

**Privilege Speech delivered in the Bangsamoro Parliament
on RA 11596: Questions of Autonomy and Religious Freedom**

on January 26, 2022

Istiadha

Basmala

Hamdala

Musa's du'a

Amma baad

Assalamu alaykum wa rahmatullah wa barakatuh.

The Messenger (peace be upon him) was quoted to have said, *"Whosoever of you sees an evil, let him change it with his hand; and if is not able to do so, then with his tongue; and if he is not able to do so, then with his heart – and this is the weakest of faith."*

Mr. Speaker, dear colleagues in the Bangsamoro Parliament, I rise on the occasion of personal and collective privilege to air sentiments that might have been missed in the discussions of a law that not only affects our communities but goes to the very heart of our practice of our faith – Republic Act No. 11596, otherwise known as An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof.

Mr. Speaker, for starters let me clarify that by this we do not mean to diminish the noble intentions of the framers of the law – them being elected officials and us being merely appointed – and the work that they've undertaken in its passage. We recognize the challenges of lawmaking especially one conducted at the time of a pandemic where widespread consultation becomes an even greater difficulty. We are all too familiar with that Mr. Speaker, as a region that unfortunately does not have the necessary infrastructure for seamless virtual interactions, and where we ourselves find it hard to reach our remotest localities for their input. But where we find handicap in our lack of facilities, we are propped by the varied representation of sectors reflected by the composition of our own assembly. And this is my main premise Mr. Speaker, that on this particular issue, there is merit in listening to our voice or voices as a Parliament.

Let us first look at the features of the law. What does it say? As I mentioned, intentions are noble. It recognizes the vital role of the youth in nation-building and promotes their physical, moral, spiritual, intellectual, and social well-being. It recognizes the role of women in nation-building and protects and promotes their empowerment and seeks to abolish unequal structures and practices that perpetuate discrimination and inequality. And thus, it aims to put an end to traditional and cultural practices and structures that perpetuate discrimination, abuse, and exploitation of children which includes – according to the law – the practice of child marriage. It goes on to conclude that child marriage is a form of child abuse as it debases, degrades, and demeans the intrinsic worth and dignity of children.

But who is a child? Anyone who is under the age of 18 years or one who is over 18 but has some physical or mental disability or condition that renders them unable to fully take care and protect themselves from abuse, neglect, cruelty, exploitation, or discrimination.

So what does this law do? It not only makes marriage among those falling under the definition of *children* illegal – or non-existent in the eyes of the law – but also criminal. Parents who facilitate such a marriage shall be imprisoned and fined, and may perpetually lose parental authority over their offspring. The solemnizing officer to this marriage is likewise penalized under the law. And what is clear is that this is defined as a public crime, meaning, any individual – not just the young couple – may initiate the filing of criminal cases against the parents and the solemnizing officers.

Unfortunately, this law has been signed by the President last month. Yet we have some reprieve as a transition period of one year takes the marriages of Muslims and indigenous peoples from the penal provisions of this law.

Mr. Speaker, my objection to the law springs from two main arguments both taken from our Constitution – our autonomy as a region on matters within our realm, and for those not living within the region, the guarantee of religious freedom to us as individual citizens of this country. The former not only read from the text of the Fundamental Law but also within the context of years of armed struggle for self-determination culminating in the signing of the Comprehensive Agreement on the Bangsamoro and now taking root through our parliamentary form of government. The latter's importance interpreted in its various iterations in our public policies, laws, and jurisprudence which even gave us the concept of *benevolent neutrality* and the like.

Those of us who are students of the law would know that the Supreme Court has once recognized the dissolution of a marriage and eventual union with another by a person belonging to a certain religious order despite the same not being allowed by our laws. This is how accepting our legal system is of our diverse religious practices in the country.

Autonomy

But before we get ahead of ourselves, first on autonomy.

It is a concept defined and protected by the 1987 Philippine Constitution. Understanding that the culture and history of certain peoples in the country are distinct from those lived by mainstream society, the framers of the Constitution mandated the creation of autonomous regions leaving to the wisdom of their respective institutions the legislative authority over a clear enumeration of subject matters. Thus, there is the Bangsamoro, expected to exercise authority over personal, family, and property relations, among others. While the Constitution does qualify this lawmaking power with consistency with national legislation, prior to this law, the Philippine legal framework adopted a stance of respect for practices under the Islamic faith in the form of Presidential Decree No. 1083 or the Code of Muslim Personal Laws.

Yet, the Bangsamoro is no ordinary entity. It is a product of years of negotiations between the Government and the Moro Islamic Liberation Front and builds upon the gains from the peace process with the Moro National Liberation Front. Its creation is a strong statement of assertion by one and recognition by the other that for certain governance matters, the national government including the legislature will take a step back, and leave them to what is presumably the sounder discretion and more grounded wisdom of regional authorities. Again, testament to this is the provision in our Bangsamoro Organic Law that empowers this Parliament to enact laws on personal, family, and property law jurisdiction. This organic law, likewise a national law, the BOL, has undergone widespread consultation within and outside this region, numerous public hearings in both the 16th and 17th Congresses, and ratification in a plebiscite conducted on two separate dates. Now, just around three years later, it is being restricted and redefined by a law that underwent merely the ordinary route for legislation.

This conflict of jurisdictions – a national criminal law that infringes on the civil law authorities of the region – could have been prevented, mitigated, or at the very least discussed had we worked for the timely institution of the Philippine Congress-Bangsamoro Parliament Forum. Unfortunately, while our composition from the Bangsamoro Parliament is ready, we are until now awaiting the appropriate action of our counterparts in the national Congress. This law against Child Marriages is a clear example of how things can go because of the absence of this critical platform for engagement.

Religious Freedom

And second, on religious freedom – the argument that applies to all Filipino Muslims, both within and outside the Bangsamoro. Just a disclaimer, I am only a student of Islam. A simple adherent. I will not deign to make pronouncements on issues that are best heard from our religious learned – our ulama. But even as a simple Muslim, a few things are clear to me.

That Islam only recognizes one *halal* or permissible relationship of that nature between a man and a woman. That is marriage. And as a famous saying within Muslim communities goes – when you make the *halal* impossible, you make the *haram* probable.

That our faith recognizes biological developments in both genders – boys and girls – that trigger acknowledging the legal effects of their actions. And that this is not contingent on attaining a certain age but is distinct from one physio-psychological state to another. This includes permitting – not forcing – them to enter into marriage as soon as they are physiologically, mentally, as well as financially ready for it. All of these factors, likewise differ from one person to another.

It encourages full participation of the youth – man or woman – in civic and societal life, without one's marriage being an impediment or a deterrent.

It celebrates and protects marriages and the families built upon them. And yet one's fate is not sealed by decisions made in earlier parts of our lives as divorce is also permitted. Again, not forced.

Mr. Speaker, honorable colleagues, this law, I argue, goes into the heart of these basic principles of our faith.

First, it not only discourages but in fact penalizes those who intend to take the more responsible route of marriage over other non-marital relations – the route that not only carries with it obligations but also vests rights to the couple as well as the children born therein. I don't suppose we imagine that our young are or can be without contact or interaction until the age of 18. I don't presume we expect that even. In fact, at present, our legal age for sexual consent is at 12, and the lobby is to raise it to 16, not 18. So to me, the message of the law to our young, including those in our communities is this: do what you want according to what is natural – make friends, form relationships with your peers – just don't get married. While this is acceptable for some, it is not for others, particularly the Muslims.

Second, as material to the discussion is the issue of consent, this law presumes lack thereof and denies agency for those under the age of 18. It means that one who is 17 years and 10 months of age, say, is incapable of deciding for himself/herself his/her own readiness to enter into a marriage. Yet, in two months, he/she will be. I think we can all agree that the number we've set for the age of majority is a placeholder or a substitute for determining maturity. However, do we really, in our legal system, hold our young incapable of acting with legal consequence before reaching 18, and therefore only blame the parents for any act done during this time? No. For as soon as one hits 15, for example, we say a "child" is directly responsible for his/her criminal acts provided discernment is established. Hence, a level of maturity even at the "tender" age of 15 is already possible and recognizable in our laws. Shall we grant this benefit of respect to the intellect of the child when a crime is committed, but not if the action amounts to tying himself/herself to another in marriage?

Third, we presume in these unions the worst in their parents and readily and easily attribute child abuse to them. We are not saying that parents who force their children to get married do not exist. What we are conveying is that this is not ALWAYS the case. But by this law, we've made a blanket imputation of ill-will upon the parents of the marrying party. Not only that. This being a public crime, even if the marrying parties do not complain, anyone can get the parents jailed. As I said in the beginning, our laws in the Philippines are so protective of families that our Constitution recognizes the sanctity of family life and guarantees the protection and strengthening of the family as a basic autonomous social institution. Our courts even uphold marital,

parental, and filial privilege – where the husband and the wife, or any parent, grandparent and up, child, grandchild and down, are restricted in testifying against each other. Yet this law has given license for the prosecution of the parents of who could very well be a consenting couple, upon complaint of any third party, and has allowed them to compel the children to testify against their parents. Are we this dismissive of the value and protection of Filipino Muslim and IP families?

And finally, what happens to the children born within that wedlock? While they would normally be protected and have rights as legitimate children under Islamic law as well as prior Philippine laws, this new law will consider them illegitimate.

Mr. Speaker, I can go on and on. These are only some of the warring ideas that play in my mind. I am sure there are many more. And I only raise these points as I feel we have not discussed these and many others sufficiently, prior to the passage of the law. I remember we made the same statement regarding another controversial national law where we felt that we, as Muslims who are or would be directly impacted by the law, could have been consulted further and deeper. We are back to that sentiment once again, Mr. Speaker. We are the ones, together with our brothers and sisters in the indigenous cultural communities, whose distinct personal and family life – once recognized by our legal system – will be affected. By law, there is only the Family Code for all Filipinos, and the Code of Muslim Personal Laws for those who marry under Islamic rites and Administrative Order No. 3, series of 2004 for the civil registration of indigenous peoples. Technically, we are the only ones affected by this new law when it comes to legal rights.

To be honest, Mr. Speaker, I offer no solution to the predicament we find ourselves in. The law has been signed and will take or might have already taken effect after publication. This is even more complicated as we can only speak of but not act for our fellow Muslims and IPs from outside the region. I'm sure there are many things that can be done to rectify the situation. However, I leave that to the legal luminaries and legislative lobby in the national Congress.

My intention is only this. To call on our lawmakers in the august halls of the Upper and Lower Houses, to kindly not forget that yes, there might be wisdom in raising the age of marriage. And I say *might* because factors other than the earliness of the marriage could be contributing to the stunted development of our young couples, like socio-economic opportunities, access to places of work or learning that are more

family-friendly, and many others that could spell the difference if we implement them, and all without necessarily contravening the teachings of Islam. But I believe that conversations about this should happen here, amongst us and by us who are closer to the realities and nuances on the ground. We are one with the honorable intention of the law – to protect our youth and work towards their best interest. Who would oppose that? A successful Bangsamoro is only possible if its citizens are not hampered in their development. But allow us to make that decision. You've recognized our enhanced autonomy three years ago. We've just celebrated our 3rd anniversary last week. I pray that this trust, that we'll do right by our people and that we are capable of deciding for our communities, is not taken away from us.

And for those who are outside of the region, that the recognition of our belief system, our way of life is not vilified and nullified by advocates and the law and policy makers to whom we look for the protection of our freedoms – as citizens of this country, as peoples of different faiths, and as fellow members of the larger and diverse Philippine society.

Thank you very much.

ATTY. ANNA TARHATA BASMAN

Member of Parliament

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