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Note: Draft version, for corrections please email us at mail@rasmitmug.com. YouTube video starts at 1:04:39.

Sen. Miguel Zubiri: I move that we resume consideration of Senate Bill Number 2214. I so move, Mr. President.

Sen. Vicente Sotto III: Any objection? If none, consideration of 2214 is in order.

Sen. Zubiri: This is the Act Resetting the First Regular Elections of Bansamoro Autonomous Region of Muslim Mindanao. We recognize the sponsor **Senator Francis “Tol” Tolentino** and to interpellate **Senator Panfilo “Ping” Lacson**.

Sen. Sotto: Senator Francis Tolentino, the gentleman from Cavite is recognized to sponsor the measure and to interpellate, another gentleman from Cavite, Senator Ping Lacson.

Sen. Lacson: Thank you Mr. President. Will the distinguished sponsor, the gentleman from the great province of Cavite, yield to some clarificatory questions?

Sen. Tolentino: Willingly, Mr. President, to my kababayan from the great province of Cavite.

Sen. Lacson: I said Mr. President because I was counting with my fingers, there are at least three natural-born Caviteños and a number of naturalized Caviteños. I can see Senator Villar, Senator Drilon, Senator Pangilinan, Senator Dela Rosa, and who else? Anyway, Mr. President. My first question is... is senate bill 2214 an amendatory bill that seeks to amend certain provisions of senate bill 2214?

Sen. Tolentino: Yes, Mr. President. The intention is to postpone the elections so it's an amendment of the existing provision Mr. President.

Sen. Lacson: Thank you. And aside from the postponement being sought under the measure, what are the other provisions that are being proposed to be amended, Mr. President?

Sen. Tolentino: Mr. President, perhaps the good gentleman is referring to section 2. Section 2 is a mere amplification, reiteration of existing provisions contained in the existing Bangsamoro Organic Law, Republic Act 11054. If the gentlemen would allow me to continue, he's probably referring to the seats allocated— the 8 reserved seats mentioned in the Bangsamoro Law. The

lead entity, Moro Islamic Liberation Front is mentioned in the current law. And the seats allocated to the non-Moro tribes, the Lumads, the traditional leaders, the Ulama, the youth, the women are likewise mentioned, Mr. President. Not to mention the fact that the 80 members comprising the parliament are likewise enshrined in the Bangsamoro Organic Law, Mr. President.

Sen. Lacson: And the third provision is the proposal to include the Congress— the role of the Congress in aiding, in assisting the Bangsamoro parliament. Is that correct?

Sen. Tolentino: Yes, Mr. President. While there is a provision in the existing Bangsamoro Organic Law (BOL) relative to the provision of a Congress, Bangsamoro Parliamentary forum, the provision that was mentioned by my kababayan is part of the measures that would assist, aid the transitory, the interim government in completing its mandates. It will not change the government, Bangsamoro Parliamentary Forum, but it would assist. It's still there, Mr. President.

Sen. Lacson: Thank you, Mr. President. And since the provision on the composition and the expansion of membership is included in the Senate Bill 2214, therefore the basic structure, I would say, the right to suffrage is somehow affected in this regard, Mr. President, because we are calling for the postponement of the elections be synchronized with the May 2025 elections instead of holding it this coming May or next year. So therefore, it affects the basic structure including the right to suffrage of the people in the Bangsamoro area.

Sen. Tolentino: Mr. President, I beg to disagree. There is no restructuring of the current Bangsamoro framework. It's still there. The parliament is still there. 80 members: The basic 55 legislative functions of the Bangsamoro parliament, they're retained, Mr. President. Nothing has changed except for the postponement of the elections, which has been done for the last several times. I think, 8 times or 7 times, Mr. President. All these postponements, all these resetting, deferrals, Mr. President, were upheld by the Supreme Court: that the deferral is part of the plenary functions of congress and for this purpose, Mr. President.

There are basic, distinct reasons that would support the postponement and if my kababayan would allow me to enumerate some, I can continue, Mr. President. Notably, Mr. President, the pandemic— COVID-19 pandemic— imposed severe hardship on the part of the BTA to perform its functions. One, they were not able to craft, promulgate, finish the Bangsamoro Electoral Code, which would require parliamentary districting. So, it would entail, involve a situation wherein elections cannot be conducted practically, realistically because there are no parliamentary districts. Two, the normalization process, without the fault of the Bangsamoro parliament, was not completed because the national government failed to download the funds. As of today, Mr. President, for the normalization process, only 1.3 billion out 7 billion was downloaded. So how can you complete the normalization process, which is part of the comprehensive agreement on the Bangsamoro, among other things, Mr. President? So, we are in a situation, Mr. President, when we deal with contracts—there is a contract between the GRP and the MILF—when we deal with contracts, there is an impossibility of performance of contract. How can you perform

something without your fault when the attending, attendant circumstances would not permit you to perform, Mr. President? And a lot of other arguments that this representation can posit, Mr. President.

Sen. Lacson: Did you mention jurisprudence, Mr. President, in your explanation?

Sen. Tolentino: Yes, Mr. President.

Sen. Lacson: Are you referring to the Abas Kida et al vs. the Senate of the Philippines?

Sen. Tolentino: Yes, I can refer to that, Mr. President.

Sen. Lacson: Because in that ruling, the Supreme Court maintained that the postponement of the elections to the, I think 9054, was not, or it applies to the postponement of the elections, correct?

Sen. Tolentino: Correct, Mr. President.

Sen. Lacson: Well, I'd like to read out, for the record, Mr. President, a portion or excerpt of that ruling Abas Kida et al versus The Senate of the Philippines Section 18. It's the Supreme Court saying this, Mr. President, "Section 18: Article 10 of the Constitution provides that the...and they quoted the specific provision... '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' and then continuing, the Supreme Court said we interpreted this to mean that only amendments to, or revisions of, the Organic Act constitutionally-essential to the creation of autonomous regions— i.e. , those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act require ratification through a plebiscite."

So, it is my position, Mr. President, that the Abas Kida et al versus the Senate of the Philippines does not apply or is not applicable under this act because there are amendments being sought under Senate Bill 2214 that were not present in the Abas Kida ruling, Mr. President. Because in the postponement of the election under the organic law, ang sinasabi po doon, separate legislation ang ipinasa natin to postpone the elections because under the old organic law, hindi naman in-specify yung date. Walang sinasabi kung kalian mag-ho-hold ng elections. In this particular case, very specific yung sinabi sa provision na yung elections, yung regional election, or first regular election will be held in May 2022, naka- synchronize ito sa national election next year, Mr. President. So, in other words, that's why I premise my line of questioning on the assumption which the distinguished sponsor agreed to earlier na in-a-amend natin yung organic law. Therefore, when there are amendments or provisions being introduced sa organic law, it necessitates a plebiscite. So, at the proper time, if the distinguished sponsor will agree, I will introduce that amendment to include the ratification by plebiscite, Mr. President.

Sen. Tolentino: Mr. President, if I may respond. The quoted Supreme Court decision by the gentleman, my kababayan, specifically cites three instances wherein a plebiscite will be

required. Number 1: when there is an amendment relative to the basic structure of the government. So, if it is now a parliamentary unit system of government, and we amend it to bicameral, it needs a plebiscite. Number 2: when there is a change in the Region's judicial system— from Sharia, we change it to another form and exclude the special courts with personal family and property law, we will need a plebiscite. And number 3: when the grant and extent of legislative powers constitutionally conceded to the regional government— the BARMM— under Section 20 of article 10 of the constitution, there are 9 cited by the constitution, and the submission of this representation is that we consider that as a constitutional floor, not the ceiling because the last part is a catch-all provision that resulted in 55 enumerated legislative powers of the BARMM parliament, Mr. President.

So, when we refer to the organic law, that would need a plebiscite, under the Supreme Court ruling and they specifically mentioned, and I quote and unquote, we stand by the standards, we refer to these three items. Here in this bill, we are not changing the structure. It will still be the 8-man member parliament BTA, if it in the interim; the region's judicial system would still be Sharia, and the 55 enumerated powers: urban planning, taxation, environment would still be retained. Now, the question is the date of elections a substantial amendment of the organic act? My position, Mr. President and this has been affirmed by the Supreme Court, and I quote "the date of the elections does not fall on other matters that the constitution specifically mandated Congress to provide for in the organic act. Meaning to say, Mr. President, that any change in the date of the elections, I'm quoting, cannot be construed as a substantial amendment of the organic act that would require compliance with this requirement, and that refers to a plebiscite, Mr. President.

So I think there is a coherence here, we are not changing the organic act, we are just resetting the elections. But my personal opinion, Mr. President, there was a mistake on the part of the framers of the constitution. They should not have named this as an organic act, this should be named as an enabling act only. There is a big difference, Mr. President. An organic act is the constitution itself, it is the fundamental law. But having said that lexicon, probably would not apply here. The Kida case is very clear, with all due respect, that resetting the date is not changing the structure of the BOL.

Sen. Lacson: Yes, I agree with the distinguished sponsor that the last two criteria: the region's judicial system saka yung grant and extend of the legislative powers constitutionally conceded to the regional government system, hindi po ito affected sa Abas Kida. But the first one, the basic structure of the regional government... well, we are a democratic country, Mr. President. And naturally, the right to suffrage is included in considering the basic structure of the regional government. Section 3, Article I of the BOL states that the purpose of the organic law is to establish a political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and the aspirations of Muslim Filipinos and all indigenous cultural communities in the Bangsamoro Autonomous Region in Muslim Mindanao to secure their identity and posterity allowing for meaningful self-governance in the framework of the constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

So, the lack of the exercise of the right to suffrage of the Muslim people in the Bangsamoro regions will definitely affect the basic structure because by then, if we introduce this amendment, meaning if we postpone the elections or the regional elections, the first regular election to 2025, the people there would not be able to exercise their right to suffrage. And in the plebiscite that they ratified last January of 2019, kasama po ito sa kanilang ni-ratify: na magkakaroon ng election after the transition period of three years. So therefore, the people in the Bangsamoro Regions, not being able to exercise that right to suffrage will affect the basic structure of the Bangsamoro Regional Government, Mr. President.

Sen. Tolentino: Mr. President, I agree as to the importance of the right of suffrage but I think there should be a clear delineation between structure and the substantive rights of the voter or residents of the Bangsamoro region, Mr. President. It is also clear from the case cited by my kababayan, and I quote again “for legislative actions, we see the clear intention of congress—and I’m quoting—to treat laws that fix the date of the subsequent elections as separate and distinct from organic acts. Meaning to say, the structure is not affected. The organic law remains but the substantive rights, the fundamental right to vote might be delayed because of events, supervening events unforeseen, not predicted, not made by the Bangsamoro, not through the fault of the Bangsamoro government, not the national government, as I’ve mentioned a while ago, which necessitates the postponement of the elections. How can we conduct an election, Mr. President? Not even a plebiscite can be conducted, Mr. President. One, we don’t have a Bangsamoro electoral code which is a *condicio sine qua non* for the conduct of an election.

During the public hearings, Mr. President, the Commission on Elections admitted that they are at a loss because they don’t know how to conduct an election because we don’t have a parliamentary system. The existing congressional districts will not apply because under the Bangsamoro Organic Law, the framers envisioned that 100,000 residents would constitute one parliamentary district and we have yet to finish the electoral code. Number 2: we yet have to receive the complete census of the national government, the PSA census, done, conducted 2020. I don’t know when they are going to release the census and all supervening events. Even the inability of the BTA to conduct parliamentary hearings, they cannot do that especially in the island provinces because of the lack of Wi-Fi connectivity, Mr. President. So, these are circumstances beyond their control. Even the downloading of funds was not given because apparently it was used for other pandemic related purposes.

So these events were not envisioned during the crafting of the law. But I still submit, Mr. President, that the decision of the Supreme Court in the Kida case is applicable, Mr. President. And the powers of congress are plenary—it cannot be diluted and the congress has the power to amend the Bangsamoro organic law, postpone the elections not needing a plebiscite as announced by the Supreme Court, and citing a long line of cases of the Supreme Court, Congress has the right, has the duty, to respond to human crisis, Mr. President. This is a human crisis that envelop and engulf the Bangsamoro area and the entire Philippines. But I’m referring to the Bangsamoro area because they were not able to comply with and finish the two tracks,

Mr. President. The political track, which includes the normalization process; the legal track, which is the full implementation of the Bangsamoro organic law, not through their fault which would have resulted in an exit agreement that would have normalized the lives of the Bangsamoro residents including, Mr. President, the population of the former Bangsamoro military camps and the commissioning of 40,000 Bangsamoro warriors and fighters, Mr. President.

All these, Mr. President, point to one inexorable result, Mr. President: that we have to postpone the elections because we cannot hold the elections under the prevailing circumstances which is dire and probably not through the fault either of the national government or of the Bangsamoro regional government, Mr. President.

Sen. Lacson: Will the distinguished sponsor agree with this representation that if the synchronized election in the region, if the election to be held in the region was not included in the provision of 11054, would the election result or the plebiscite result, would it have been different, Mr. President?

Sen. Tolentino: I don't get—

Sen. Lacson: Okay. If that provision to hold the regional election, the first regular election, was not included in the RA 11054, would not the result of the plebiscite be different, Mr. President?

Sen. Tolentino: I cannot—probably in hindsight...

Sen. Lacson: Maybe the people voted in favor of the plebiscite because they were hoping that three years later or in 2022, they will vote for their leaders in the Bangsamoro region. Isn't that a logical assumption, Mr. President?

Sen. Tolentino: Mr. President, partly that can be correct. But there are a lot of other factors that should be considered.

Sen. Lacson: But that could be a factor. That could be a major factor.

Sen. Tolentino: Peace can be a factor, Mr. President. Economic development can be a factor, social development can be a factor, the participation of the IPs, the non-Moro tribes, the anticipated development coming from natural resources, Mr. President— these are all congruent factors that should have made the people decide that peace and the future of Bangsamoro would be achieved by voting in the plebiscite.

But to reiterate, Mr. President, the current Bangsamoro law does not prohibit the postponement of the elections. Nowhere in any provision does it appear that congress cannot postpone the elections. Nowhere in any provision of the several pages of the Bangsamoro organic law does it appear that any postponement of elections will require a plebiscite, Mr. president. And that nowhere in the provisions of the Bangsamoro organic law, as approved in the plebiscite, does it appear that a plebiscite is always required, Mr. President. So, with these

Mr. President there is no textual prohibition, if you look at the Bangsamoro organic law and even in the constitution of the Philippines that would prohibit the postponement of elections—we cannot find any, Mr. President.

Sen. Zubiri: May I just interject with the permission of the two gentlemen from Cavite.

Sen. Sotto: Majority leader.

Sen. Zubiri: Thank you, Mr. President. And if I'm not mistaken, the last postponement, where there is also an appointment by President Aquino, was questioned at the Supreme Court. The Supreme Court said that it is not unconstitutional nor illegal to postpone the election only that it should be synchronized. If I can remember clearly, sinabi nila na under the ruling, it is okay, it is legal to postpone the elections by legislation but has to be synchronized with the national elections, if I'm not mistaken.

Sen. Tolentino: Yes, Mr. President. It is correct. And if I may place this on the record, Mr. President, there are 8 instances wherein the elections in that region were postponed. The first postponement transpired March 4, 1996 to Sept. 9, 1996, the second postponement occurred March 8, 1999 to September 9, 1999, the third postponement happened September 99 to September 11, 2000. The fourth postponement occurred September 11, 2000 to May 14, 2001. The fifth postponement, when Republic Act 9012 was passed, happened when it was reset from May 14, 2001 to September 10, 2001. The sixth postponement, Mr. President, happened Sept. 10, 2001 when it was reset, rescheduled to November 26, 2001. The seventh postponement, when Republic Act 9333 set the dates, it was again postponed to November 26, 2001. The eighth postponement happened— and to reiterate, the seventh postponement was because of a law that required the conduct of an elections specifying a specific date: the 2008 ARMM elections. The 8th postponement occurred August 8, 2011 when it was rescheduled to May 2013. In all of these, Mr. President, the Supreme Court stood by the Congress of the Philippines, upholding the plenary duties, prerogatives of Congress to reschedule the elections when needed because of public interest, Mr. President. And this is the same situation we are in right now. Not only because of the pandemic but all the confluence of events, peace and order, socio-economic would point the inexorable need to postpone the elections, Mr. President. And that is the call of the times, Mr. President.

Sen. Lacson: There is no question, Mr President, on the synchronization of election because that is a constitutional mandate. Naka-indicate naman talaga na naka-synchronize yung national, local, even autonomous regional elections must be sychrnonized. Naka-mandate po yan sa constitution. But you know, the election of leaders should be considered as an act of securing the identity and posterity of the Bangsamoro people. Yun po yung point na nire-raise ko na that would affect the basic structure because the right to suffrage of the people is included in the basic structure. As included in the Abas Kida ruling, ang unang-una nga basic structure of the regional government. Kaya hindi applicable— it is my contention that the Abas Kida ruling is not applicable in this case because in the case of the past postponement, we passed it in a separate legislation saka hindi naka-indicate dun sa old organic law yung date ng

election. As differentiated in this case, in 11054, specific, explicitly stated that the election should be held in a synchronization in the May 2022 national election. Yun po ang basic difference. Yung Abas Kida ruling, that's why it our position that it should not apply in this particular case, kasi naka-specify dito ang date ng election and the right to suffrage of the people of the Bangsamoro region is affected. And that's included in the basic structure kasi nawala na yung kanilang right to elect their own leaders in May of 2022.

Sen. Tolentino: Yes, Mr. President. Again, I agree with the sole position that the right of suffrage is fundamental. But then again, Mr. President, there is a basic principle which all parliaments and legislatures in democratically free countries are following and this is what I'm saying, Mr. President. That entrenched legislation is frowned upon, and more often than not, considered unconstitutional. You cannot tie the hands of future legislation. By specifying a specific date, you tie the hands of 17th congress or 16th congress will tie the hands of the 18th and 19th congress, Mr. President, that is unconstitutional.

Any congress, as representatives of the people, can enact laws necessary for the general welfare and no previous congress can tie the hands, not even the requirement of a two-thirds majority, not even the requirements of other qualifications that would prevent succeeding congress to enact laws. Mr. President, by imposing a fixed date which the current congress cannot amend, it practically ties the hand of the current congress and future congresses, which is not allowed in any democratic parliament, constituted parliament, Your Honor.

We are free to enact laws. The congress, the senate is a plenary body, with comprehensive authority, absolute, except when it violates the tenets of the constitution. That is my supposition, Mr. President. And we have to uphold the right of congress to amend laws, especially when it is for the general welfare and public interest of the Filipino people and the Bangsamoro people as they strive to attain ephemeral peace, Mr. President.

Sen. Lacson: To follow your line, Mr. President, so okay lang na i-postpone na rin natin yung national election next year, to another year? I know it's constitutional. And you know, I'm not trying to say that we should not postpone the regional election. Ang sinasabi ko lang is it should be ratified in a plebiscite because the basic structure is affected. Meaning, the right to suffrage of the people, the Bangsamoro people, is affected and that is the reason why I'm proposing while we can postpone the election from May 2022 to May 2025, it's okay, it's valid but it should be ratified by the Bangsamoro people because their right to suffrage is affected.

Kasi kasama yan sa binoto nila sa plebiscite noong January 2019— that the first regular election would be held in May of 2022. Kaya ang tanong ko kanina, magbabago ba yung kanilang boto, possible bang magbago ang boto nila kung wala ang provision na yun at open-ended yung first regular election? I suppose, they would have voted differently kung open-ended yung election because they were hoping that okay there's a transition period for three years from January or February, yung second plebiscite. But they were hoping that in May 2022, they would be able to choose their own leaders. But since we're amending that and we are not pushing through

anymore with the May 2022 regular elections and moving it to May 2025, that could have changed the result of the plebiscite, Mr. President.

Sen. Zubiri: Mr. President, may I just interject a point.

Sen. Sotto: Yes, majority leader.

Sen. Zubiri: Thank you. As principal author and sponsor of the Bangsamoro Organic Law together with several of our colleagues here present, during the deliberations of the bicameral conference committee in, I forget which hotel that we met Mr. President, Congressman Rudy Fariñas was the chairman of their panel. We made a discussion on the plebiscite, we tackled the issue of the plebiscite, we clarified which provisions, as mentioned earlier by the good gentleman from Cavite—

Sen. Lacson: It's Cavite. Tagaytay, Imus.

Sen. Zubiri: Cavite... Tagaytay. The one near Taal Volcano. The gentleman from Cavite pointed out earlier which are substantial that would enact a plebiscite, that would need or enable a plebiscite. We also discussed the issue of postponement of elections. And the discussion then was let congress decide if there's a need to postpone. I'm trying to get the records now, Your Honors. We're trying to get the exact wordings and minutes of the said meeting so I can explain to the body the position of the bicameral conference members both from the house and senate on that particular issue. Because one of the congressmen said 'what if we want to postpone eventually again, just like what had happened in the past' and I believe, if I'm not mistaken, it was the chairman of the House panel, the distinguished legal luminary Rudy Farinas who said that – exactly what the point of Senator Tolentino is— let us not tie the hands of congress and allow congress to decide at that particular time if there's a need to postpone or not . That was the discussion. But I clearly, clearly remember because I wanted to be clear on what needed a plebiscite and what amendments may not need a plebiscite, Mr. President. I have asked for that during the bicameral conference committee to be clear. And minister naguid [?], who is a member of our legal team at that time, who is now minister of local government [unintelligible]. The difference between national elections, for example elections for congressmen, senators, and local government officials except for the barangay is clearly specified under the constitution. The autonomous regions are a creation of congress, as allowed by the constitution. Therefore, if it is a creation of congress through legislation, it can be amended. Although, as again, if it substantial then it needs a plebiscite that we discussed during those bicameral conference committee hearings what are deemed not substantial enough for a plebiscite. I will try to get the records, Mr. President and present it to the body.

Sen. Lacson: Mr. President, if the distinguished majority leader will respond to a question from this representation.

Sen. Zubiri: Yes, absolutely.

Sen. Lacson: When you discussed the power of congress or the prerogative of congress to postpone the election, did you include in your discussion the Abas Kida ruling? I guess not. You did not include that in your discussion because this is jurisprudence. I think this is the leading case. And if you did not include in your discussion the Abas Kida et al vs the Senate of the Philippines ruling then kulang yung information ninyo at that time.

Sen. Zubiri: We discussed, as I mentioned earlier, the decision of congress on postponing BARMM election because I believe it was questioned. And the good minority leader was actually the sponsor of the postponement of the BARMM case in 2011.

Sen. Lacson: It's a different matter, Mr. President. Because hindi naka-specify. Sinabi lang doon na every three years naka-synchronize. Walang specific date.

Sen. Zubiri: Oo nga po. I think the Supreme Court, if I'm not mistaken, I do not have the ruling with me today but we have discussed this briefly. The supreme court have said that there is no prohibition by law if you want to postpone the election. You just have to pass a law to postpone the election. All they say is that it must be synchronized.

Sen. Lacson: Yes, Mr. President. I agree. But we are not arguing that we should not postpone and that we don't have the power to postpone the election. What I'm only saying is that it should be ratified in a plebiscite. There's no argument on the postponement, Mr. President.

Sen. Zubiri: Ito po. May I quote— we have the minutes of the meeting, Mr. President.

Sen. Lacson: Okay.

Sen. Zubiri: The discussion was revolving around the need for postponement of elections and chairman Fariñas, and I quote, 'precisely when they postpone elections, hindi na kailangan ng plebiscite.' Then Senator Drilon answered, 'when we postponed the elections, we amended the election code. Not the ARMM. Now the terms of the ARMM expired, we did not touch it. The president invokes his power to appoint because of the vacancy. Because of the synchronization law, this from Rep. Sangcopan, [unintelligible] Supreme Court hanggang sa nag expire po yung term ng incumbent.

So I'll let you look at the discussion, Mr. President. But that was the discussion. So we basically, and the House panel also agreed, precisely that the postponement of elections, hindi na kailangan ng plebiscite. Yan po ang minutes. And you know when we discuss laws, these are what is presented during the discussions with the Supreme Court, when we talk about the essence of the law.

Sen. Lacson: Did the postponement of the election of the ARMM, under the ARMM, did it amend yung organic law of the ARMM?

Sen. Zubiri: No, we abolished the organic law.

Sen Lacson: No, we passed a separate legislation to postpone the election. But we did not amend, By virtue of that postponement, the organic law of the ARMM.

Sen. Zubiri: The ARMM itself, Mr. President, was abolished by the Bangsamoro Organic Law.

Sen. Lacson: No, before that. Because we postponed the ARMM election but we did not amend the organic law. We passed a separate legislation to postpone the election because there's nothing in the organic law specifying the date of the election.

So wala tayong ina-amend sa organic law. In this case, we are amending a provision in the BOL that says that elections will be held, shall be held, the first regular elections shall be held in May of 2022. Or this coming May, next year. And it is my argument again, I have to be repetitive, but you know, the right to suffrage is included in the basic structure.

Because what would differentiate us from an authoritarian rule, Mr President? The first question in my interpellation sana is what is the basic yet most significant reason for the holding or the conduct of an election? Democracy. And that differentiates us from an authoritarian rule. Ang democracy, nire-recognize yung right to suffrage. Pag nawala yan, parang authoritarian na tayo, Mr. President. So while we agree that the election can be postponed to a later date, it should be subjected to a ratification by the people who ratified the first or the original BOL.

Sen. Zubiri: Mr. President, if I may be allowed by the sponsor, this is more discussions on the plebiscite issue. This is from congressman Far. Section 18 of the constitution states that the plebiscite is required only for the creations of autonomous regions and for the determining which provinces, cities, geographic areas will be included in the autonomous region.

Only amendments or revisions to the organic act constitutionally essential to the creation of the autonomous regions such as aspects specifically mentioned in the constitution which congress... and he says, nalilito din ako dito, must provide for the organic act require ratification through a plebiscite. Here's the Abas case, the amendments to the organic act that require ratification are those that relate to structure of the regional government, like the one we are doing now. The region's judicial system, that is the special courts, with personal, family, and property law jurisdiction, and a grant of in extent of legislative powers constitutionally considered to the regional government under section 20, article 10 of the constitution.

To date, the date of the ARMM elections does not fall under any of the matters that is constitutionally specifically mandated. And I quote, "so yun" sagot ni congressman Rudy Farinas, that is the distinction between amendment. In the same manner sir that even in the constitution, when it is an amendment, it may done through people's initiative. And it was actually answered in affirmative by Senator Drilon. Senator Drilon said, "yes, it is correct." It is here on record, Mr. President.

Sen. Lacson: We're citing the same Supreme Court case, Mr. President?

Sen. Zubiri: Opo. It was mentioned during the discussions sa BOL. I'm just putting through the body the information and the intent discussed during the Bicam on that particular provision. That's all I could share with the group and I [unintelligible].

Sen. Tolentino: Thank you, majority floor leader. Mr. President, if I may continue. Perhaps two new words can be gleaned from the Supreme Court ruling of Kida. The new words that were announced by the Kida Supreme Court are the following: constitutionally essential, you will need a plebiscite if the revisions on or amendments to the organic act are constitutionally essential to the creation of autonomous regions.

Thereafter, the Supreme Court, enumerated the three constitutionally essentials: 1. The structure, 2. The judicial system, 3. The specified functions of the parliament. And if you refer to the structure, it is basic, the structure is the framework. The parliament, headed by a chief minister, made up of cabinet members, made up of 80 members. We're not expanding the membership of the parliament. We're not reducing the membership of the parliament. We're not changing the mode of election, of selecting the chief minister. They should be selected by the members of the parliament. We're not diluting the voting membership of the non-Moro tribes, the settler communities, the ulama, the traditional leaders, the women, the youth among others. The structure remains the same. We are referring to the election postponement and the BOL RA 11054 is very clear when it was enacted and even ratified by the people.

Section 1 of Article 17 refers to the amendment and revisions. And I quote, 'any amendment to revision or repeal of the organic law shall be made by law enacted by the Congress of the Philippines' and this was acquiesced and ratified by the people of the Bangsamoro. They agreed and they voted in the plebiscite that any change in this Bangsamoro law can be done by Congress: 'we, the people of Bangsamoro, agree in this plebiscite and we vote yes.' So that is in response, the people of Bangsamoro, through that plebiscite agreed that their congress can amend and the powers of congress cannot be curtailed, Mr. President, by a legislation. And if we go to suffrage; suffrage, I submit, is not part of the structure.

Suffrage is part of the fundamental human right of every Filipino. Even if you live in a Bangsamoro area, or in a non-Bangsamoro area you can vote in 2022. You can vote for the senators, you can vote for the governors. It just so happened that your right to vote in the Bangsamoro will be delayed because of supervening events beyond the control of the Bangsamoro, beyond the control of the national government, and beyond the control of the Bangsamoro people. So that is why, Mr. President, we have to accede to the changing circumstances Mr. President. It has changed. They cannot produce the Bangsamoro electoral code, they cannot the exit agreement because of circumstances beyond their control. Though they tried— they finished the civil service code, the administrative code, the education code— they still need three more codes: the internal revenue code, the electoral code, and the local government code, Mr. President. They're trying.

So, this law, if approved, will approximate into that situation wherein we can reach that ideal as envisioned by Republic Act 11054. We are not, Mr. President, let me be clear, we are not extending the terms of people comprising the Bangsamoro transitional authority. We are extending the term of the institution: the Bangsamoro transitional authority. Whatever the composition is, whether it's the chief minister coming from the MILF, we're not after that. For ours, when we created the Bangsamoro government, is that we recognized that ours is a government of laws not of men, Mr. President. So we extend the term of the structure of the government, but not the people manning the various offices. Bahala po sila doon. So that's the basic tenet of this measure which this representation humbly submits as participative, inclusive, ideal, and approximating what we really want when we need peace. It's not just suffrage, but peace, Mr. President, which I reiterate again, my sponsorship speech, the 68 words of the preamble of the 74-word preamble is about peace, Mr. President.

Sen. Lacson: I am not questioning the powers of congress, Mr. President. We have the power to legislate. Kaya siguro tayo hindi nagkakaintindihan, Mr. President, ang concept ninyo is the powers of congress. I'm not questioning that. What I'm questioning is the necessity of holding a plebiscite to ratify the postponement being a major factor that would affect the basic structure through the right to suffrage of the Bangsamoro people.

Sen. Tolentino: Mr. President, I have here the Kida case in front of me.

Sen. Lacson: I also have the Kida case, Mr. President. In fact, I flashed it on the screen.

Sen. Tolentino: If I may quote, Mr. President, a portion of the Kida case: 'if we were to go by the petitioners' interpretation of section 18, article 10 of the constitution, all amendments to the organic acts have to undergo the plebiscite requirement before becoming effective this would lead to impractical, illogical results, hampering the region's progress by impeding congress from enacting laws that timely address— ito po yung sinasabi ko kanina— problems as they arise in the region, as well as weighing down government with cause that unavoidably follow the holding of a plebiscite.' Sabi nila not all amendments would require a plebiscite. Yung tatlo lang: structural, judicial system, and the enumerated legislative functions coming from section 20, article 10 of the Philippine constitution, Mr. President.

Sen. Lacson: I never said that all amendments of the organic law would require a plebiscite, Mr. President. We're on the same page by stating the three constitutionally essential factors that would necessitate a plebiscite. Pareho naman ang sinasabi natin, the basic structure of the regional government, the region's judicial system, the grant and extend of the legislative powers constitutionally conceded to the regional government system.

Pareho naman po yung ating sina-cite na jurisprudence because it so clearly stated. What we are not in agreement, Mr. President, yung sa basic structure— what constitutes the basic structure of the regional government. And it's my opinion, it's my contention that the right to suffrage is affected and it should be included in the basic structure kasi all-encompassing yung right to suffrage ng mga tao, Mr. President.

Maraming pwedeng apektuhan noon. As I said, when they ratified the plebiscite last January 2019, alam nila after three years they would elect their own leaders. And now it's not happening because of this amendment. So, we are denying the Bangsamoro people the right to suffrage next year. I am not questioning the postponement. We can actually postpone by virtue of our legislative powers because the organic law is still an act passed by congress. So, we can amend. But I'm only saying is subject the amendments, because we are now rewriting some provisions of the organic law, and since it is an organic law therefore we should subject it to a plebiscite to be ratified by the people, Mr. President.

Before we take round two, because there's another topic coming up: we're coming from the legal perspective. We'll discuss in the next breath, yung political perspective and even the normalization process. So can we take a short break, Mr. President?

Sen. Sotto: Majority leader.

Sen. Zubiri: Yes, with the permission of Senator Lacson, we'll recognize the other members who wish to interpellate. And he could come back.

Sen. Lacson: Yeah. I'll suspend my interpellation.

Sen. Zubiri: We'll suspend temporarily the interpellation of Senator Lacson and now recognize Senator Koko Pimentel. He had asked to also ask a few questions. After Senator Koko Pimentel, the list is Senator Gordon, Senator Imee, and Senator Joel Villanueva, Mr. President.

Sen. Sotto: The interpellation of Senator Lacson is postponed, I'm sorry, suspended. In the meantime, we are going to recognize Senator Koko Pimentel to continue the interpellation.

Sen. Koko: Thank you, Mr. President. With the permission of the sponsor, I just have a few clarificatory questions because I filed the original bill in this case. With the permission of the sponsor.

Sen. Zubiri: Mr. President, before we move forward, I just like to put on record... I'm reading now the minutes of the deliberation of that particular issue and it was actually Senator Koko Pimentel and Senator Drilon together with Chairman Rudy Farinas of the House where it was extensively discussed on this particular issue of the need for plebiscite for revision and amendment. It was at the interjection of our dear, at that time, Senate President Koko Pimentel that we were able to resolve this issue. With the jurisprudence that he had sponsored. It's a good read, Mr. President. I'm actually reading it again to refresh my memory. Thank you, Mr. President.

Sen. Koko: With the permission of the sponsor, Mr. President.

Sen. Tolentino: Willingly, Mr. President. The gentleman from Cagayan de Oro.

Sen. Koko: I filed a bill towards this purpose of postponing the election and I actually kept it simple. Just to move the date of the election and minimize the so-called moving parts so that we will have no unintended or unforeseen circumstances or effects. But I've noticed that the first section, the first part of the committee report retained the essence of my bill, the postponement from 2022 to 2025, but then there are additional ideas contained in the committee report like the need to re-appoint the 80 new interim members of the BTA. So, Mr. Sponsor, Mr. President, is the purpose of the measure we are now discussing, the extension only of the transition period but we are not extending the present set-up of the BTA? Is that the essence of the measure we're discussing?

Sen. Tolentino: Correct, Mr. President. What is being extended here is the institution: the Bangsamoro Transitional Authority. As I've said, even past Supreme Court decisions would frown upon old over-capacities for local government officials. And BARMM officials are indubitably local government officials. So we are extending the institution but not the persons inside the institution.

Sen. Koko: And the reason, Mr. President, is that the committee saw some constitutional issues if we also extend the term and just retain the members of the BTA as well as the interim chief minister? Will there be constitutional issues?

Sen. Tolentino: Yes, Mr. President. I mentioned a while ago, the several hold over capacity decisions thumbed down by the Supreme Court plus the tenet that congress cannot appoint through a legislative act the persons who should occupy the office. We cannot pinpoint that you should be the secretary of this, we can only enact laws that would affect the office, the institution, the functions, how the office would be run. But the persons who would man the office is a purely executive function, Mr. President, and that's provided for under the constitution that the president appoints. With that as a backdrop, we cannot appoint, Mr. President. That would be a violation, Mr. President.

Sen. Koko: Yes, but didn't we not appoint them in the first place because the present BTA members— the cabinet secretaries, the interim chief minister— were appointed by the president. Then the chief minister was chosen from the members of the BTA and then the cabinet secretaries. So isn't that not applicable in this situation, Mr. President?

Sen. Tolentino: Mr. President, the act of appointment is an executive function. It is not a legislative function. We can only provide for the creation of the office, the extension of the office, providing the functions of the office, but the personalities involved, the names of the persons who will occupy the office, the blood and muscle would be the prerogative of the executive, Mr. President. We cannot name who should occupy that office. But we can create the office.

Sen. Koko: And the present members, Mr. President, of the BTA, their term expires when?

Sen. Tolentino: Under the existing law, it should motu proprio expire on the date after the elections of May 2022. That's why the BTA would be [unintelligible]. There would be no more BTA supposed to be after May 2022. That's why we're extending the BTA as an institution. But the institution cannot function without people manning the institution. And now, that's the job of the executive, the chief executive, the president, to appoint who will man. But congress can set the qualifications just as we did last 17th congress. And I'm just reiterating the qualifications. Like the need for the 8 reserved seats, it was mentioned in the law: the members of the Teduray, the Sama, and all other tribes, the Ulama, the traditional leaders, among others, Mr. President. But we cannot name who that Teduray leader should be.

Sen. Koko: So if this bill becomes law therefore there would be a need to reappoint. When does the need arise? When? Because the terms of the incumbent BTA members are deemed to have terminated.

Sen. Tolentino: We'll terminate in accordance with Republic Act Number 11054 on the dates specified but under existing jurisprudence, there might be a leeway for a period of hold over capacity in so many days until after the president appoints a replacement. Or reappoints the current position order, Mr. President. So it's now an executive function beyond the realm of legislature, Mr. President.

Sen. Koko: For my education, Mr. President. So if hold over is frowned upon, is the sponsor trying to say that there is a grace period where a hold over capacity is allowed or tolerated by jurisprudence? Because I'm not familiar, for my education Mr. President, how long is that grace period and what is the case?

Sen. Tolentino: Administrative law cases probably would point, Mr. President, that a few days to wait for the turnover of whoever would be the next occupant, otherwise it would be a dereliction of your duty if you just abandon and leave your office, Mr. President, with no one manning the fort. So a few days probably, Mr. President, until the successor has taken his oath and assumed office, Mr. President.

Sen Koko: The successors, Your Honor, the new appointees to the extended period, do they need to reorganize the BTA again and go through the procedure, the birth pains procedure followed by the existing BTA when they were first organized? Do the next appointees also need to do this and in apt time, so minus na naman sa extended period po nila yung re-organization po nila?

Sen. Tolentino: No, Mr. President. The concept is that the BTA is a continuous body. It's still there. As a continuing body, what was initially, structurally done would be continued by the successors. And the successors can even be the current office holders if they are reappointed because the law gives weight to the membership of the MILF, Mr. President.

Sen. Koko: Most likely. We wish that they will be reappointed but we cannot be sure.

Tol: But Mr. President, the law provides that majority would come from, without prejudice to the membership of the MNLF, majority would come from the MILF. So it's still there. It's still the same group deciding amongst themselves who will be their leader and who will assume position as members of the parliament, Mr. President. I would speculate, Mr. President, for purposes of continuity and for purposes of accomplishing what they started, they would agree amongst themselves, they would still be the leaders of the MILF.

Sen. Koko: We can anticipate or wish that the present members of the BTA will be reappointed. But of course we can never be sure. Did your honor, Mr. President, did the sponsor already made commitments that there will be amendments to the proviso found on page 2 beginning on line 3 up to line 12 on the composition of the 80 interim members? Did the sponsor already manifest an amendment to this enumeration?

Sen. Tolentino: Yes, Mr. President. This is not etched in stone. In fact, Mr. President, at the outset, mea culpa. The mention here of Sultan Kudarat should not have been there. I was perturbed Mr. President, because in all my consultative meetings, the congressman, the governor of Sultan Kudarat was there. So probably got dazed. Number 2, Sultan Kudarat is originally part of the Tripoli agreement in 1976, probably that confused me more. And number 3, Mr. President, for the record, there is a municipality of Sultan Kudarat in Maguindanao. So that added to the daze, Mr. President.

There was an incident before, years ago, before the plebiscite, when I went to Sultan Kudarat for the turnover of long firearms with the president. There was an event in 2018 when long firearms were surrendered at the back of the Insulan gymnasium in Sultan Kudarat. I was present with Senator Bong Go and the WesMinComm Chief then is now the vaccine czar.

That probably added to the confusion because firearms were surrendered in Sultan Kudarat. And number 5, there is really a slot for another LGU, for the record. If you remember, Mr. President, we approved the creation of Maguindanao del Sur and Maguindanao del Norte. So in effect, Mr. President, they would phase in as the part of the Bangsamoro, because the people there joined the plebiscite exercise and they're part of the undivided Maguindanao.

So that's probably mea culpa on my part but the consequence would be that slot would be reserved to Maguindanao del Sur, which I assume Mr. President will be signed within a few days by the president. So we will have another province, another LGU within the BARMM area, Mr. President.

Sen. Koko: There will be amendments.

Sen. Tolentino: Yes.

Sen. Koko: Because I think there have been questions for members nominated by the LGUs, etc. But I'll just ask a question which encompasses or covers the entire subject matter of Section 2 on the composition of the 80 new interim members of the BTA. The original law did not go into

that detail. Why are we doing it? Are we not curtailing now the discretion or the power of the president? Why not just retain the original power of the president to determine the composition of the BTA since we are just extending the transition period anyway?

Sen. Tolentino: You're correct, Mr. President. But if you look at the existing law, mention was made of the 8 reserved seats for the IPs. Mention was made for the majority, the leadership coming from the MILF. So right now, the majority would be 41, in an 80-parliament composition.

So, some are questioning how come instead of 41, it's now 47 as the original bill implied? We take into consideration the proviso in the BOL and I quote without prejudice to the participation of the MNLF in its membership. So it would include the MNLF, so Mr. President, the proposed amendments coming from the majority leader would be simplified in so far as the participation is concerned because it will now involve the congressional districts because we still do not have parliamentary districts. Now, your question is why are we attempting this? Mr. President, we are approximating the approach to what is envisioned in the BOL. It will not change the structure, it's still the same. Yun nga yung gusto natin ma-attain na kasama po yung mga non-Moro tribes, kasama po yung mga LGUs, kasama yung MNLF. Mr. President, and congress is not prohibited.

Instead of giving a free for all nomination hunting season, if you consider that this will happen immediately after the presidential elections, all will be lobbying as members of the parliament. The president has the discretion whom to appoint but congress can delineate as envisioned by RA 11054, without changing the structure, as contained in that Kida case, Mr. President. We are not changing the structure. The structure is still the same. Yung tao lang, para masigurado tayo na yung pinaghirapan po ninyo na magkaroon ng inclusive BARMM na nandoon po lahat— representation coming from settler communities, representation coming from the Sama tribe na hindi na ho napapansin sa Tawi-tawi at Basilan, nilagay na po natin doon. Inulit lang natin yung nakalagay sa law. In-specify lang natin doon without changing the structure, approximating the ideal as it was envisioned by the people when they joined the peace process; when the MILF signed the comprehensive agreement on the Bangsamoro.

Buo pa ho yung panel, ito yung gusto nila. And Mr. President, the majority leader is familiar with this: we conducted consultations. This never came out of the blue. It came from the LGU leadership, the MILF leadership, and all other sectors, Mr. President.

Sen. Sotto: Senator Lacson is recognized with the permission of the two gentlemen.

Sen. Lacson: This is a followup to the point being pursued by Senator Koko. I will cite another jurisprudence, Mr. President. Flores et al vs. Drilon. I think this is Roberto Flores versus the minority leader. G.R. No. 104732. June 22, 1993. The Supreme Court ruled and I will quote, 'when Congress clothes the President with the power to appoint an officer, it cannot at the same time limit the choice of the President to only one candidate.

Once the power of appointment is conferred on the President, such conferment necessarily carries the discretion of whom to appoint, etc. Consequently, when the qualifications prescribed by Congress can only be met by one individual, such enactment effectively eliminates the discretion of the appoint power to choose and constitutes an irregular restriction on the power of appointment.'

Now, referring to section 2 of the senate bill under discussion, clearly, it's limiting the powers of the president as clothe by congress to his choices of whom to appoint. Kasi naka-specify na rito e. 47 members nominated by the Moro Islamic Liberation Front, from whom the Chief Minister will be appointed. Four members nominated by each of the six BARMM provincial local government units. Now Mr. President, yung China they also have an election. Officially yes, but in reality, they really don't have an honest-to-goodness election. Why? Because the CCP, the Chinese Communist Party will just choose from the elite group in their society whom the people will vote for in their assembly, in their parliament. So parang naging China na tayo rito, Mr. President, kasi we're limiting the power. No, this is not election but appointment but I'm just trying to make an analogy that democracy will no longer be in effect when we limit the president in the appointment of the members of the parliament under the extended BTA, Mr. President.

Sen. Tolentino:: To reply quickly, Mr. President. We are not limiting the powers of the president as provisioned by that 1993 Flores vs. Drilon case. Because the case involved the narrowing to one person, the person who is qualified to hold office. In fact, Mr. President, we are broadening the pool. In that 63 barangays of North Cotabato that joined the BARMM, 193,000 residents is the pool from which the president can pluck out a representative to the BTA. In the same manner, the 78,000 residents from Tawi-tawi of the Sama tribe, the president can pluck out one from that 78,000.

Mr. President, we're not narrowing the pool, we are expanding the pool, making it more democratic by identifying, as identified. Wala naman pong binago, Mr. President. Nakalagay na rin po ito sa existing law. Yung mga youth, women, traditional leaders, inulit lang po yun. Ang ginawa lang po dito, in-specify lang and this is subject to amendments as proposed by Senator Pimentel para naman po hindi ma-agrabyado yung iba, lalong lalo na po ang Marawi na dapat po may representative dahil dumaan sila sa hagupit ng gera. Dapat po meron pong mag mando po doon na miyembro ng parliament to oversee the rehabilitation as part of the BTA. Wala pong miyembro sa Marawi.

Ganoon din po yung composition, Mr. President. Nabago na po ito after consultations. Mas marami na po sa Lanao del Sur kasi mas malaki po ang population ng Lanao del Sur. We are not going after mathematical exactitude, Mr. President. What we want is really to expand the pool. So again, I reiterate that the power of the president, there is the Rufino vs Baltazar case, the president can appoint a person to an executive position as part of his constitutional prerogative, Mr. President.

Sen. Lacson: If that is not limiting, I mean section 2, if that is not limiting the choice of the president, I don't know what is. Why don't we just entrust to the president who to appoint, period? Why specify and limit the choice of the president based on Section 2? That's my point.

Sen. Tolentino:: These provisions relative to women, youth, Ulama, traditional leaders, settler communities are all in the existing law. We cannot remove that. It's part of the existing law, we are not amending, it's part of the law. The original leadership of the MILF is part of the existing law. The provision, without prejudice to the MNLF, it's part of the existing law. So, we're not changing anything, it's there.

Sen. Sotto: Sen. Lacson has sat down so it is still the floor of Senator Tolentino and Senator Pimentel. The minority leader wishes to be recognized, if the two gentlemen will allow.

Sen. Drilon: With the permission of the two gentlemen, just a trivia on the citation of Flores vs Drilon by Senator Lacson. And yes, I am the respondent in my capacity as executive secretary. But note that there is a statement in the ruling cited by Senator Lacson. It said, quote, when the qualification prescribed by Congress can only be met by one individual, such designation is invalid because it limits the discretion of the president. So let me repeat: the supreme court ruled when the qualification prescribed by Congress can only be met by one individual, for the record, Mr. President, that one individual is Senator Dick Gordon. [laughs]

Sen. Tolentino: I failed to take note of that last remark coming from the minority leader. With his indulgence, can he reiterate that?

Sen. Drilon: I know this case because I was a respondent, Mr. President. And this involves the SBMA. And the court ruled that the qualification of the head of the SBMA can only be met by Senator Dick Gordon. Can you imagine that?

Sen. Tolentino: Now I understand, Mr. President, the Flores vs. Drilon ruling. But then again, I reiterate, we are not limiting the pool but we are in effect expanding and recognizing. But I leave it to the body to decide as to the fate of section 2, which I mentioned a while ago is not etched in stone but amendable, cognizant of the powers of congress, of the senate to pursue the framework initiated by the last congress, 17th congress. Mahaba na po ang narating, Mr. President. I think I was one of the resource persons when Mayon Volcano erupted, I rushed from Legazpi to this very hall seated beside me was [unintelligible], to my left. And to my right was Tatay Nene Pimentel during that hearing. I had to excuse myself. I asked Senator Zubiri because I was sleepy coming from that long trip from the eruption of Mayon Volcano, Mr. President.

Sen. Koko: If I may proceed, Mr. President. Just to point out to the sponsor that article 16, section 2, paragraph 3 of existing law is very simply written, Mr. President. The Bangsamoro transition authority shall be composed of 80 members who shall be appointed by the president. Then colon, provided, I will skip that because that's about the ARMM. Provided further that

non-Moro indigenous communities, youth, women, settler communities, traditional leaders and other sectors, shall have representative in the Bangsamoro Transition Authority.

So in effect, we are revising that very simple paragraph, by this enumeration of 47, four members each, six, one from LGU, and six from the indigenous people. Isn't that now such an extensive amendment of an existing provision of a law, which underwent plebiscite? That this time, may be valid to argue, the revision of such a paragraph needs approval now in a plebiscite. So, maybe its better just to keep it simple and leave it to the president to appoint the, if we really want a new appointment of the 80 BTA members, Mr. President.

Sen. Tolentino:: Mr. President, I agree with the gentleman from Cagayan de Oro. But that should be read together with Section 2 of Article 6, which reads: that is hereby created a Bangsamoro Transition Authority, the institution under consideration right now, which shall be the interim government in the Bangsamoro Autonomous Region during the transition period (which we are trying to extend). The Moro Islamic Liberation Front shall lead the Bangsamoro Transition Authority without prejudice to the participation of the Moro National Liberation Front in its membership. So that's one item that should be read together with the provision mentioned a while ago by the gentleman from Cagayan de Oro. Plus the non-Moro indigenous communities, which should be retained because it is also provided under section 2: women, youth, settler communities, traditional leaders, and other sectors shall have representatives in the BTA, which the parliament has yet to name because there is no electoral code. They have yet to finish that electoral code.

We are not jumpstarting this but we're paving the way for them, as part of our oversight functions now, to have a smooth transition from an interim government to a permanent government after the exit agreement. So, Mr. president, I see no disconnect or conflict. But I agree, make it simple. Then again, my only worry is after the 2022 elections, which is a presidential election, this will be part of the vacant positions which will be jockeyed upon by some well-meaning or not individuals who might be not be attuned to the original peace agreement. That's why we are crafting a safe haven, so to speak, Mr. President to ensure that this will not be politicized after the presidential elections of May 2022.

Kawawa naman po ang Bangsamoro. Baka po ang mapalagay dito ay yung hindi tumakbong congressman, o hindi tumakbong mayor, sila ang magpa-appoint na parliament, malakas sila sa bagong presidente. Ay naloko na po ang pinaghirapan ng lahat for the last several decades. Na-politicize na, napabaya, and siguro naman po hindi tayo papayag na that fear of mine can happen. It can happen, Mr. President, kasi lahat pupunta...o bakante ngayon lahat ito, magpa-appoint na lang ako na member of parliament, baka maging minister ako of education. Magpa-appoint na lang ako na NEDA chief ng Bangsamoro. So we maintain, Mr President, that we should pursue the original vision of what Bangsamoro should look like— anchored on peace, anchored on socio-economic development, taking into consideration the plight of the voiceless people of the Bangsamoro.

Sen. Koko: Thank you for that input, Mr. Sponsor. I'm glad that you saw my point that even if we read those two sections together, they are not exactly similar as section 2 of the proposed measure. And it can even be argued that there is a revision now and then to be safe, we can keep it simple. So that we can be safe from the argument that the revision of the existing provisions need plebiscite approval. At least that's agreed upon.

Last two points, Mr. President. Why are we in the bill page 2 section 1, for example, emphasizing that the BTA shall prioritize its mandated duties under Section 4A, Article 16 of the RA 11054, when if you read that section it already states there that BTA shall prioritize the following. Is this a message to the BTA that they have been remiss in something?

Sen. Tolentino: Mr. President, the reality is this: out of the six mandated codes, what we have right now are only three. The civil service code, the administrative code, and the education code. We still need three more: the internal revenue code, which is very hard to craft even if you get the best taxation lawyers, the local government code, plus one more code. So Mr. President, we are just reminding them that these should be finished but we acknowledge the hardship of crafting these because of the pandemic. They cannot go on Zoom, online, because they don't have signal. In Basilan, in Tawi-tawi, in other areas, it's very hard for them during the lockdown. Most of the members of the parliament are senior citizens and the elderly, they cannot converge in Cotabato City. So naiwanan poi to. We are just reiterating a legislative nudge, Mr. President, na pwedeng bilis-bilisan ng konti for us to attain that requirement of substantial compliance to reach the exit agreement.

Sen. Koko: Thank you for that Mr. President. Mr. President, I changed my mind I want to pursue some other matters but I may be taking too long a time right now so may I also ask that I suspend my interpellation on this measure, Mr. President?

Sen. Sotto: What will the majority leader say?

Sen. Zubiri: Yes, Mr. President. Actually, there is still to be a meeting today at the Malacanang with the governors, and the president and I think also with the executive on this measure according to Senator Bong Go. It's actually good to listen and wait for the outcome of the meeting, Mr. President, to guide us more on how we can proceed with this particular measure and so I appeal to our colleagues if we can suspend consideration of this measure until tomorrow, first thing again. We recognize the minority leader.

Sen. Drilon: Before we suspend, can I ask a couple of questions so I can get out of the way in so far as this bill is concerned? Just a couple.

Sen Zubiri: Absolutely Mr. President. To our distinguished minority floor leader.

Sen. Sotto: The minority leader is recognized.

Sen. Drilon: Thank you so much Mr. President. One point, the elections will be postponed because of the rule on synchronization, the next election will be in 2025. The present members of the BTA were appointed in 2018. And therefore, by 2025, they would be in office under the BTA for a total of 7 years. Now, the section 2 of the measure says 80 new BTA members shall be appointed. Just for the record, what does new mean?

Sen. Tolentino: Mr. President, following various consultations, that word is subject for deletion, Mr. President. It is up for deletion, it will be deleted. What was envisioned, Mr. President, is that there has got to be another appointment emanating from the executive. Because I reiterate again the principle again, Mr. President, that hold over capacity is frowned upon by the constitution. And what we are extending here is not the personality involved, occupying the position but the institution itself as an adjunct of the BOL.

Sen. Drilon: When we say another appointment, Mr. President, it does not disqualify the incumbent members of the transition authority? Or does it?

Sen. Tolentino: I presume, Mr. President, that they are not disqualified because even the terms of elected local government officials, if they are reelected will cumulatively be 9 years. So considering that they are not elected, they are appointed supposed to be an elective position in the future, they are appointed, my submission is that the 9 year cumulative tenure or term will not be applicable if that is the question of the good gentleman.

Drilon: That is not a valid example because the nine years would require a reelection. But in this particular case, it could result in a term of seven years, appointed for seven years on an elective position whose term is only three years. That is why we're trying to place on record exactly what new BTA members mean. Because to me, this is something that we must clarify for the record. That is why I'm glad that the good sponsor recognize this and says that he will review this. But at this point I would like to place on record what is the initial thinking of the good sponsor because it involves a policy judgment. In other words, here is a situation where the occupant can possibly be there for seven years for an elective position, the term of which is only three years. I have no opinion either way, I'm just pointing out this policy issue, that is why I am asking the good sponsor to spread it on record exactly what it means by new BTA members, 80 new BTA members.

Tolentino: Yes, Mr. President. As I mentioned a while ago, this is subject for deletion during the amendment period but the new here would connote the new issuance of the appointment. It does not follow that we are talking of new personalities. We are talking of new oath of office, new appointment papers, but it is not reflective of faces. The new is reflective of a new chief executive prerogative being exercised as an appointing act. That will be deleted, Mr. President, as I've mentioned.

Drilon: That's why I'm trying to spread it on record. And what I hear, correct me if I'm wrong that the connotation of new would mean new appointment paper.

Tolentino: Whether we delete that, new appointment papers should emanate from the president. Not necessarily new faces.

Drilon: Why don't we just say hold over rather than going around. That kind of set up can be simplified and we can be straightforward and say that these incumbent members will continue in a hold over capacity rather than place this wording new interim members, when in fact, the interpretation now of the good sponsor is new appointment papers. Why not go straight to the point and say that the incumbent officials shall continue in a hold over capacity?

Tolentino: There was a supreme court decision relative to the constitutional permissibility of the holdover positions. While it can be held, it is frowned upon by the court because it is clearly an incursion on the executive act or prerogative to appoint. So if we legislate that they should continue in a hold over capacity, there is a supreme court, constitutional provision which provides that the president should have prerogative in appointing. We limit the prerogative of the president in the exercise of his constitutional function of appointing office holders in the executive branch. Mind you, congress can only appoint within its sphere, senate president can appoint a sergeant at arms, senate president can appoint a senate secretary but in another sphere, the president has unlimited powers, in appointing, in filling up positions.

Drilon: Mr. President, I know the statement of the good sponsor that a hold over provision is frowned upon. Now isn't section 2 a hold over provision because according to the sponsor, new members, the new here would refer to new appointment. But the one appointed is also the incumbent. Kaya this is a hold over capacity called by another name. It reminds me of another saying, a rose called by another name smells just as sweet. Why don't we be candid and say that they are in a hold over capacity unless you're saying that it is not. Because this phrase, and the way it is interpreted by the good sponsor, it is a hold over provision. By the way, Mr. President, just to make it clear, I have not expressed any opinion as to whether we are against the hold over or the new appointments to be made. I am just asking what the sponsor exactly means when the sponsor says new BTA members. And according to the sponsor, new appointment members of the incumbents.

Tol: No, not necessarily Mr. President. Even new appointees can be appointed by the president coming from the legislatively captured group and it refers to the MILF, it refers to the Lumad, it refers to the Ulama, it refers to the non-Moro groups, settler communities, etc. So the president has the broad prerogative. So that's why I retain again, and I reiterate that we are extending is the structure, the institution, who will man the institution, we leave that to the president. He can appoint the incumbent, he can appoint another one but he should follow the guidelines provided for by RA 11054 that the bulk should come from the MILF without prejudice to the participation of the MNLF.

Drilon: We're asking this question precisely because of the case cited by Senator Lacson involving this representation as respondent in his capacity as executive secretary. And the subject of the case is none other than our good friend and colleague Senator Lacson, and the court said when the qualification prescribed by congress can only be met by one individual, that

is invalid. That is why I was asking what exactly is meant by new members and I am concerned that the interpretation is that when you say new it only refers to new appointment papers but it cannot refer to a new appointee. So that's why if we can clarify this, then that satisfies my query, Mr. President.

Tol: Yes, Mr. President. New appointees can be made provided that they comply with the provisions of RA 11054 in compliance with the peace agreement, the comprehensive agreement of the Bangsamoro. The members of the MILF, surely Mr. President, are not just 41. There are thousands. And from that pool, they can select the best, the most able, the most qualified, the most passionate to be members of the parliament. So, we're not restricting this to a single individual Mr. President. The framework of the peace process clearly mentions the MILF so we're constrained to follow that Mr. President and this is part of the law but the personalities, the president can choose from amongst the thousands. We're not delimiting it to a single individual, Mr. President. So I hope I have answered correctly the question of the minority leader.

Drilon: Yes, thank you Mr. President. That's all.

Tol: Thank you, Mr. President.

Sen. Villanueva: Before we suspend Mr. President the consideration of the measure, we just like to put in record that this representation is physically present together with 9 other members of this chamber who came here today and I was ready to ask questions Mr. President but the majority leader enlisted me at the bottom of the list considering that I am physically present. But I am not complaining Mr. President. I just want to put that on record and that its becoming more interesting to talk about this measure and of course, we commend the distinguished gentleman from Cavite for sponsoring this very important measure. Thank you, Mr. President.

Tol: Any question, Mr. President, from a Bolton Celtic fan will be accepted.

Sen. Sotto: He's still mourning.

Sen. Zubiri: Who's still mourning? Ah, yes. Anyway, Mr. President, again, we begged it off of our colleagues that we can suspend the consideration and discuss this again tomorrow. For the record, Senator Lacson has suspended his interpellation and would like to come back and also Senator Koko Pimentel so we'll just put them on the list tomorrow. As well as those listed today: Senator Gordon, Senator Imee, and Senator Joel Villanueva, of course. And we'll give priority to those who are in the plenary if that is the wishes of those who are in plenary, Mr. President, then we submit. So I move to suspend, Mr. President.

Sen. Sotto: Alright. Any objection? If none, consideration of the measure is suspended.

Sen. Zubiri: Thank you so much Mr. President.

