents.

PERLAS-BERNABE,  
LEONEN,\*  
JARDELEZA,\* and  
CAGUIOA,\* JJ.

Promulgated:  
November 29, 2016

X-----

*Marcos L. Leonen*

## DECISION

**CARPIO, J.:**

### The Case

Before the Court are consolidated petitions<sup>1</sup> challenging the constitutionality and validity of the Comprehensive Agreement on the Bangsamoro (CAB) and the Framework Agreement on the Bangsamoro (FAB) entered into between the Government of the Philippines and the Moro Islamic Liberation Front (MILF) on 27 March 2014 and 12 October 2012, respectively.

In G.R. No. 218406, petitioners Philippine Constitution Association (Philconsa), represented by its President Ferdinand Martin G. Romualdez, Francisco S. Tatad, Archbishop Ramon C. Arguelles, Archbishop Fernando R. Capalla, Archbishop Romulo T. de la Cruz, and Norberto B. Gonzales contend that the provisions of the CAB and the FAB violate the Constitution and existing laws. They argue that the conduct of the peace process was defective since the Government of the Republic of the Philippines (GRP) Peace Panel negotiated only with the MILF and not with the other rebel groups. Hence, respondents violated Section 3(e) and (g) of Republic Act No. 3019<sup>2</sup> in giving unwarranted advantages to the MILF. Petitioners

- No part.
- No part.
- No part.

<sup>1</sup> G.R. No. 204354 is a petition to declare the Framework Agreement on Bangsamoro unconstitutional and to prohibit further negotiation and implementation thereof.

G.R. No. 204355 is a petition for certiorari, prohibition, mandamus, and writ of preliminary injunction with prayer for the issuance of a temporary restraining order.

G.R. No. 218406 is a petition for certiorari, prohibition, and mandamus with prayer for issuance of temporary restraining order and writ of preliminary injunction.

G.R. No. 218407 and G.R. No. 218761 are petitions for certiorari.

<sup>2</sup> These provisions read:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

*[Signature]*

further argue that respondents committed grave abuse of discretion when they “committed to cause the amendment of the Constitution and existing laws to conform to the FAB and CAB x x x.”<sup>3</sup>

In G.R. No. 218761, petitioners Tanggulang Demokrasya (TAN DEM), Inc., represented by its President Teresita Daza Baltazar, Pilar L. Calderon, Rizalito Yap David, Rosita K. Imperial, Ma. Salome A. Mable, Serfin G. Ocampo, and Elena San Agustin claim that the CAB and the FAB are unconstitutional since the agreements seek to create a virtual sub-state known as the Bangsamoro Political Entity (BPE) to replace the Autonomous Region of Muslim Mindanao (ARMM), and guarantee to make amendments to the Constitution to shift from the present unitary state to a new federal state which is beyond the GRP Peace Panel’s power and authority to commit.

In G.R. No. 204355, petitioners Rev. Vicente Libradores Aquino, Rev. Mercidita S. Redoble, and International Ministries for Perfection and Party Against Communism and Terrorism, Inc. (IMPPACT, Inc.) argue that the GRP Peace Panel usurped the power of Congress to enact, amend, or repeal laws since it bound Congress to agree to the provisions of the FAB and abolish the ARMM. Petitioners add that the FAB provisions are replete with ambiguities, violative of the provisions of the Constitution, and inconsistent with Republic Act No. 9054.<sup>4</sup>

In G.R. No. 218407, petitioner Jacinto V. Paras argues that the CAB and the FAB violate the provisions of the Constitution, as well as the consultation requirement under Executive Order (EO) No. 3 and Memorandum of Instructions of the President. Petitioner further contends that respondents exceeded their authority when they guaranteed the amendment of certain provisions of the Constitution to conform to the CAB and the FAB.

In G.R. No. 204354, petitioner Rev. Elly Velez Pamatong claims that the constitutionally infirm MOA-AD of 2008 and the FAB are substantially the same since they are both aimed at creating a “fully independent Islamic

---

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or grossly inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

<sup>3</sup> *Rollo* (G.R. No. 218406), p. 11.

<sup>4</sup> An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled “An Act Providing for the Autonomous Region in Muslim Mindanao,” as amended. Lapsed into law on 31 March 2001 without the President’s signature.

State” covering Mindanao, Palawan, and Sulu.<sup>5</sup> Petitioner argues, among others, that there were no consultations regarding the FAB. Petitioner further contends that the doctrine of *res judicata* applies since the MOA-AD and the FAB are similar. Consequently, the decision in the MOA-AD case is applicable. In addition, petitioner argues that the FAB is void for being unconstitutional since (1) under Section 18, Article X of the Constitution, an autonomous region can only be created by Congress and the President does not have the power to establish the Bangsamoro with the rebel group MILF; (2) the FAB is not a peace agreement but allegedly a conspiracy to establish an independent Bangsamoro Republic under Malaysian tutelage; and (3) the FAB guarantees constitutional amendments, which act is contrary to the mechanisms set forth in the Constitution itself.

Essentially, the petitions commonly seek to declare the CAB and the FAB unconstitutional for being similar to the void MOA-AD, which was struck down by the Court for violating, among others, the constitutional provisions on constitutional amendments.

### **The Facts**

On 15 September 1993, President Fidel V. Ramos issued EO No. 125<sup>6</sup> creating the Office of the Presidential Adviser on the Peace Process and calling for a “comprehensive, integrated and holistic peace process with Muslim rebels” in Mindanao. On 28 February 2001, President Gloria Macapagal-Arroyo issued EO No. 3<sup>7</sup> which amended EO No. 125 to reaffirm the government’s commitment to achieve just and lasting peace in the Philippines through a comprehensive peace process.

Pursuant to EO No. 3, the Government Peace Negotiating Panel (GPNP) held negotiations with the MILF, an armed, revolutionary Muslim separatist group based in Mindanao seeking separation of the Muslim people from the central government. The negotiations eventually led to the preparation of the Memorandum of Agreement on Ancestral Domain (MOA-AD) on 27 July 2008. However, on 14 October 2008, in the case of *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,<sup>8</sup> the Court declared the MOA-AD unconstitutional.

During the administration of President Benigno S. Aquino III, the government resumed peace negotiations with the MILF. Marvic M.V.F.

<sup>5</sup> *Rollo* (G.R. No. 204354), p. 7.

<sup>6</sup> Defining the Approach and Administrative Structure for Government’s Comprehensive Peace Efforts.

<sup>7</sup> Defining Policy and Administrative Structure for Government’s Comprehensive Peace Efforts.

<sup>8</sup> 589 Phil. 387 (2008).



Leonen<sup>9</sup> headed the GPNP and became the government's chief peace negotiator with the MILF in July 2010.

On 15 October 2012, a preliminary peace agreement called the FAB<sup>10</sup> was signed between the government and the MILF. The FAB called for the creation of an autonomous political entity named Bangsamoro, replacing the ARMM.

After further negotiations, the following Annexes and Addendum to the FAB were also signed in Kuala Lumpur, Malaysia:

- a) Annex on Transitional Arrangements and Modalities;<sup>11</sup>
- b) Annex on Revenue Generation and Wealth Sharing;<sup>12</sup>
- c) Annex on Power Sharing;<sup>13</sup>
- d) Annex on Normalization;<sup>14</sup> and
- e) On the Bangsamoro Waters and Zones of Joint Cooperation Addendum to the Annex on Revenue Generation and Wealth Sharing and the Annex on Power Sharing.<sup>15</sup>

The Annexes and Addendum discussed the following:

- a) The Annex on Transitional Arrangements and Modalities, signed on 27 February 2013, established the transitional process for the establishment of the Bangsamoro and detailed the creation of the Bangsamoro Transition Commission, the Bangsamoro Basic Law and the Bangsamoro Transition Authority.
- b) The Annex on Revenue Generation and Wealth Sharing, signed on 13 July 2013, enumerated the creation of sources of revenues for the Bangsamoro government and its power to levy taxes, fees and charges.
- c) The Annex on Power Sharing, signed on 8 December 2013, discussed intergovernmental relations of the central government, the Bangsamoro government and the constituent units under the Bangsamoro.
- d) The Annex on Normalization, signed on 25 January 2014, outlined the laying down of weapons of MILF members and their transition to civilian life.

<sup>9</sup> Now a Member of this Court.

<sup>10</sup> *Rollo* (G.R. No. 218761), pp. 34-48.

<sup>11</sup> *Id.* at 49-54.

<sup>12</sup> *Id.* at 55-62.

<sup>13</sup> *Id.* at 63-74.

<sup>14</sup> *Id.* at 75-87.

<sup>15</sup> *Id.* at 88-90.



- e) The Addendum on the Bangsamoro Waters and Zones of Joint Cooperation, signed on 25 January 2014, detailed the scope of waters under the territorial jurisdiction of the Bangsamoro (12 nautical miles from the coast) and Zones of Joint Cooperation in the Sulu Sea and the Moro Gulf.

On 7 December 2012, Miriam Coronel-Ferrer succeeded Marvic M.V.F. Leonen as GPNP Chairperson.

On 17 December 2012, President Benigno S. Aquino III issued EO No. 120,<sup>16</sup> constituting the Bangsamoro Transition Commission, tasked, among others, to (1) draft the proposed Bangsamoro Basic Law with provisions consistent with the FAB, and (2) recommend to Congress or the people proposed amendments to the 1987 Philippine Constitution.<sup>17</sup> Under Section 5 of the same EO, the Bangsamoro Transition Commission shall cease to operate upon the enactment by Congress of the Bangsamoro Basic Law.

On 27 March 2014, the Philippine Government, represented by GPNP Chairperson Miriam Coronel-Ferrer, signed the CAB,<sup>18</sup> which was an integration of the FAB, the Annexes and the other agreements<sup>19</sup> previously executed by the government and the MILF.

On 10 September 2014, a draft of the Bangsamoro Basic Law, referred to as House Bill (HB) No. 4994,<sup>20</sup> was presented by President Aquino to the 16<sup>th</sup> Congress. On 27 May 2015, in Committee Report No. 747, the Ad Hoc Committee on the Basic Bangsamoro Law of the House of Representatives substituted said bill and passed another version known as House Bill No. 5811.<sup>21</sup> In the Senate, a revised version of the Bangsamoro Basic Law, known as the Basic Law for the Bangsamoro Autonomous Region or Senate Bill No. 2894,<sup>22</sup> was presented on 10 August 2015. However, on 6 June

<sup>16</sup> Constituting the Transition Commission and For Other Purposes.

<sup>17</sup> Section 3 a. and b., respectively, of EO No. 120.

<sup>18</sup> *Rollo* (G.R. No. 218761), pp. 91-97.

<sup>19</sup> *Id.* at 98-182.

<sup>20</sup> Introduced by Representatives Feliciano Belmonte, Jr., Henedina R. Abad, Giorgidi B. Aggabao, Sergio A.F. Apostol, Pangalian M. Balindong, Carlos M. Padilla, Roberto V. Puno, Neptali M. Gonzales II, Mel Senen S. Sarmiento, Enrique M. Cojuangco, Mark Llandro L. Mendoza, Eleandro Jesus F. Madrona, Elpidio F. Barzaga, Jr., Antonio F. Lagdameo, Jr., Rolando G. Andaya, Jr., Nicanor M. Briones, and Raymond Democrito C. Mendoza.

<sup>21</sup> Sponsored by Representatives Rufus B. Rodriguez, Pangalian M. Balindong, Jim Hataman-Salliman, Bai Sandra A. Sema, Henry S. Oaminal, Tupay T. Loong, Romeo M. Acop, Raymond Democrito C. Mendoza, Sergio A.F. Apostol.

<sup>22</sup> Prepared jointly by the Committees on Local Government; Peace Unification and Reconciliation; and Constitutional Amendments and Revision of Codes with Senators Franklin M. Drilon, Vicente C. Sotto III, Loren B. Legarda, Ralph G. Recto, Maria Lourdes Nancy S. Binay, Francis G. Escudero, Paolo Benigno "Bam" Aquino IV, Juan Edgardo M. Angara, Pia S. Cayetano, Gregorio B. Honasan II, Teofisto Guingona III, Ferdinand R. Marcos, Jr., and Miriam Defensor Santiago, as authors.



2016, the 16<sup>th</sup> Congress adjourned<sup>23</sup> without passing the proposed Bangsamoro Basic Law.

Meanwhile, several petitions were filed with this Court assailing the constitutionality of the CAB, including the FAB, and its Annexes. G.R. Nos. 204354 and 204355, which were both filed in 2012, were consolidated pursuant to a Resolution<sup>24</sup> dated 11 December 2012. Likewise, in a Resolution<sup>25</sup> dated 23 June 2015, G.R. Nos. 218406 and 218407 were consolidated. In a Resolution<sup>26</sup> dated 12 January 2016, the Court granted the consolidation of G.R. No. 218761 with G.R. Nos. 218406 and 218407. In a Resolution dated 22 November 2016, all five petitions were consolidated.

On 7 November 2016, President Rodrigo Roa Duterte issued EO No. 08<sup>27</sup> expanding the membership and functions of the Bangsamoro Transition Commission. EO No. 08 expands the number of members of the Bangsamoro Transition Commission from 15 to 21. Section 3 of EO No. 120, as amended by EO No. 08, provides for the functions of the Bangsamoro Transition Commission, which include drafting proposals for a Bangsamoro Basic Law, to be submitted to the Office of the President for submission to Congress, and recommending to Congress or the people proposed amendments to the 1987 Philippine Constitution.

### The Issue

The threshold issue in this case is whether the CAB, including the FAB, is constitutional.

### The Court's Ruling

We dismiss the petitions.

#### *Not ripe for adjudication due to non-enactment of the Bangsamoro Basic Law*

Section 1, Article VIII of the Constitution spells out what judicial power is, to wit:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

<sup>23</sup> *Sine Die* Adjournment.

<sup>24</sup> *Rollo* (G.R. No. 204355), p. 70.

<sup>25</sup> *Rollo* (G.R. No. 218407), pp. 151-152.

<sup>26</sup> *Rollo* (G.R. No. 218761), p. 225-C.

<sup>27</sup> Amending Further Executive Order No. 120 (s. 2012), as Amended by Executive Order No. 187 (s. 2015), on the Bangsamoro Transition Commission and for Other Purposes. <http://www.gov.ph/downloads/2016/11nov/20161107-EO-8-RRD.pdf> (last accessed on 11 November 2016).

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Pursuant to this constitutional provision, it is clear that the Court's judicial review power is limited to actual cases or controversies. The Court generally declines to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies assures that the courts will not intrude into areas specifically confined to the other branches of government.<sup>28</sup>

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.<sup>29</sup> There must be a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.<sup>30</sup> The Court can decide the constitutionality of an act, either by the Executive or Legislative, only when an actual case between opposing parties is submitted for judicial determination.<sup>31</sup>

Closely linked to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it.<sup>32</sup> For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.<sup>33</sup> Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.<sup>34</sup>

In *Province of North Cotabato v. GRP* (MOA-AD case),<sup>35</sup> which involved the Memorandum of Agreement on the Ancestral Domain Aspect

<sup>28</sup> *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra note 8, at 480-481.

<sup>29</sup> *Philippine Amusement and Gaming Corporation v. Thunderbird Pilipinas Hotels and Resorts, Inc.*, et al., 730 Phil. 543, 562 (2014).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, citing *Didipio Earth Savers' Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457 (2006).

<sup>32</sup> *Guingona v. Court of Appeals*, 354 Phil. 415, 427 (1998).

<sup>33</sup> *Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172, 207563, 8 April 2014, 721 SCRA 146, 280.

<sup>34</sup> *Id.*

<sup>35</sup> Supra note 8.



of the GRP-MILF Tripoli Agreement on Peace of 2001, the Court faced the same issue of ripeness. There, the Court explained the limits of the power of judicial review and the prerequisites for the judicial determination of a case.

In the MOA-AD case, the Court rejected the argument of the Solicitor General that there was no justiciable controversy that was ripe for adjudication. The Court disagreed with the Solicitor General's contention that the initialed but "unsigned MOA-AD is simply a list of consensus points subject to further negotiations and legislative enactments as well as constitutional processes aimed at attaining a final peaceful agreement. x x x [T]he MOA-AD remains to be a proposal that does not automatically create legally demandable rights and obligations until the list of operative acts required have been duly complied with."<sup>36</sup> The Court ruled that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."<sup>37</sup> Moreover, in the MOA-AD case, the Executive was about to sign the initialed MOA-AD with the MILF in Kuala Lumpur, Malaysia in the presence of representatives of foreign states. Only the prompt issuance by this Court of a temporary restraining order stopped the signing, averting the implications that such signing would have caused.

In the present case, however, the Court agrees with the Solicitor General that there is no actual case or controversy requiring a full-blown resolution of the principal issue presented by petitioners.

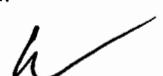
Unlike the unconstitutional MOA-AD, the CAB, including the FAB, mandates the enactment of the Bangsamoro Basic Law in order for such peace agreements to be implemented. In the MOA-AD case, there was nothing in the MOA-AD which required the passage of any statute to implement the provisions of the MOA-AD, which in essence would have resulted in dramatically dismembering the Philippines by placing the provinces and areas covered by the MOA-AD under the control and jurisdiction of a Bangsamoro Juridical Entity.<sup>38</sup>

The MOA-AD as an agreement did not provide for the enactment of subsequent legislation to implement its provisions. In fact, its provisions were immediately implementable after its signing warranting the timely intervention by this Court to rule on its constitutionality.

<sup>36</sup> Supra note 8, at 482.

<sup>37</sup> Supra note 8, at 486.

<sup>38</sup> Under the MOA-AD, "[b]oth Parties agree that the Bangsamoro Juridical Entity (BJE) shall have the authority and jurisdiction over the Ancestral Domain and Ancestral lands, including both alienable and non-alienable lands encompassed within their homeland and ancestral territory, as well as the delineation of ancestral domain/lands of the Bangsamoro people located therein." (paragraph 6, Concepts and Principles, MOA-AD)



Further, under the MOA-AD, the Executive branch assumed the mandatory obligation to amend the Constitution to conform to the MOA-AD. The Executive branch guaranteed to the MILF that the Constitution would be drastically overhauled to conform to the MOA-AD. In effect, the Executive branch usurped the sole discretionary power of Congress to propose amendments to the Constitution as well as the exclusive power of the sovereign people to approve or disapprove such proposed amendments.<sup>39</sup> Thus, this Court struck down the MOA-AD as unconstitutional since such *ultra vires* commitment by the Executive branch constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

In the present case, there is no such guarantee when the CAB and the FAB were signed. The government gives no commitment, express or implied, that the Constitution will be amended or that a law will be passed comprising all the provisions indicated in the CAB and the FAB. Thus, contrary to the imagined fear of petitioners, the CAB and the FAB are not mere reincarnations or disguises of the infirm MOA-AD.

The CAB and the FAB require the enactment of the Bangsamoro Basic Law for their implementation. It is a fundamental constitutional principle that Congress has full discretion to enact the kind of Bangsamoro Basic Law that Congress, in its wisdom, deems necessary and proper to promote peace and development in Muslim areas in Mindanao. Congress is expected to seriously consider the CAB and the FAB but Congress is not bound by the CAB and the FAB. Congress is separate, independent, and co-equal of the Executive branch that alone entered into the CAB and the FAB. The Executive branch cannot compel Congress to adopt the CAB and the FAB. Neither can Congress dictate on Congress the contents of the Bangsamoro Basic Law, or the proposed amendments to the Constitution that Congress should submit to the people for ratification.

The CAB and the FAB cannot be implemented without the passage of the Bangsamoro Basic Law. The CAB and the FAB remain peace agreements whose provisions cannot be enforced and given any legal effect unless the Bangsamoro Basic Law is duly passed by Congress and subsequently ratified in accordance with the Constitution. The CAB and the FAB are preparatory documents that can “trigger a series of acts”<sup>40</sup> that may lead to the exercise by Congress of its power to enact an organic act for an autonomous region under Section 18, Article X<sup>41</sup> of the Constitution. The

<sup>39</sup> Justice Carpio’s Separate Concurring Opinion in *Province of North Cotabato v. GRP*, supra note 8, at 585, 589, 603.

<sup>40</sup> Office of the Solicitor General’s (OSG) Comment *Ad Cautelam, rollo* (G.R. No. 218406), p. 420.

<sup>41</sup> This provision reads:

Section 18. 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 nominees from multisectoral bodies. The organic act shall



CAB and the FAB do not purport to preempt this Congressional power.

Provision I(C) of the Annex on Transitional Arrangements and Modalities provides that “[t]he proposed Basic Law shall be submitted to the Office of the President” and that “[t]he President shall submit the proposed Basic Law to Congress as a legislative proposal. The bill for the proposed Basic Law shall be certified as urgent by the President.” The CAB, as the consolidation of the peace agreements between the government and the MILF, requires the drafting of the Bangsamoro Basic Law, its submission to the Office of the President and the President’s submission of a draft Bangsamoro Basic Law to Congress as a legislative proposal. It is a fundamental premise of the CAB that a law and a ratification process are required for its “actual implementation.”

Significantly, President Rodrigo Roa Duterte issued EO No. 08 expanding the membership and functions of the Bangsamoro Transition Commission. EO No. 08 increases the number of members of the Bangsamoro Transition Commission from 15 to 21. Section 3 of EO No. 120, as amended by EO No. 08, provides for the functions of the Bangsamoro Transition Commission, which include drafting proposals for a Bangsamoro Basic Law, to be submitted to the Office of the President for submission to Congress, and recommending to Congress proposed amendments to the Constitution for submission to the people for ratification.

The functions of the Bangsamoro Transition Commission, which explicitly include the drafting of proposals for a Bangsamoro Basic Law, as required under the CAB and the FAB, highlight the fact that the CAB and the FAB are mere preliminary framework agreements which will guide the Bangsamoro Transition Commission in the formulation of the proposed Bangsamoro Basic Law for submission to Congress, which may adopt such proposed law in whole or in part, amend or revise the same, or even reject it outright.

During the Aquino administration, the Bangsamoro Transition Commission submitted its proposed Bangsamoro Basic Law to former President Benigno S. Aquino III, who submitted the same to the 16<sup>th</sup> Congress, which however failed to enact the same before its adjournment. Thus, the bill proposing the Bangsamoro Basic Law has to be refiled with the present Congress. With the signing of EO No. 08 by President Duterte,

---

define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. 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.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.



the expanded Bangsamoro Transition Commission shall redraft the proposed Bangsamoro Basic Law to be submitted to the President who is expected to certify it to the present Congress as an urgent bill. Congress, in turn, may or may not accept the proposed Bangsamoro Basic Law as it is worded. There is therefore no guarantee that Congress will enact the Bangsamoro Basic Law. Congress has the sole discretion whether or not to pass the Bangsamoro Basic Law, as proposed by the Bangsamoro Transition Commission.

It is not the CAB or the FAB that will establish the Bangsamoro but the Bangsamoro Basic Law enacted by Congress and ratified in a plebiscite in accordance with the Constitution. Congress must still enact a Bangsamoro Basic Law. The requirement of a Bangsamoro Basic Law under the CAB and the FAB ensures that the pitfalls under the invalid MOA-AD will be avoided.

Even if there were today an existing bill on the Bangsamoro Basic Law, it would still not be subject to judicial review.<sup>42</sup> The Court held in *Montesclaros v. COMELEC*<sup>43</sup> that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in *vacuo*. As the Court in *Montesclaros* noted, invoking Section 1, Article VIII of the Constitution, there can be no justiciable controversy involving the constitutionality of a proposed bill. The power of judicial review comes into play only after the passage of a bill, and not before.<sup>44</sup> Unless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review.

Clearly, any question on the constitutionality of the CAB and the FAB, without the implementing Bangsamoro Basic Law, is premature and not ripe for adjudication. Until a Bangsamoro Basic Law is passed by Congress, it is clear that there is no actual case or controversy that requires the Court to exercise its power of judicial review over a co-equal branch of government.

**WHEREFORE**, we **DISMISS** the petitions on the ground of prematurity.

**SO ORDERED.**



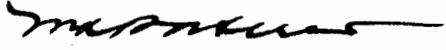
**ANTONIO T. CARPIO**  
Associate Justice

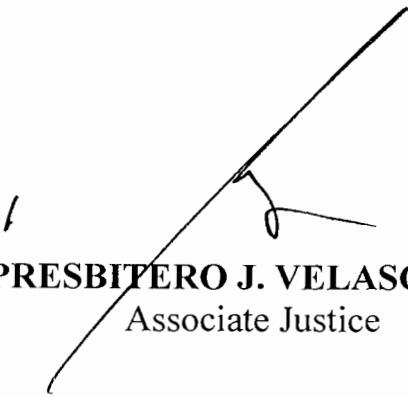
<sup>42</sup> See OSG's Comment, *rollo* (G.R. No. 204354), p. 210.

<sup>43</sup> 433 Phil. 620, 634 (2002).

<sup>44</sup> *Id.*

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

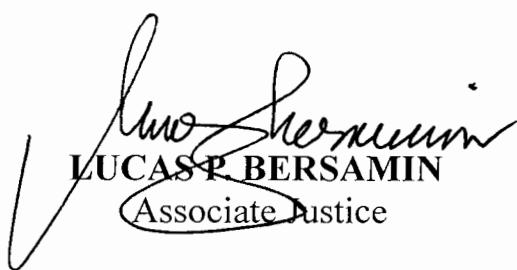
  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**

Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**

Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**

Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**MARVIC M.V.F. LEONEN**  
<sup>(no part)</sup>  
Associate Justice

**FRANCIS H. JARDELEZA**  
<sup>(no part)</sup>  
Associate Justice

No Part.  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

*marie lourdes p. a. sereno*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice