

EN BANC

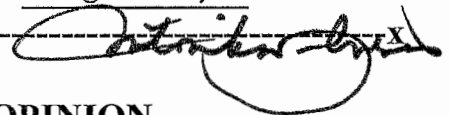
G.R. No. 271741 – DATU SAJID S. SINSUAT, EBRAHIM P. DIOCOLANO, and FEBY A. ACOSTA, Petitioners, v. HON. AHOD BALAWAG EBRAHIM, in his capacity as Interim Chief Minister of the Bangsamoro Government, and BANGSAMORO TRANSITION AUTHORITY (BTA), Respondents.

G.R. No. 271972 – MAYOR DATU TUCAO O. MASTURA, for himself and as representative of the Municipality of Sultan Kudarat, Maguindanao del Norte, and the LIGA NG MGA BARANGAY OF THE MUNICIPALITY OF SULTAN KUDARAT, MAGUINDANAO DEL NORTE, represented by BAI ALIYYAH NADRAH M. MACASINDIL, Petitioners, v. BANGSAMORO TRANSITION AUTHORITY (BTA), and HON. AHOD BALAWAG EBRAHIM, in his capacity as the Interim Chief Minister of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), and the COMMISSION ON ELECTIONS, Respondents.

Promulgated:

August 20, 2024

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SEPARATE CONCURRING OPINION

DIMAAMPAO, J.:

At the outset, I would like to commend the ponente's prompt handling of the above-captioned cases in light of the upcoming plebiscites on September 7 (for Bangsamoro Autonomy Act [BAA] No. 53¹) and 21 (for BAA Nos. 54² and 55³), 2024. Certainly, the succinct exposition contained in the *ponencia* will enrich the broader understanding of the Bangsamoro Organic Law (BOL).⁴

The draft *ponencia* partially grants the consolidated petitions by declaring as unconstitutional the phrase “*qualified voters in a plebiscite to be conducted in the barangays comprising the municipality pursuant to Section 2 hereof*” found in the subject BAAs. Since the existing Municipalities of Sultan Kudarat and Datu Odin Sinsuat are directly affected by the creation of new municipalities, all qualified voters therein should be allowed to vote in the plebiscite.⁵

On that score, I wholeheartedly agree. To further refine the discussion

¹ An Act Creating the Municipality of *Nuling* in the Province of Maguindanao del Norte.

² An Act Creating the Municipality of *Datu Sinsuat Balabaran* in the Province of Maguindanao del Norte.

³ An Act Creating the Municipality of *Sheik Abas Hamza* in the Province of Maguindanao del Norte.

⁴ Republic Act No. 11054 (2018), Bangsamoro Organic Law.

⁵ Draft *ponencia*, pp. 23–28.



on this point, I propose that the three-factor test in *Del Rosario v. Commission on Elections*⁶ be applied herein, namely: *territorial alteration*, political effects, and economic effects.⁷

In resolving the instant petitions, the draft *ponencia* elucidates that Article VI, Section 10 of the BOL requires compliance with the criteria found in the Local Government Code (LGC)⁸ for the creation or division of municipalities within the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).⁹

Indeed, the organic acts of autonomous regions cannot prevail over the Constitution. Article X, Section 20 of the Constitution itself expressly ordains that the legislative powers of regional assemblies are limited “[w]ithin its territorial jurisdiction and subject to the provisions of the Constitution and national laws[.]”¹⁰ Significantly, the same constitutional provision is cited in Article V, Section 2 of the BOL on the powers of the Bangsamoro Government.

The draft *ponencia* goes on to underscore that the issue on the purported noncompliance of the Bangsamoro Transition Authority (BTA) with the requisites under the LGC for the creation of the Municipalities of Nuling, Datu Sinsuat Balabaran, and Sheik Abas Hamza should be properly threshed out in a trial where the parties can adduce their respective evidence.¹¹ To this, I humbly proffer a different perspective.

Article X, Section 10 of the Constitution governs the creation of local government units, *viz.*:

No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

Plainly, two specific standards must be observed: *first*, the criteria established by the LGC, i.e., income, population, and land area;¹² and *second*, the approval by a majority of the votes cast in a plebiscite in the political units directly affected.¹³ Each standard serves a different purpose. On one hand, the criteria fixed by the LGC are designed to achieve an *economic* purpose. Upon the other hand, the plebiscite is required to achieve a *political* purpose, i.e., to

⁶ 872 Phil. 698 (2020) [Per J. A. Reyes, Jr., *En Banc*].

⁷ *Id.* at 714.

⁸ Republic Act No. 7160 (1991), Local Government Code.

⁹ Draft *ponencia*, pp. 30–31.

¹⁰ See *Sema v. Commission on Elections*, 580 Phil. 623, 661 (2008) [Per J. Carpio, *En Banc*].

¹¹ Draft *ponencia*, pp. 35–36.

¹² Republic Act No. 7160 (1991), Local Government Code, sec. 7.

¹³ See *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 693 (2008) [Per J. Brion, *En Banc*].

use the people's voice as a check against gerrymandering.¹⁴

From the foregoing, it is inevitable that any measure which fails to satisfy the criteria found in the LGC may potentially breach the Constitution. In this regard, it is jurisprudentially settled that *questions calling for judicial determination of compliance with constitutional standards by other branches of the government are fundamentally justiciable*. The resolution of such questions falls within the checking function of the Court under the Constitution to determine whether 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.¹⁵

Thus, in *Samson v. Aguirre*,¹⁶ the petitioner therein failed to overcome the presumption of validity accorded to the law creating the City of Novaliches out of 15 barangays of Quezon City. *Taking into account the statements made by resource persons from different government offices during the public hearings before the Senate*, the Court held that Samson's allegation that no certifications attesting compliance with the LGC and its IRR were submitted to the Congress cannot substitute for proof.

In the present consolidated cases, it is extant from the records that petitioners were unable to adduce sufficient proof to show that the proceedings before the Committee on Local Government of the BTA were mired with irregularities. Accordingly, the presumption stands that the impugned BAAs passed by the BTA complied with the criteria set forth in the LGC.

To sum, it bears emphasis that the presumption of constitutionality may only be challenged when there is a clear showing of the grounds for invalidating a law.¹⁷ Since only the phrase "*qualified voters in a plebiscite to be conducted in the barangays comprising the municipality pursuant to Section 2 hereof*" was invariably shown to have breached the concept of "political unit directly affected" under Article X, Section 10 of the Constitution, I register my full concurrence with the *ponencia*.


JAPAR B. DIMAAMPAO
Associate Justice

¹⁴ See *Miranda v. Aguirre*, 373 Phil. 386 (1999) [Per J. Puno, *En Banc*].

¹⁵ See *Aldaba v. Commission on Elections*, 624 Phil. 805 (2010) [Per J. Carpio, *En Banc*]. (Citation omitted)

¹⁶ 373 Phil. 668 (1999) [Per J. Quisumbing, *En Banc*].

¹⁷ See *Mendoza v. Pilipinas Shell Petroleum Corporation*, G.R. No. 209216, February 21, 2023 [Per S.A.J. Leonen, *En Banc*]. (Citation omitted)