

**POLICY BRIEF**

# Code of Muslim Personal Laws of the Philippines



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## HISTORICAL OVERVIEW

### Precursors of the Code

The codification of Muslim personal laws goes back in Philippine history to the promulgation during the Sulu Sultanate of the *Diwan Taosug* as the principal personal law codex of Sulu. Around the middle of the eighteenth century, the Sultan of Maguidanao promulgated a more comprehensive codex, the *Luwaran sa Magindanao*. (Mastura 2005)

After the country became independent from the U.S. in 1946, several laws were passed that recognized certain aspects of Muslim personal laws. Republic Act 386 or the New Civil Code recognized marriages among Muslims and mixed marriages between Muslims and Christians. RA 394 recognized divorce among Muslims. RA 6268 extended the applications on Muslim marriages for another ten years after the expiration of the 20-year period stipulated in RA 386.

### Promulgation in 1977

In 1977, the Code of Muslim Personal Laws (CMPL) was promulgated by President Ferdinand Marcos through Presidential Decree 1083. CMPL recognizes the legal system of Muslims in the Philippines as part of the law of the land, codifies Muslim personal laws, and provides for the administration and enforcement of the Code through the establishment of Shari'a courts.



The promulgation of CMPL followed closely the signing of the Tripoli Agreement of 1976, the first peace agreement between the Philippine government and the Moro National Liberation Front (MNLF). The Agreement provided for the establishment of autonomy in southern Philippines “within the realm of Philippine sovereignty and territorial integrity of the Republic of the Philippines.” Among other provisions, it stipulated that Muslims in the specified areas of autonomy were to be given the right to set up their own courts that would implement Shari’a laws. The CMPL addresses this provision on Shari’a courts.

### **Implementation of the Code**

While the CMPL was signed into law in 1977, it could not yet become operational. In preparation for the Code’s implementation, the Ministry of Muslim Affairs (now the Office of Muslim Affairs) five years later in 1982 created the Philippine Shari’a Institute to provide Shari’a legal education for prospective Shari’a bar examinees, law practitioners and judges.

The Supreme Court in 1983 approved the “Special Rules of Procedure in the Shari’a Courts” and conducted the first Special Bar Examinations for the Shari’a Courts. Out of the 183 candidates, only 14 passed; and from these successful Shari’a Bar examinees, nine were appointed Shari’a judges and sent to Egypt for further studies in Islamic law and jurisdiction. Finally in 1985, the first Shari’a courts were opened and the CMPL became operational – eight years after its promulgation.

### **Additional Laws on Shari’a**

In 1989, Republic Act 6734 or the Organic Act for the Autonomous Region in Muslim Mindanao (ARMM) was enacted. This was amended in 2001 by RA 9054 or the Expanded ARMM Law.

Under RA 9054, the ARMM Regional Legislative Assembly, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari’a legal system applicable only in ARMM and to Muslims or those who profess Islam. To date the RLA has not exercised this power. RA 9054 also created a Shari’a Appellate Court with appellate jurisdiction over the Shari’a District Courts. Up to today, the Supreme Court has not yet organized this appellate court.



## SIGNIFICANCE OF CMPL

Given the prevailing conditions at that time, the enactment of the Code was “victory” for Muslim Filipinos. “Then as now, the majority Christians refused and continues to refuse to understand the sentiments of Muslims, hindering the enactment of a more comprehensive Code. There was also an element of haste because the Civil Code provisions affecting Muslims were about to expire, so there was an urgent need for a legal system that would recognize the personal laws of Muslims. Had the Code not been enacted, Muslim marriages, for instance, would not have been recognized. Thus, while the original draft of the Code was more comprehensive and complete, the all-Muslim drafters decided to scale down its scope to personal laws to ensure its enactment and to avert a legal crisis where Muslim institutions would cease to be recognized.” (Bacani 2004, pp. 64-65)

Atty. Mohd. Musib M. Buat describes the enactment of CMPL as a “milestone in the history of Philippine jurisprudence.” He adds, “The Muslim Code being declared as part of the law of the land has placed the Muslims on par status and equal access to courts dispensing Islamic justice in accordance with Muslim law, customs and practices.” (Buat 2002, p. 112, 137)

According to Justice Omar U. Amin of the Philippine Judicial Academy-Supreme Court of the Philippines, the Code has “assured us the Filipino-Muslims that the government protects our rights equally with the rest of the Filipino population and rightfully unify them as integral part of the Filipino nation.”

Justice Jainal Rasul Sr., Chair of the Department of Shari’a and Islamic Jurisprudence, Philippine Judicial Academy, observes that the CMPL can be the most reliable foundation for national understanding and unity. It signifies “the acceptance in the Philippines of the legitimacy or validity of cultural plurality. Here, different cultural groups, while preserving their cultural identities, participate in the overall national processes and despite criss-crossing or organizational loyalties – all are held together by a common loyalty to the national community, the Philippine Republic.” (Rasul, 2003, p. xi)



# STATE OF CMPL AND SHARI'A COURTS

Born out of the continuing and concerted efforts to bring peace and development to Muslim Mindanao, the Philippine Shari'a courts have been an integral part of the challenge to make autonomy work in southern Philippines and the historical struggle of Muslim Filipinos for self-determination.

Executive Director of the Institute for Autonomy and Governance of the Notre Dame University in Cotabato City, Atty. Benedicto R. Bacani, observes, "The Philippine Shari'a law cannot be divorced from political processes and the struggle of the Moro people for self-determination."

Recognizing this context will have to be the first step in understanding the issues and concerns confronting the Shari'a courts and the implementation of CMPL. And understanding these general issues will provide a solid foundation for taking concrete steps in strengthening and reforming the Shari'a justice system in the Philippines.

Among the challenges that Shari'a courts face today are the following:

## Implementation issues

A study of the Shari'a courts by the Pilipina Legal Resources Center, Inc. (Solamo-Antonio, 2003) notes the following trends:

- A wide gap exists between the actual number of existing courts against the number mandated by law. Many courts remain unorganized.
- Judges have not been appointed even in existing courts.
- There is a lack of court personnel, office space and support facilities.
- Judges work in various courts, handling several municipalities and provinces.
- The Muslim community has a low level of awareness on the nature and function of Shari'a courts.
- More women than men seek the remedy of Shari'a courts.
- Local government units do not appropriate funds for Shari'a courts.



Other implementation issues, as pointed out in focus group discussions (FGDs) and key informant interviews conducted by the Asian Institute of Journalism and Communication (AIJC) in Marawi City and Cotabato City in 2006 (AIJC, 2007) and other related studies, are as follows:

- There is low caseload and low clearance rate of cases in the Shari'a courts.
- The most frequent use of Shari'a courts is to file for divorce and petition for support of children and/or wife.
- The RLA to date has not exercised its power, in consultation with the Supreme Court and consistent with the Constitution, to legislate on a Shari'a legal system.
- Up to today, the Supreme Court has not yet organized the Shari'a Appellate Court.
- The office of the Jurisconsult is rendered unoperational.
- There is a lack of lawyers in the practice of Shari'a

### **Institutional framework**

In a 2004 study on the Shari'a courts conducted for the Supreme Court and funded by the United Nations Development Program, the CPRM Consultants, Inc. identified the following institutional framework issues:

- Concurrent jurisdiction with other lower courts renders the judicial system vulnerable to multiplicity of venue and to conflicting prejudicial decisions.
- There are laws of general application such as the Arbitration Law and the Barangay Justice System under the Local Government Code that confuse users of the Shari'a courts.
- PD 1083 failed to establish which of the appellate and original decisions of the Shari'a District Courts are liable for appeal to the Shari'a Appellate Court.
- There are convergence and divergence of two Philippine Muslim Court Systems: the Shari'a court system determined by the ARMM for the ARMM and the Shari'a court system that is created through the national government system outside the ARMM.



## Islamic law considerations

Dr. Hamid A. Barra of the King Faisal Center, Mindanao State University asserts that the CMPL cannot be considered Shari'a Law or the Islamic Shari'a. Dr Barra also laments that Shari'a terms are not used according to their original meaning and that many Shari'a lawyers do not even know the Qur'an. (Bacani, 2004, pp. 63-64)

Barra points out conflicting provisions in the Constitution and national laws on the one hand and the CMPL on the other. He also notes that CMPL makes it possible for non-Muslims to be admitted in the Shari'a bar or bench, and this possibility violates classical Islamic law that provides that the Shari'a must be exclusively administered by Muslims.

## Competence of judges and lawyers

The CPRM Study (p. 129) points out that a weak education system on Islamic justice results in lack of qualified lawyers and judges. It undermines the public's trust and confidence by undermining the efficiency and effectiveness of the Shari'a courts.

The 45-day training on CMPL is not adequate preparation for Shari'a lawyers and judges, whose perceived lack of competence is a reason for people's low regard for the Shari'a courts (Bacani 2004, pp. 66-67).

## Limited jurisdiction and scope

Shari'a courts are not able to serve Muslims outside of the ten provinces and six cities specified in the CMPL because of the distance. Even in the provinces and cities where these courts exist, there are not enough courts to serve the various communities. For these existing courts, they are often remote from where most of the populace live. Thus, many Muslim Filipinos are being deprived of equal access to Shari'a courts.

Since CMPL covers only personal laws, criminal, election and commercial laws are not covered. Subsequently, the Shari'a courts do not have jurisdiction over many aspects in the life and livelihood of Filipino Muslims.



## Other challenges

The CPRM Study points out several other challenges on the implementation of CMPL, such as governance issues in Muslim Mindanao that may have implications on the Shari'a justice system; adequacy and sufficiency of the Philippine Shari'a legislation; internal organization and capacity issues such as lack of rules on Shari'a judicial fees; weaknesses in the other pillars of justice, such as the lack of public attorneys for the Shari'a courts; and the lack of common recognition by Muslim Filipinos of the Shari'a justice system as the forum they trust for the settlement of justiciable disputes.

## A CALL TO REFORMS

Having taken the “first good steps” by promulgating the CMPL, the National Government, with the Shari'a courts and other stakeholders, needs to take the next strides toward fulfilling the mandate of the Code by addressing its various deficiencies and gaps.

In these subsequent initiatives, major stakeholders have to be involved, particularly policy and decision makers in the upper echelons of government like Congress, the Supreme Court, Philippine Judicial Academy, Judicial and Bar Council, agencies like the Department of Justice and the other pillars of justice, Civil Service Commission and Office of Muslim Affairs, and the Autonomous Region in Muslim Mindanao (ARMM).

Other sectors – like law schools, the academic community particularly in Muslim Mindanao, institutes on Islamic studies, research institutions on Muslim issues, Filipino Islamic scholars, and Muslim non-government organizations – must also put their stake in a robust discourse that should evolve a comprehensive response to the numerous challenges facing the implementation the CMPL.

Among the general areas for reform that need to be explored are the following:

- Shari'a legal framework
- Shari'a legal education and training
- Jurisdictional scope, structure and rules of court of the Shari'a courts
- Organizational capacity and integrity of the Shari'a courts



While the immediate objective would be the strengthening of the Shari'a justice system, a more long-term goal should underlie all these efforts: the promotion of a culture of the rule of law and the attainment of lasting peace and development in Muslim Mindanao.

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