

# PERSPECTIVE

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## **Three Challenges Facing the Bangsamoro Organic Law**

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### **EXECUTIVE SUMMARY**

- The Bangsamoro Organic Law is the Duterte administration’s landmark legislative achievement to date.
- This law, if effectively implemented, will devolve significant powers to the new Bangsamoro government and could create a real regional autonomous government for Muslim Mindanao.
- Previous attempts to create an effectively autonomous regional government in Muslim Mindanao show that the passage into law is the easier part. Effective implementation is the hard and so far unsuccessful part.
- The three biggest challenges to address so that history does not repeat itself are:
  - Resolving local divisions over the Bangsamoro Organic Law in Muslim Mindanao;
  - Improving state capacity in Muslim Mindanao, and;
  - Ensuring national government support for the regional autonomous government.

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## **INTRODUCTION**

On 26 July 2018, President Duterte signed the Bangsamoro Organic Law after two decades of negotiations between the government of the Philippines and the largest insurgent group in Muslim Mindanao, the Moro Islamic Liberation Front (MILF). The Bangsamoro Organic Law legally codifies the Comprehensive Agreement on the Bangsamoro signed by the MILF and the Philippine government on 27 March 2014.

On 21 January 2019 plebiscites to ratify the Bangsamoro Organic Law will be held in the current Autonomous Region of Muslim Mindanao (ARMM), and Cotabato City, Isabela City, and on 6 February 2019 in a number of bordering barangays in North Cotabato and Lanao del Norte provinces. The law provides for the creation by 2022 of a new parliamentary government for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) to replace the current ARMM. BARMM could be larger and significantly more populous if the plebiscites in Cotabato City, Isabela City, North Cotabato and Lanao del Norte go in favour of the new autonomous region.<sup>1</sup>

The Bangsamoro Organic Law is the latest and most ambitious effort to end the decades-long Moro insurgency in Muslim Mindanao by recognizing the Moro community's rights for self-determination within the Philippine state through the establishment of a regional autonomous government. It offers the best chance at finally delivering a political solution to the alienation of the Moro community from the Philippine state; ending the resulting deeply-rooted insurgency that has become a main preoccupation of the Armed Forces of the Philippines; and seriously degrading the mutually beneficial ties between Moro insurgent and terrorist groups and regional and global terrorist groups that came to the forefront in the devastating siege of Marawi City last year. The Bangsamoro Organic Law delegates a much wider range of powers and fiscal capabilities to BARMM than earlier failed attempts to establish an effective regional government in Muslim Mindanao.

While the Bangsamoro Organic Law offers the best chance at addressing the Moro community's political alienation and ending the Moro insurgency, it is far from clear how good this best chance will turn out to be. Even before the plebiscites are held to ratify the law and establish the new empowered BARMM, familiar problems that denied the effective implementation of earlier attempts are evident. The three most familiar and consequential are local opposition in Muslim Mindanao to the Bangsamoro Organic Law, serious questions about the capacity of Muslim Mindanao and the MILF to fulfil the great governance demands of the Bangsamoro Organic Law, and the national government's level and sustainability of support for implementation of this law.

## **MUSLIM MINDANAO DIVISIONS**

The decades of negotiation between Manila and the Moro National Liberation Front (MNLF) which led to the creation of ARMM in 1989 and its enhancement in 2001 seriously weakened the MNLF and its claims to represent the Moro community. The MILF split off from the MNLF over opposition to the MNLF negotiations with Manila and grew larger than the MNLF. The local elites in Cotabato City, geographically in Maguindanao province, and Isabela City, geographically in Basilan province,<sup>2</sup> successfully campaigned against joining

ARMM in 2001. Ironically, Cotaboto City, while outside of ARMM, is where the ARMM administrative offices are located. A debilitating problem for the ARMM is that many in the Moro community saw it as the creation of an agreement between the MNLF then led by Nur Misuari and Manila, and not as a regional autonomous government for all. Nur Misuari becoming ARMM governor in the first elections after the peace agreement signed between the Ramos government and the MNLF in 1996 further cemented this exclusivist view.

BARMM will face the very similar problem of being seen by its opponents in Muslim Mindanao as the creation of an agreement between the MILF and Manila. The Bangsamoro Islamic Freedom Fighters at the heart of the January 2015 Mamasapano massacre that curtailed efforts by the administration of Benigno Aquino to establish BARMM are a splinter group of the MILF opposed to the negotiations between the MILF and Manila. The Maute Group that led the five-month siege of Marawi City in 2017 are also opposed to the MILF and its negotiations with Manila. Terrorist attacks by local groups in the ARMM continue despite the invocation of martial law across all of Mindanao and the passage of the Bangsamoro Organic Law. Such attacks are likely to persist for the foreseeable future and pose another ongoing challenge for the Bangsamoro Organic Law and the BARMM if and when it is established.

Efforts by President Duterte to include Nur Misuari (who is facing charges for leading the 2013 siege of Zamboanga City) and his MNLF faction based in Sulu in the negotiations that led to the Bangsamoro Organic Law have not prospered.<sup>3</sup> Many interpret the 2013 siege as a reaction against the negotiations between the MILF and Manila.<sup>4</sup>

Sulu Governor Abdusakar Tan II (the scion of the most powerful political dynasty in Sulu) has filed a case with the Supreme Court against the Bangsamoro Organic Law claiming that it is unconstitutional. Tan is opposed to the law's clause that calls for a single vote in the ARMM on whether to join the BARMM or not. Governor Tan wants a separate vote for Sulu.<sup>5</sup> Sulu accounts for roughly one-fifth of the ARMM population. Sulu, along with Tawi-Tawi and Basilan, is part of island Muslim Mindanao that is linguistically and culturally distinct from mainland Muslim Mindanao. The mainland Muslim Mindanao provinces of Maguindanao and Lanao del Sur account for the majority of the ARMM population. The MILF is closely associated with the ARMM's largest province, Maguindanao, and ethnic group, the Maguindanao.

Tan's case being heard by the court could delay the plebiscites to ratify the Bangsamoro Organic Law. If his case is successful and the four ARMM provinces vote separately, then the BARMM could end up being smaller than the ARMM. If his case is not heard or is not successful, the BARMM plebiscite takes place, and a majority of voters in Sulu vote against it but their province is incorporated in the BARMM due to the aggregate ARMM vote, then trouble will likely ensue. To complicate matters even further, Nur Misuari's son, Karim, may run for the post of Governor of Sulu in the mid-term elections scheduled for May 2019.<sup>6</sup>

## **BARMM STATE CAPACITY**

In socio-cultural and political terms, Muslim Mindanao presents a very good case for a truly regional autonomous government. In socio-economic terms, it provides a fraught case for

effective self-government. The ARMM is the poorest by far of the sixteen regions in the Philippines and Lanao del Sur that accounts for over a quarter of the ARMM population is the poorest of the 81 provinces in the country. In 2015, Lanao del Sur was the only province where a majority of families, 66.3 per cent, were under the national, regionally-adjusted poverty line.<sup>7</sup> The table below in Appendix 1 gives more details on the ARMM's comparative lack of economic development and poor educational outcomes.

These weak socio-economic indicators have entwined with the Philippines' patrimonial, clan-based political culture that is particularly strong and violent in Muslim Mindanao to undermine the state capacity and service delivery of the current ARMM government. The ARMM's poor socio-economic situation and clan-based patrimonial political culture are mutually reinforcing structural realities that have been resilient to the multitude of capacity-building and anti-corruption programmes, mostly foreign-funded, that have focussed on the ARMM. Oddly, from 2012 to 2016, the ARMM and the Central Visayas were the only two regions in the Philippines to suffer from a reduction in the number of government employees. Over this same period, the number of government employees grew by 62.8 per cent nationally.<sup>8</sup>

The ambitious devolution of powers from the national government to the BARMM one legislated for in the Bangsamoro Organic Law will likely aggravate these state capacity problems for the foreseeable future. The early days of the BARMM could be rough going. Appendix 2 below lists the 55 powers specifically delegated by the Bangsamoro Organic Law to the yet-to-be-created BARMM government. These new powers range from health to operating public utilities and from quarantine regulations and food security to the administration of justice. The Bangsamoro Organic Law calls for the elections to the new parliamentary BARMM government to be held in May 2022 where the MILF's new and untested political party, the United Bangsamoro Justice Party, could become the largest party and source of the inaugural chief minister. Insurgents often do not make good democratic politicians or government bureaucrats.

The Bangsamoro Organic Law lists many new governmental departments and agencies that this new BARMM government is legislated to create. These include a number of inter-governmental boards and committees with national government participation to manage shared and overlapping responsibilities and the inevitable disagreements between levels of government. By itself, the BARMM government will need to quickly establish a plethora of new regional state ministries and agencies. These include a general hospital system, a housing and settlements agency, a ministry of indigenous peoples, a Bangsamoro revenue office, and a ministry of energy. Creating the BARMM legislation and implementing rules for these new bodies and finding qualified personnel and management to staff and run them will be a herculean task. Notably, the ARMM government did not succeed in its much less daunting state capacity challenge.

## **NATIONAL GOVERNMENT SUPPORT**

ARMM officials and Nur Misuari and his supporters place much of the blame for the ARMM's significant state capacity and governance shortcomings on a perceived lack of national government support and incomplete implementation of the *Organic Act for the*

*Autonomous Region of Muslim Mindanao, Republic Act 6734 (1989)*, and the enhanced autonomy promised for the ARMM in the *Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act 9054 (2001)*.<sup>9</sup> The Estrada administration that succeeded the Ramos administration in 1998 was criticized for treating the 1996 peace deal between the MNLF and the national government more as a personal agreement between President Ramos and Nur Misuari.

For the Maranao community in Lanao del Sur in particular, the ongoing national government efforts to rehabilitate Marawi City, the largest city in the ARMM and the home of the Maranao, could act as a litmus test for national government support and responsiveness to local concerns. If so, then so far, so bad.

The rehabilitation project has been hit by serious delays, a lack of personal support from President Duterte, and complaints from a growing number of Maranao civil society groups that their concerns are being ignored. The ground-breaking ceremony for the rehabilitation of Marawi City was first scheduled for mid-April 2018. It occurred on 30 October 2018, after numerous delays.<sup>10</sup> President Duterte did not attend, choosing instead to front another unrelated ceremony the next day in Cotabato City. President Duterte did attend on 11 January 2018 the ground-breaking ceremony for the new, second army base in Marawi City that is opposed by many of the city's resident and displaced population. The Maranao historically have expressed very little trust in the Armed Forces of the Philippines or the Philippine National Police.<sup>11</sup>

By the end of November 2018, thirteen months after the president announced the liberation of Marawi City, a main contractor for the rehabilitation of the most affected areas was still missing. The China-led consortium that was first selected to lead the rehabilitation failed to live up to its commitments and has been dispensed with. Negotiations with a second China-led consortium have yet to prosper. The national government's Task Force Bangon Marawi, headed by former general Eduardo Del Rosario, has been criticized both for the absence of local Maranao members and for a lack of effective local consultation. The MILF and politicians in Lanao del Sur stressed during the Marawi City siege and its aftermath that passing the Bangsamoro Organic Law was necessary to ensure no repeat of the siege. If the rehabilitation of Marawi City from the destruction of the siege goes badly, support in Marawi City and among the Maranao for the BARMM could erode.

The passage of the Bangsamoro Organic Law on 26 July 2018 is the signature nation-building achievement of the Duterte administration and likely would not have happened without the personal intervention of President Duterte. The Bangsamoro Organic Law offers the best chance at addressing Muslim Mindanao's political alienation and ending the Moro insurgency. How these three challenges are addressed will help determine how good this chance will be.

## APPENDIX 1

### Selected socio-economic indicators for the Autonomous Region of Muslim Mindanao

Indicator	ARMM score	Comment	National Score
Population growth 2010-15	16.1%	Fastest among all regions	9.4%
Change in # of gov't personnel 2012-16	-0.1%	Second slowest among all regions	62.8%
Average family income, 2015	P139,000	Worst among all regions	P267,000
Gini co-efficient, 2015	0.281	Best among all regions	0.4439
Poverty incidence among families, 2015	48.2%	Worst among all regions	16.5%
Subsistence among population, 2015	21.1%	Worst among all regions	8.1%
Per capita gross regional domestic product, 2016	P27,345	Worst among all regions	P140,249
Projected life expectancy at birth, women, 2010-15	62.93	Worst among all regions	73.14
Projected life expectancy at birth, men, 2010-15	61.94	Worst among all regions	67.61
Net enrolment in elementary school, 2015	69.64%	Worst among all regions	91.05%
Cohort survival rate, elementary school 2013-14	39.61%	Worst among all regions	80.63%
National Achievement Test of Grade Six pupil, 2014-5	59.64%	Second worst among all regions	68.88%
Labour force participation rate, 2016	52.4%	Worst among all regions	63.5%
Connection to electricity grid, 2016	38%	Worst among all regions	88%

Source: 2017 Philippine Statistical Yearbook. Quezon City: Philippine Statistics Authority, October 2017.

[https://psa.gov.ph/sites/default/files/PSY\\_2017\\_Jan%2016%202018.pdf](https://psa.gov.ph/sites/default/files/PSY_2017_Jan%2016%202018.pdf)

## APPENDIX 2

### **Powers to be granted to BARMM under the Bangsamoro Organic Law, Republic Act 11054**

Administration of justice	29. Housing and human settlements
Administrative organization!	30. Humanitarian services and institutions
Agriculture, livestock and food security	31. Human rights
Ancestral domain and natural resources!	32. Indigenous peoples' rights
Barter trade and counter trade	33. Inland waters
Budgeting	34. Inland waterways for navigation
Business name registration	35. Islamic banking and finance
Cadastral land survey (property boundaries)	36. Labour, employment, and occupation
Civil service	37. Libraries and museums, and historical, cultural, and archaeological sites
Classification of public lands	38. Loans, credits, and other forms of indebtedness
Cooperatives and social enterprises	39. Mechanisms for consultations for women and marginalized sectors
Creation, division, merger of boundaries of municipalities and barangays	40. People's organizations
Creation of government-owned or controlled corporations and pioneer firms	41. Public utilities' operations
Creation of sources of revenue!	42. Power sector investments
Cultural exchanges and economic and technical cooperation	43. Public works and infrastructure
Culture and language	44. Quarantine regulations
Customary laws	45. Registration of births, marriages, and deaths
Development programs for women, labour, youth, the elderly, the differently-abled and indigenous peoples	46. Regulation of the manufacture and distribution of food, drinks, drugs, and tobacco
Disaster reduction and risk management	47. Science and technology, research councils, and scholarship programs
Ecological solid waste management and pollution control	48. Social services, social welfare, and charities
Economic zones, industrial parks and free ports	49. Sports and recreation
Educations and skills training	50. Technical cooperation for human resource development
Eminent domain!	51. Tourism development!
Environment, parks, forest management, wildlife, and nature reserves' conservation	52. Trade and industry
Fishery, marine, and aquatic resources	53. Urban and rural planning development!
Grants and donations	54. Urban land reform and land use
<i>Hajj and Umrah</i> (Muslim pilgrimages to Mecca)	55. Water supply and services, flood control, and irrigation systems
Health	

! Powers already specifically delegated to ARMM under The Organic Act for the Autonomous Region of Muslim Mindanao, Republic Act 6734 (1989).

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- <sup>1</sup> A good map of the current ARMM and proposed BARMM can be viewed at <http://springtimeofnations.blogspot.com/2013/09/introducing-bangsamoro-republikbut-for.html>
- <sup>2</sup> Cotabato City is administratively separate from Maguindanao province where it is located as is Isabela City from Basilan province.
- <sup>3</sup> Ruth Cabal, “Exclusive: MILF ‘traitors’ and ‘criminals’ – Misuari”, *CNN Philippines*, 8 November 2016, <http://cnnphilippines.com/news/2016/11/07/exclusive-misuari-milf-traitors-criminals.html>
- <sup>4</sup> See Joseph Franco, “The Zamboanga standoff: role of the Nur Misuari group”, *RSIS Commentary*, 17 September 2013, <https://www.rsis.edu.sg/rsis-publication/cens/2056-the-zamboanga-standoff-role-o/#.XBh3B2kRWUk>
- <sup>5</sup> Lian Buan, “Governor Tan of Sulu runs to Supreme Court to block Bangsamoro law”, *Rappler*, 30 October 2018, <https://www.rappler.com/nation/215554-sulu-abdusakur-tan-ii-supreme-court-petition-block-bangsamoro-organic-law>
- <sup>6</sup> “Run for governor of Sulu, Tausug urge Nur’s son”, *Manila Standard*, 11 October 2018, <http://manilastandard.net/igu/mindanao/277699/run-for-governor-of-sulu-tausug-urge-nur-s-son.html>  
To complicate matters even more, a group of eminent constitutional lawyers have also filed a case with the Supreme Court claiming that the Bangsamoro Organic Law is unconstitutional, Dona Z. Pazzibugan, “Stop Bangsamoro law, group asks Supreme Court”, *Philippine Daily Inquirer*, 19 December 2018, <https://newsinfo.inquirer.net/1064442/stop-bangsamoro-law-group-asks-supreme-court>
- <sup>7</sup> *2017 Philippine Statistical Yearbook*. Quezon City: Philippine Statistics Authority, October 2017, p. 2-24, [https://psa.gov.ph/sites/default/files/PSY\\_2017\\_Jan%2016%202018.pdf](https://psa.gov.ph/sites/default/files/PSY_2017_Jan%2016%202018.pdf)
- <sup>8</sup> *2017 Philippine Statistical Yearbook*. Quezon City: Philippine Statistics Authority, October 2017, p. 11, [https://psa.gov.ph/sites/default/files/PSY\\_2017\\_Jan%2016%202018.pdf](https://psa.gov.ph/sites/default/files/PSY_2017_Jan%2016%202018.pdf)
- <sup>9</sup> “ARMM should continue moving on – and moving up”, *Manila Times*, 7 March 2015, [www.manilatimes.net/armm-should-continue-moving-on-and-moving-up/167841/](http://www.manilatimes.net/armm-should-continue-moving-on-and-moving-up/167841/); and R.J. May “Muslim Mindanao: Four years after the peace agreement”, *Southeast Asian Affairs 2001*, edited by Daljit Singh and Anthony L. Smith, Singapore: ISEAS, 2001, pp. 263-75.
- <sup>10</sup> Carolyn O. Arguillas “Breaking deadlines, breaking ground in Marawi’s battleground”, *MindaNews*, 3 November 2018, <http://www.mindanews.com/top-stories/2018/11/breaking-deadlines-breaking-ground-in-marawis-battleground/>
- <sup>11</sup> Carijane C. Dayag-Laylo, “Exploring Conflict Management in the Autonomous Region of Muslim Mindanao”, paper presented at the 4<sup>th</sup> Asian Regional Conference of the World Association for Public Opinion Research, Makati City, Philippines, 23-24 February 2004, p. 6, <https://asiafoundation.org/resources/pdfs/ExploringConflict.pdf>

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