

RESEARCHERS AT SINGAPORE'S *INSTITUTE OF SOUTHEAST ASIAN STUDIES* SHARE THEIR UNDERSTANDING OF CURRENT EVENTS

Singapore | 17 Mar 2014

Peace's Best Chance in Muslim Mindanao

*By Malcolm Cook**

EXECUTIVE SUMMARY

- Political disagreement and ensuing violence have precluded the integration of the Moro community into the Philippines since the Spanish colonisation of the Philippine archipelago in the 1500s. Since the 1970s, over one million Mindanao residents have been displaced by political violence, over 100,000 have died and the regional economy has been stunted by this nation-building failure.
- The Framework Agreement on the Bangsamoro between the Government of the Philippines and the Moro Islamic Liberation Front (MILF) completed on 25 January 2014 offers the best chance yet for a political solution to the insurgency in Muslim Mindanao in the forty-plus years of peace negotiations.
- The potential payoffs from the latest diplomatic effort hinge on three differences from previous unsuccessful agreements: (i) the balance of power within the Moro insurgency favours the supporters of this Agreement, (ii) the Agreement provides for greater and more sustainable autonomy and disarmament, and (iii) greater engagement and support from foreign states and local stakeholders.

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- While the Framework Agreement is an important step in moving Mindanao toward peace, there are four significant hurdles to be overcome: (i) many difficult details are glossed over in the Agreement, (ii) President Aquino's single presidential term runs out in mid-2016, (iii) the new MILF-led Bangsamoro government will need to absorb the existing regional government, and (iv) a successful Supreme Court challenge may prove fatal to the Agreement.
- A signed Bangsamoro Basic Law based on the Framework Agreement and a successful 2016 Bangsamoro election would redefine the Philippine state and Manila-Muslim Mindanao relations. Another failure, however, would reaffirm the Moro sense of alienation that lies at the root of the insurgency and would leave no major Moro group willing and able to negotiate further with the Philippine government.

INTRODUCTION: POOR PRECEDENTS¹

The two previous agreements between the Philippine government and the Moro Islamic Liberation Front (MNLF) as well as the start-stop history of Manila's negotiations with the MILF did not provide fertile ground for optimism in what has become one of the world's longest-running conflicts.²

The 1976 Tripoli Agreement between the Government of the Philippines and the MNLF mediated by the Organisation of the Islamic Conference (OIC, recently rebadged as the Organisation of Islamic Cooperation) called for "areas of autonomy for Muslims" covering 14 provinces "within the realm of the sovereignty and territorial integrity of the Republic of the Philippines."³ The Final Peace Agreement stipulated in Article 15 of the Tripoli Agreement, to be signed by the Government of the Philippines, the MNLF and the OIC, was not consummated—the OIC and the MNLF disagreed with the Marcos administration's implementation of the Tripoli Agreement. By 1977, hostilities between the MNLF and the Philippine government had resumed. The Moro Islamic Liberation Front (MILF) then separated from the MNLF due to the MNLF's support for Moro autonomy within the Philippines over independence from the Philippines.

In 1996, the Ramos administration and the MNLF signed the Final Peace Agreement called for by the Tripoli Agreement.⁴ This deal led to the formation in 2001 of an expanded and functioning Autonomous Region of Muslim Mindanao (ARMM). Nur Misauri, the MNLF Chairman, became the first ARMM Governor. Since its establishment though, the ARMM and the 1996 deal as a whole have not prospered. In response, in 2005, the OIC established the tripartite process (the OIC led by Indonesia, the MNLF led by Misuari and the Government of the Philippines) to address growing disagreements over the implementation of the Final Peace Agreement. This review process is ongoing with no resolution in sight.

Since 1996, the MNLF's ability to speak for Moros has declined. While this group splintered, the MILF has become the most significant Moro group. In the 2013 ARMM elections, Nur Misauri, now only the head of one of three MNLF factions, failed badly in his campaign to regain the governorship. Mujiv Sabbihi Hataman, from

¹ For a more detailed analysis of the history of the Moro insurgency and successive rounds of peace negotiations, please see Kit Collier and Malcolm Cook, *Mindanao: A Gamble Worth Taking* (Sydney: Lowy Institute, 2006) and Kristina Gaerlan and Mara Stankovitch eds, *Rebels, Warlords and Ulama: A Reader on Muslim Separatism and the War in Southern Philippines* (Quezon City: Institute for Popular Democracy, 2000).

² Bangsamoro translates as land or nation of the Moro people. It will also serve as the official name for the autonomous region agreed to in the Framework Agreement. The Agreement can be downloaded at <http://www.opapp.gov.ph/resources/framework-agreement-bangsamoro-0>

³ "The Tripoli Agreement" in *Selected Documents and Studies for the Conference on the 'Tripoli Agreement: Problems and Prospects'* (Quezon City: International Studies Institute of the Philippines), pp. 1-5.

⁴ "1996 Peace Agreement with the Moro National Liberation Front", 2 September 1996, <<http://pcdsp.gov.ph/downloads/2012/10/Final-Peace-Agreement-MNLF-September-2-1996.pdf>>

the Liberal Party of President Aquino, triumphed with over 400,000 votes as did his Liberal Party candidate for vice-governor. Misuari received less than 30,000 votes.⁵

In recognition of the MNLF's eroding Moro mandate, the Government of the Philippines began negotiating with the MILF in 1997. In the Estrada administration (1998-2001) and the Macapagal-Arroyo administration (2001-2010), talks stopped and both sides returned to war. During the Macapagal-Arroyo administration, defeat was snatched from the jaws of victory. The Supreme Court ruled in an 8-6 decision that the 2008 agreement on ancestral domain which had been hailed as a negotiating breakthrough was unconstitutional. The case was filed by a range of political dynastic leaders in Mindanao long opposed to the negotiations and a columnist for the *Philippine Star*, Ernesto M. Maceda, with the support of opposition Liberal Party leaders Manuel "Mar" Roxas and Franklin Drilon.⁶ War recommenced and peace talks stalled after the Supreme Court's decision. Negotiations only started again after President Aquino met, at his personal request, MILF Chairman Murad Ebrahim in August 2011 in Tokyo.

BETTER PROSPECTS

As did the 1992-1996 period of negotiations that led to the Final Peace Agreement with the MNLF, the present phase of negotiations with the MILF has benefitted from strong presidential commitment and lobbying. This will last at least until mid-2016 when President Aquino's single presidential term ends. Two key differences between the present Agreement and the 1996 deal, and one key difference between the present Agreement and the 2008 ancestral domain failure, suggest that this deal has better prospects of ending the Moro insurgency than its predecessors.

Moro imbalance of power

The recent ARMM election results and the one-sided clashes between the Armed Forces of the Philippines (AFP) and the Misuari faction of the MNLF and the Bangsamoro Islamic Freedom Fighters splinter group from the MILF show that the popularity and military capability of Moro armed groups unsupportive of the Framework Agreement are weak. Misuari is a fugitive after his faction's failed siege of Zamboanga city in September 2013.⁷ So is estranged MILF local commander and recent stroke

⁵ John Unson, "Hataman Wins in ARMM Gubernatorial Race", *The Philippine Star*, 17 May 2013.

⁶ Manuel Roxas is now Liberal Party president and the Secretary of the Interior and Local Government. Franklin Drilon is Liberal Party chairman and Senate President.

⁷ "Misuari Disowns Zambo Seige", *Rappler*, 12 September 2013. <http://www.rappler.com/nation/38759-misuari-disowns-zamboanga-siege>; Criselda Yabes, "Misuari's Journey: From the Burning of Jolo to the Siege in

victim Ameril Umbra Kato after recent operations against his Bangsamoro Islamic Freedom Fighters group led to the death of 37 insurgents for the loss of one soldier. Both military operations were aided by MILF support and intelligence, reaffirming Chairman Murad Ebrahim's commitment to the peace process and control over the MILF.

This is a very different situation on the ground than in 1996 when the MILF, from a position of military and popular strength, was excluded from and actively opposed the Final Peace Agreement. The MILF at that time was too large and established an excluded group to be properly considered a "spoiler." This time around, the Misuari faction, the Bangsamoro Islamic Freedom Fighters and the Abu Sayyaf Group appear too small, weak and isolated to translate their opposition to the Framework Agreement into effective spoiling. The "official" MNLF faction—led by Vice-Mayor of Cotabato City Muslimin Sema—has, so far, expressed support for the harmonisation of the 1996 and 2014 deals.

More autonomy

Important lessons from the 1996 Final Peace Agreement have been acted upon in the Framework Agreement. The Agreement promises the MILF and the wider Moro community greater and more sustainable autonomy. This should contribute to greater MILF and wider Moro community commitment to the peace deal and Moro autonomy within the Philippine state. The Agreement's Annex on Power Sharing in Article 1 begins with:

The relationship between the Central Government and the Bangsamoro Government is asymmetric. This relationship is reflective of the recognition of the Bangsamoro identity and their aspiration for self-governance. This makes it distinct from the regions and other local governments.⁸

This greater recognition of Moro distinctiveness and autonomy is backed up by a deeper and more stable fiscal foundation—as negotiated and documented in the Framework Agreement's Annex on Revenue Generation and Wealth Sharing—for the Bangsamoro Government than the 1996 deal provided for the ARMM. In particular, this Annex outlines the following details:

Zamboanga", *GMA News*, 28 September 2013. <http://www.gmanetwork.com/news/story/328573/news/specialreports/misuari-s-journey-from-the-burning-of-jolo-to-the-siege-in-zamboanga>

⁸ The Annex on Power Sharing can be downloaded at <http://opapp.gov.ph/resources/annex-power-sharing>

- transfers all revenue generation powers of the ARMM to the Bangsamoro Government;
- increases the Bangsamoro Government's share of the taxes and revenues raised by the Central Government in the Bangsamoro area from 70 per cent under the 1996 agreement to 75 per cent;
- provides the Bangsamoro Government with new revenue generation powers to levy within the Bangsamoro area including a capital gains tax, a documentary stamp tax, an estate tax and a donor's tax;
- establishes a more detailed allocation of natural resource revenues with 100 per cent of non-metallic resource revenues, 75 per cent of metallic resource revenues and 50 per cent of revenues from fossil fuels and uranium allocated to the Bangsamoro Government as compared to 70 per cent of all such revenue going to ARMM and;
- the Bangsamoro Government will be supported by an annual, automatically allocated block grant from the Central Government defined by the formula in the Bangsamoro Basic Law. The Central Government's annual allocation to the ARMM was neither automatic nor guaranteed.⁹

The Framework Agreement also establishes a larger territory for the new Bangsamoro political entity than the ARMM presently covers, with the Bangsamoro political entity to absorb the ARMM once the Bangsamoro Basic Law is passed.

On the Government of the Philippines side, the Framework Agreement has two distinct advantages. First, the Agreement's Annex on Normalization signed on 25 January provides for a more detailed process of MILF disarming than the 1996 Agreement. The lack of an effective disarmament and reintegration process left many former MNLF fighters disillusioned and heavily armed after the formation of the ARMM. The MILF has committed to handing over all its weapons to an independent international body in step with the reduction of private militia activity in the Bangsamoro area and the relocation of present AFP deployments within and outside the ARMM.¹⁰

Second, the Agreement's Annex on Power Sharing provides a clearer division of powers between the Central and Bangsamoro governments. The 1996 Agreement and subsequent 2001 Organic Law for the ARMM limited Central Government authority to a list of 14 powers with all other powers being vested in the ARMM. The Framework Agreement divides sovereign power into nine areas of exclusive central authority, 14 areas of concurrent power to be managed jointly and 58 areas of exclusive Bangsamoro authority. This is a clearer, if more complex, division of power.

⁹ The Annex on Revenue Generation and Wealth Sharing can be downloaded at <http://opapp.gov.ph/resources/annex-revenue-generation-and-wealth-sharing>

¹⁰ The Annex on Normalization can be downloaded at <http://opapp.gov.ph/resources/annex-normalization-0>

Broader support

The origins and level of foreign government support for the Government of the Philippines-MILF negotiations and the Framework Agreement are noticeably different from the negotiations with the MILF and its two major agreements. The OIC, at the urging of the MNLF, instigated the negotiations that led to the Tripoli Agreement. In contrast, the Government of the Philippines, with the approval of the MILF, asked Malaysia, outside of the OIC, to act as the international mediator. The Government and the MILF have determined throughout which foreign governments play which roles in the negotiations.

Manila and the MILF have been very successful in expanding international support and involvement in the peace process. Malaysia, Indonesia, Brunei, Japan, Norway and the European Union (EU) have committed personnel to the International Monitoring Teams established in 2004 to oversee the ceasefire between Manila and the MILF.¹¹ Alistair MacDonald, the former EU Ambassador to the Philippines, has recently been appointed to chair the five-person Third Party Monitoring Group tasked with overseeing the translation of the Framework Agreement into the Bangsamoro Basic Law. Randall Beck, an Assistant Commissioner of the Royal Canadian Mounted Police, leads the seven-person Independent Commission on Policing tasked with providing advice on Bangsamoro policing arrangements with four local experts and one each from Australia and Japan.¹² The seven-person Independent Decommissioning Body is also to be headed by one of its four foreign experts.¹³ The Framework Agreement and the peace process more broadly has wider and deeper international involvement than its predecessors, providing it with greater credibility and linking more foreign governments and organisations to its fate.

Burned by the successful legal challenge to the 2008 agreement on ancestral domain, the Government and the MILF have worked harder to gain wider local community and stakeholder support for the Framework Agreement. In contrast to the ancestral domain disappointment, the Governor of North Cotabato (now Emmylou Talino-Mendoza) has expressed support for the Framework Agreement and its quick translation into the Bangsamoro Basic Law, as have Drilon and Roxas.¹⁴ The OIC and key MNLF figures attended the signing of the Agreement in October 2012 and responded positively to the completion of negotiations on the four annexes and water rights addendum on 25 January 2014. The Liberal Party's present majority in

¹¹ For more information on these teams, please visit < imtmindanao.org/about-imt/ >

¹² Arland Abubakkar, "GPH-MILF Independent Commission on Policing Meets to Begin Work", *Luwaran*, 26 October 2013. < <http://www.luwaran.com/index.php/welcome/item/625-gph-milf-independent-commission-on-policing-meets-to-begin-work> >

¹³ Nikko Dizon, "Body to Oversee Decommissioning of MILF Arms", *Philippine Daily Inquirer*, 27 January 2014; and Angela Casauay, "Peace Monitors Meet with Government, MILF", *Rappler*, 8 July 2013.

¹⁴ North Cotabato may lose territory to the new Bangsamoro entity as a number of municipalities presently in North Cotabato will have plebiscites on their transfer to the Bangsamoro entity.

the House of Representatives and the Senate nationally and in the ARMM regional assembly and its strong presence in Mindanao underpins political support for the Framework Agreement and its speedy translation into the Bangsamoro Basic Law.

FOUR HURDLES

The path from the 25 January completion of negotiations to the signing of the Bangsamoro Basic Law is far from unencumbered. Four hurdles in particular loom large.

Devilish details: The Framework Agreement leaves many details undefined, and this can potentially derail certain aspects of the agreement. Among the most problematic is the sequencing of MILF disarmament with a reduction in private militia activities and redeployment of the armed forces. Many local private armies are beyond the control of the MILF and Manila, and their controllers may not cooperate. The Annex on Normalization is silent on this issue. Likewise, the Annex on Power Sharing is very general on the joint governance mechanisms to deal with disagreements over the complex division of sovereign powers and on the management of the 14 listed jointly-held concurrent powers. Problems over MNLF disarmament and the division of powers have bedevilled relations between Manila and the ARMM and Manila and the MNLF since 1996.

Tight timing: President Aquino, mindful of his term limit, has set an ambitious time table. He has called for the Bangsamoro Transition Commission to complete drafting the Bangsamoro Basic Law by the end of March. This draft will then be tabled in Congress, become law by the end of 2014, and the first Bangsamoro elections held by early 2016. This timeline is unlikely to be met. The process of translating the 1996 Final Peace Agreement into the Organic Law on the ARMM took more than four years and the Framework Agreement on the Bangsamoro calls for greater autonomy and, hence, a more fundamental change to the nature of the Philippine state. The Philippine Senate has already signalled that they may want more time for deliberation than is allowed for in the President's timeline.¹⁵

ARMM absorption: The MNLF factions are in agreement that their Front has been excluded from the peace negotiations with the MILF, and that any agreement with the MILF must be consistent with previous agreements with the MNLF. The OIC supports this stand. Managing the preparation for the process of ARMM absorption in

¹⁵ Noelan Arbis, "Philippines Peace Deal Laudable but Challenges Remain", *cogitAsia*, 31 January 2014. <http://cogitasia.com/philippines-peace-deal-laudable-but-challenges-remain/>

a way that maintains OIC support for the peace process, and lets moderate MNLF members see benefit from the establishment of the Bangsamoro political entity, will be very tricky but critically important. The MILF plans to transform itself into a political party to contest the first Bangsamoro election.¹⁶ Providing incentives for the MNLF's Sema faction, the largest and most moderate of the three, to do likewise can remove this hurdle.

Court challenges: Potential constitutional amendments as a result of the greater autonomy ambition of the Framework Agreement, MNLF concerns, and the tight time frame will encourage Supreme Court challenges. These challenges may arise at different stages of the transition to a Bangsamoro Basic Law and provide the Court with complex constitutional considerations. Within two months of the initial signing of the Framework Agreement in October 2012, two cases challenging its constitutionality were filed with the Supreme Court.¹⁷ The completion of the negotiations of the four annexes and the water rights addendum will likely trigger more. A decision by the Supreme Court against the Framework Agreement may lead to a return to war as happened in 2008.

CONCLUSION: LOOKING FORWARD

If these hurdles can be avoided or sidestepped, the establishment of the Bangsamoro political entity would be transformational. Politically, it would be the most fundamental change in the nature of the unitary Philippine state which would better reflect the diversity of the multi-ethnic Philippine archipelago. Economically, an enduring political solution to the Moro insurgency would greatly assist in unlocking the vast natural resource wealth of Mindanao, such as the \$5.9 billion Tampakan project.¹⁸ With the ARMM being among the poorest regions in the Philippines with a history of below-average growth, greater foreign investment and local regulatory control over resource exploitation—as provided for in the Framework Agreement—could cement gains with real social and humanitarian impact.

In terms of security policy, political peace would support the AFP's reorientation towards external defence at a time when external challenges to the Philippines' territorial and jurisdictional claims in the South China Sea are mounting. It also would

¹⁶ "MILF Plans to Form Political Party", *Agence France Press*, 27 May 2013. <http://newsinfo.inquirer.net/416157/milf-plans-to-form-political-party>

¹⁷ "Petitions Filed against Bangsamoro Framework Deal", *The Philippine Star*, 3 December 2012. <http://www.sunstar.com.ph/manila/local-news/2012/12/03/petitions-filed-vs-bangsamoro-framework-deal-256424>

¹⁸ Rosemary Francisco and Manuel Mogato, "PH Vows Mining Reform Law: Delay Seen in Xstrata's \$5.6B Project", *ABS-CBN News*, 18 October 2012. < <http://www.abs-cbnnews.com/business/10/17/12/aquino-wants-revenue-raising-mining-reforms>>

help end the role of the Southern Philippines as a stateless safe haven for local and regional terrorists.¹⁹

Peace in Muslim Mindanao is far from guaranteed by the Framework Agreement. Yet this deal does provide the best chance for a transformational outcome for the Philippines and its place in Southeast Asia. Many states have focussed their diplomatic relations and aid programmes with the Philippines to support the peace process over the last 17 years. For the sake of peace in Muslim Mindanao and its manifold benefits, this should continue well beyond the signing of the Bangsamoro Basic Law and the first Bangsamoro elections.

¹⁹ In 2005, the State Department identified the southern Philippines as one of the three connected terrorist safe havens in East Asia (along with Sabah, Malaysia and Indonesia). "Terrorist Safe Havens", *Country Reports on Terrorism* (Washington DC: US State Department, 2005), pp.18-19. <<http://www.state.gov/j/ct/rls/crt/2005/64333.htm>>

ISEAS Perspective is published electronically by the Institute of Southeast Asian Studies, Singapore.

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