

## Summary of the conversations during “Peace Lens: Sharia Justice System in the Bangsamoro” (18 June 2014)

During the previous “Peace Lens on Women Empowerment in the Bangsamoro” last 12 March 2014, one of the most intensively debated aspects was how the Sharia Law will be contextualized and whether this will be sensitive enough to protect women's rights and their recurring concerns. One disturbing thought for women groups is the possibility that the adopted Sharia law in the future Bangsamoro entity will contradict their interpretations of Sharia, particularly on the protection of women's rights.

Several participants expressed the need for more platforms for awareness-raising and discourses on various concepts and interpretations of Sharia. This means making it imperative to hold deeper and more inclusive discussions on Sharia among 'experts' and groups who hold various interpretations on it, including government agencies mandated to implement Muslim laws and civil society organizations accompanying the peace process.

Against this background and the strong need expressed by the participants to understand more on the scope and implications of the expanded Sharia law in the future Bangsamoro entity, the organizers decided to focus the 9<sup>th</sup> Peace Lens series on these issues.

Prof. Dr. Hamid Aminoddin Barraof the Mindanao State University in Marawi City and visiting professor at International Institute of Islamic Thought and Civilization at the International Islamic University Malaysia was invited as our lead discussant to shed light on the topic. Dr. Barra is also a co-convenor of the Bishops-Ulama Conference of the Philippines (representing the Ulama League of the Philippines).

*Please find below the main ideas and key questions discussed among the participants from various civil society groups, academic institutions, and some religious leaders.*

**Islam is diverse and so is the Bangsamoro.** There are different interpretations of Islam. It covers several aspects of human life. In the same way, Bangsamoro itself is not a monolithic society thus it should not be governed by only one interpretation that defines Sharia. Expertise on Sharia concepts and interpretation of the Holy Qur'an and the Sunna should not be delegated to one group within the future Bangsamoro entity to avoid single interpretation of the Sharia justice system.

On the other hand, most people have a distorted knowledge on the Sharia justice system. In grassroots communities, Sharia is imagined as legal system propagating corporal punishment such as 'cutting of hands' or 'stoning to death' among others. Academe, civil society, religious leaders and Islamic scholars should work together to provide comprehensive orientation on Sharia and to widen understanding of it.

## **Sharia is not only one particular legal system but it is a complete way of life.**

Islam and Sharia should not only be seen as a legal system because it has many other things to offer such as Islamic banking and Islamic economics. With the financial crisis affecting countries all over Europe and the USA, the Islamic banking system on the other hand, has remained intact. More people are now investing in the Islamic banking system because Islamic Economics is very much different to the western point of view. Most religious leaders focus more on *Da'wah* and Islamic propagation. And for the system to work, there is still a need to work on producing Islamic engineers, psychologists, and Islamic political scientists.

Furthermore, Sharia also talks about spirituality which guides Muslims how to be on the right path; how to be a good Muslim in spirit, soul, and mind or how to live out the teachings of Islam and be example to others.

**Three aspects of Islamic Criminal Law.** When speaking of Sharia Penal Laws one should not only refer to *Hudud* but there are three different aspects of Islamic Criminal Law that need to be considered:

1) *Hudud* refers to crimes in which the punishments are provided for in the Qur'an such as stoning for adultery, cutting off hands for theft and higher forms of robbery, or flogging for drinking wine, among others. It is challenging to implement these punishments because of the need to create first the condition in which the penalties can be implemented. For example, the punishment for adultery; a crime that is almost impossible to prove under Islamic Law because of the circumstances needed to prove the crime.

2) *Kisas* speaks about retaliation. This means reviving the law of Moses; of life for life, truth for truth. If a person kills, this person has to be killed. However, within *Kisas* itself, there is a provision of forgiveness which is the better way to go.

Under the national law, the president can forgive a criminal (executive clemency). Asking forgiveness from the family of the victim is not part of this. In Sharia, the President himself cannot forgive the criminal but rather it is the family of the victim who should give forgiveness. This makes us to think which is better, Islamic Law or the national law? This aspect of Islamic Law could be adopted by the government.

3) *Taasir* refers to discretionary punishments covering daily crimes. Under the Islamic Law, the legislature of any government is given the right to pass laws and to punish crimes. In the case of the Bangsamoro, when referring to the criminal justice, the participants hoped that it will first touch on *Taasir*.

**Will the future Sharia Justice System in the Bangsamoro be strong enough to protect women and children of practices such as 'forced early marriages'?**

On the child marriage issue, there have been efforts in the past to amend the Code of Muslim Personal Laws because of the provision that allows any “Muslim female of the age of puberty or upwards to contract marriage”. A female is assumed to attain puberty upon reaching the age of 15, which is much lower than the minimum legal age. However, Islamic interpretation on the issue of child marriage is different using cultural perspectives.

The future Bangsamoro government through its Parliament can address the prevalence of cases that violates women and children's rights such as 'child marriages'. This means the Bangsamoro can legislate by going back to the original provisions of the Sharia so that certain practices which are not part of the Islamic Law can be stopped.

**In Sharia, a woman is protected through all her life.** Under the Sharia and as a general rule, there is no point in time in a life of a woman when no one protects her. In the presence of a father, he is required to protect and support his daughter. When the father dies, this protective responsibility passes over to the grandfather or the brother. When the woman marries, it is the husband's responsibility to protect her. When she is divorced from the husband or when the husband dies, she returns back to her father or any male family member. When there is no one in the family, the Islamic state or the leader of the community is required to protect that woman.

The Qur'an puts emphasis on both men and women. Some chapters are devoted on women which means that they are not left out. Both men and women can participate in governance and have rightful share in the community.

**It is said that civil courts are most effective when the community-based informal justice system is very strong. How would informal justice system connect to formal justice system in the Bangsamoro?**

Basically there are four legal systems that intertwine. In the case of Maguindanaons and Maranaos, first, we have the law of kinship. Second, the use of local traditions and customs which emphasizes the participation of local royal leaders who settle conflicts. Third, the Sharia which can be divided into two: 1) formal (going to Sharia Court) or 2) informal (judgment is made by the religious leaders within the community using the provisions of the Sharia). This legal complexity is one aspect of the judiciary that needs to be improved in the future Bangsamoro government. The FAB discussed the possible improvement and development of the Sharia, including the alternative system of settling disputes.

There are also indigenous way of resolving conflicts. The provision for the creation of tribal courts had all been there even during the American time but no one has implemented this so far. Maybe in the Bangsamoro, the establishment of alternative justice system for them will be pursued. However, the precise way to address the challenges on how these different legal systems interplay or intertwine remains to be seen when the Bangsamoro entity will be established.

**The problem lies on how culture influences the interpretation of Shariah and its variation from context to context.** The real challenge will be on how the people who will run the Sharia courts will interpret Sharia. How will we define whether the interpretation of the law is based on the Qur'an or according to the cultural perspective which is ridden with bias and prejudice?

It is recommended that those who will interpret Sharia should be informed of other emerging themes and frameworks (such as gender and Islam and human rights and Islam) which could be applied in legal processes.

**On the jurisdiction of Sharia Courts, at what point will jurisdiction be attached to a person's identity as a Bangsamoro? Or is it also covered by the many facets of the principle of territoriality?**

One of the characteristics of criminal law is territoriality. The law of the place where the crime is committed will be applied. If foreigners commit a crime in the Philippines, they are subject to Philippine laws. But when relating to civil law, that needs to be referred back to their respective countries.

Applying that principle, when the Bangsamoro will be established, it will first apply to Muslims. If one of the parties to a crime is a non-Muslim, the Sharia will not be applied to them. If a Muslim commits a crime outside the Bangsamoro, Sharia might not be applied to them because they are outside of the territory of the Bangsamoro. However, these kind of intricate issues can be studied further by the parliament or the legislature of the future Bangsamoro.

**The need to convey Sharia to non-Muslims for wider understanding and support.** Education can be the bridge that can connect Muslims and non-Muslims in the understanding of Islam and Sharia. This could be done through introducing Islamic subjects/concepts in the curricula of Social Sciences programs in which subjects are taken by most students.

But even the Muslims themselves are faced with the dilemma on the absence of proper Islamic education. Most of them were educated in Catholic schools and went to *Madrasah* only in their elementary years. The challenge now for the academic sector is on how to teach Muslims to become good Muslims.

**Sharia should not sow fear among non-Muslims because it is a fair system of law.** Qur'an emphasizes that religion is not compulsory. If the Sharia Justice System will be implemented in the Bangsamoro territory, there is no compulsion to impose it to non-Bangsamoros.

In Islam, it is not only a matter of religious tolerance but also of religious freedom. It is a religion of peace and everyone is free to believe in what he/she thinks. This is freedom but misunderstood by some Muslims, thinking that it was better to try to force people into believing.

Christianity and Islam have a lot of differences in the religious context but there are common universal values which can be highlighted. There are principles that can be shared between Muslims and Christians, such as the principle of justice and the values of compassion, love and understanding. And in the history of Islam, there has always been a close relationship between Muslims and non-Muslims.

## **Synthesis**

Through the discussions, participants were able to leap from little understanding of Sharia into a better sense of awareness; from limited appreciation of Sharia into a broader comprehension. Some of the new insights were:

a) that there are three dimensions of Islamic Criminal Law (not only *Hudud* but also *Kisas and Taasir*);

b) that Sharia does not only refer to personal law or criminal law aspects; but that Sharia is appreciated more when one understands its objective and the point of implementing Sharia

It is hoped that the future Bangsamoro will be a better platform for bridging the gap between what is ideal in Sharia and what are the actual experiences in most communities such as in dealing with issues on women and children.

One recommendation is to work on the distorted understanding of Sharia among non-Muslims and also among Muslims themselves. And how to extend efforts for Sharia to be understood by the wider public.

However, there are some issues that need to be discussed further in the context of Sharia and in the future Bangsamoro entity. How will the future Bangsamoro deal with the issue of different identities and sexual orientation? How far will the future Sharia law in the Bangsamoro depart from the national law? How about if some women would want to define the kind of protection that they want for themselves and not rely on what is stated in the Qur'an?

Islam *enables and ennobles*. We want to envision an Islam that *engages, energizes, educates and enhances*. *Engages*, because the process of dialogue and communication needs to be sustained. Engagement also pushes away our fears and doubts. Continued engagement also helps to contextualize those doubts. *Energizes*, because we need to pursue a process that does not focus on fears but rather on hopes. *Educates*, since we need more people who can present a very nuanced, more comprehensive and a dialectic view of Sharia that may not be communicated yet by other discussants. *Enhances*, because aside from understanding that Sharia is perfect and divine, there is a need to enhance its application in the context of the Bangsamoro.