

# **THE PHILIPPINES: BREAKTHROUGH IN MINDANAO**

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## THE PHILIPPINES: BREAKTHROUGH IN MINDANAO

### EXECUTIVE SUMMARY

The pact signed on 15 October 2012 between the Moro Islamic Liberation Front (MILF) and the Philippine government is a breakthrough in many ways but is far from a final peace. As with earlier texts signed over years of negotiations, this one – the “framework agreement” – defers several tough questions and it is unclear how, if ever, they will be resolved. At stake is the creation of a genuinely autonomous region in Muslim-majority Mindanao for the various ethnic groups collectively known as the Bangsamoro, with more powers, more territory and more control over resources. The framework agreement envisions a new government for the troubled Muslim south that would raise its own revenues and have its own police and judiciary. It maps out a multi-step process to create this new entity by the time President Benigno Aquino III’s term ends in 2016. The obstacles ahead are huge. Politics in Mindanao or Manila could get in the way, and it may be impossible to devolve sufficient power to the Bangsamoro government without running afoul of the constitution. The MILF is unlikely to surrender its arms until the process is complete.

Peace talks with the 12,000-strong MILF, the country’s largest and best armed insurgent organisation, began in 1997. They have moved glacially ever since and were interrupted three times by serious fighting: in 2000, 2003 and 2008. The collapse in 2008 had damaging political implications because it hardened the positions of all stakeholders on critical elements of a final peace. These include the territory for a new Bangsamoro homeland and its powers vis-à-vis Manila. At the centre of the storm was a sweeping text known as the Memorandum of Agreement on Ancestral Domain (MOA-AD), whose provisions the Supreme Court declared unconstitutional; it was never formally signed. It was difficult to get the peace process back on track afterwards because the MILF insisted that discussions resume from where they had left off.

President Aquino, who took office in June 2010, had no interest in repeating these mistakes. His government would consult and reassure potential spoilers, and any deal reached would have to be legally, constitutionally and politically watertight. The government strategy from early on was to find a way to move the MILF away from the terms of the failed 2008 agreement. Aquino, elected on an anti-corruption platform, also did not want a peace pact to run the risk of wors-

ening governance problems in the south. The MILF, proud of its tenacity and consistency in the protracted talks, was initially unwilling to adjust to this new approach.

The negotiations only started to make real progress in mid-2012 when the parties began to draft a text that embodied all points they could agree on, while setting aside everything they did not. With Malaysia, which facilitates the negotiations, and other international third parties to the peace process nudging the MILF and the Aquino government closer together, the text of the framework agreement fell into place. When the hard part came – territory – the MILF was ready to take a leap of faith. It agreed to provisions that are tricky to sell to its supporters in Mindanao but that give all Bangsamoro a chance to decide whether they accept the terms of a final peace.

For the Aquino government, it was important to bring the peace process back to the Philippines after years of confidential negotiations abroad and to give other voices in Mindanao a chance to be heard. The MILF’s leaders, who claim to represent all Bangsamoro despite the undeniably fractious politics of the region, have agreed to make space for others to sit at the table and help them craft the new law that will create a Bangsamoro government. If all goes well, this will increase the popular legitimacy of the peace process; if it does not, and the Bangsamoro cannot even agree among themselves, it will do serious damage to the idea of regional autonomy. The next hurdle will be passing this new law through Congress. The president’s popularity and considerable political capital will help with stakeholders in Manila, and the depth of his commitment to securing peace in Mindanao will become clear when constitutional issues inevitably rear their head. If the process stalls at any stage, it may be hard for the MILF leadership to control its commanders and retain popular support.

For the Bangsamoro, the framework agreement holds out the possibility of peace, a responsive government and a better, more prosperous future for their children. Nothing has changed yet, but there is real hope that this time will be different. The MILF, the government and their international partners need to work together to ensure those hopes are not dashed.

**Jakarta/Brussels, 5 December 2012**

## THE PHILIPPINES: BREAKTHROUGH IN MINDANAO

### I. INTRODUCTION

The 15 October 2012 framework agreement elaborates a sweeping vision of a new government for the Bangsamoro that will be vastly different in structure and more powerful than the existing but impotent Autonomous Region in Muslim Mindanao (ARMM), which Manila created by fiat in the late 1980s.<sup>1</sup> It touches on a wider range of issues than any other text previously signed by the parties.<sup>2</sup>

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<sup>1</sup> According to the 1987 constitution, promulgated under President Corazon Aquino (the current president's mother), an autonomous region in Muslim Mindanao can be created through the passage of a law, called an organic act, in Congress followed by plebiscites in those areas to be included. The other area entitled to an autonomous area is the Cordilleras in the northern Philippines. In 1987, Congress passed Republic Act 6734, known as the organic act of ARMM. In a plebiscite held in 1989, the provinces of Maguindanao and Lanao del Sur in Central Mindanao voted to join the ARMM, as did the provinces of Sulu and Tawi-Tawi in the Sulu archipelago (the third island province, Basilan, did not). This was not the first attempt at regional autonomy in the southern Philippines. In 1979, the martial law government of Ferdinand Marcos unilaterally implemented the first major agreement signed with a Muslim insurgent organisation – the 1976 Tripoli agreement – by creating two separate, non-contiguous autonomous regions, one with a capital in Cotabato City (the hub of Central Mindanao), the other with a capital in Zamboanga City (the jumping off point for the Sulu archipelago). In the 1989 plebiscite, however, neither city chose to join ARMM although the seat of the regional government is in the former. Another major city, Marawi, in Lanao del Sur, also stayed out.

<sup>2</sup> For earlier stages of the peace process and related issues, see Crisis Group Asia Reports N°225, *The Philippines: Local Politics in the Sulu Archipelago and the MILF Peace Process*, 15 May 2012; N°213, *The Philippines: Indigenous Rights and the MILF Peace Process*, 22 November 2011; Asia Briefings N°125, *The Philippines: A New Strategy for Peace in Mindanao?*, 3 August 2011; N°119, *The Philippines: Back to the Table, Warily, in Mindanao*, 24 March 2011; N°88, *The Philippines: Running in Place in Mindanao*, 16 February 2009; N°83, *The Philippines: The Collapse of Peace in Mindanao*, 23 October 2008; Asia Reports N°152, *The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao*, 14 May 2008; N°110, *Philippines Terrorism: The Role of Militant Islamic Converts*, 19 December 2005; and N°80, *Southern Philippines Backgrounder: Terrorism and the Peace Process*, 13 July 2004.

It stands in sharp contrast to the 2008 MOA-AD, which defined an “ancestral domain” – the boundaries of a future Bangsamoro homeland – but fell apart when it ran up against other, more powerful interests. Territory has been the toughest issue in the peace talks. The 2008 agreement provided a solution that was highly favourable to the MILF because it could have included a massive swathe of Mindanao in the Bangsamoro homeland, had the peace process not collapsed. The MOA-AD was the best deal the MILF was ever going to get. To satisfy its fighters and supporters, the leadership cannot sign anything that would represent a clear step back from that agreement.

The other reference point is the 1996 final peace agreement between the Philippine government and the older, now weaker Moro National Liberation Front (MNLF), which did not significantly change the powers or boundaries of ARMM.<sup>3</sup> The MILF needs a deal that is better than what the MNLF got. Between those two imperatives – and the limits of the constitution – there is not a lot of room to negotiate.

The framework agreement is remarkable for two reasons. First, the MILF made a major concession in agreeing to a formula for determining which areas would be under a new Bangsamoro government. If the MOA-AD was revelatory for the territorial scope of a future homeland, the framework agreement is surprising because of the process it sets out for securing the consent of the Bangsamoro to join this new entity. Second, the new pact makes it clear the present ARMM will be gone by the time President Aquino leaves office in 2016. The framework agreement charts a path forward for the parties to replace it with the new Bang-

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<sup>3</sup> The 1996 agreement was never fully implemented. In 2001, Congress passed an amendment to the organic act of ARMM (Republic Act 9054), supposedly reflecting the 1996 agreement but in fact dramatically watering down its terms. A plebiscite held that same year brought Basilan, but not its capital, Isabela City, into ARMM. Marawi City also joined. In Central Mindanao, six municipalities in Lanao del Norte, the province adjacent to Lanao del Sur, voted in favour, as did 39 *barangays* (villages) in six municipalities in North Cotabato, which borders Maguindanao. These areas have a Muslim majority population. However, the overall provincial results for Lanao del Norte and North Cotabato did not favour inclusion in ARMM, so these areas did not join at that time.

samoro government. The hard part, implementation, is only just beginning.

Over the course of the peace talks, the Aquino government gradually became willing to see the MILF not just as its adversary across the negotiating table but as a partner for the years ahead. As for the MILF, its leaders have agreed to let other Bangsamoro, not all of whom are their friends, and Congress play a part in drafting the law that will create the new region rather than negotiate everything in confidential talks. Yet the biggest problem of all – whether the powers the MILF wants can be accommodated by the constitution – is still up in the air.

This report builds on Crisis Group's earlier research on the peace process. Interviews with the negotiating teams, members and supporters of the MILF, government and military officials, diplomats, civil society groups and others were conducted in Manila and Mindanao through 2011 and 2012.

## II. THE NEGOTIATIONS

Talks under President Aquino did not get off to a promising start. In February 2011, the MILF submitted a proposal for a comprehensive peace that was essentially the failed 2008 agreement with a new name.<sup>4</sup> Prospects looked brighter when, on 4 August, the president met MILF Chairman al-Haj Murad Ebrahim in a one-on-one meeting in Tokyo, Japan.<sup>5</sup> There, he conveyed his desire for a settlement and emphasised that the ideal window was before May 2013, the mid-point of his term.<sup>6</sup> The signal was clear: the president wanted peace with the MILF as part of his legacy. But later that month, MILF negotiators promptly rejected the government's counter-offer for a final peace.<sup>7</sup> Talks then went into limbo. The third parties who attend the negotiations – the facilitator, a diplomat from Malaysia which has hosted the peace talks for the past decade and a small independent team of concerned governments and international non-governmental organisations known as the International Contact Group<sup>8</sup> – tried to get the parties back to the table by back-channelling and drawing up a matrix of common points between the proposals.

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<sup>4</sup> Crisis Group interview, government negotiator, Manila, 30 September 2011.

<sup>5</sup> This was the first time a sitting president had met the chair of the MILF. The negotiations are conducted via appointed five-person negotiating panels, one for each side, which are supported by a technical secretariat. The chair of the government panel under President Aquino was Marvic Leonen, a respected law professor and constitutional expert; in late November 2012 he was appointed to the Supreme Court. The chair of the MILF panel since 2003 is Mohagher Iqbal, a member of the MILF central committee.

<sup>6</sup> Under the 1987 constitution, presidents are elected for a single, six-year term, with elections to the bicameral Congress every three years.

<sup>7</sup> This was the "3-for-1" proposal. The three components were: addressing social and economic development needs in a participative manner; reforming legal and political environments to allow meaningful autonomy and self-governance; and acknowledging the historical causes of conflict towards reconciliation. See "The GPH '3-for-1' Proposal in the GPH-MILF peace negotiations", Office of the Presidential Adviser on the Peace Process, October 2011.

<sup>8</sup> For years, the facilitator was Datuk Othman Razak. In April 2012, he was replaced by Tengku Dato' Ab Ghafar Tengku Mohamed. The International Contact Group consists of the UK, Japan, Saudi Arabia, Turkey, the Centre for Humanitarian Dialogue, Conciliation Resources, The Asia Foundation and Muhammadiyah (an Indonesian Islamic organisation). It was set up in late 2009. For more on the International Contact Group, see Steve Rood, "Internationals, Malaysia, and Negotiations for Peace in the Philippines", The Asia Foundation, 17 October 2012.

A firefight that killed nineteen soldiers, five MILF fighters and one civilian in mid-October demonstrated paradoxically both parties' commitment to the peace talks. The incident happened on Basilan, one of the three island provinces of the Sulu archipelago which stretches from the western tip of Mindanao to eastern Malaysia – hundreds of kilometres away from the MILF stronghold of Central Mindanao. The military operation that triggered the clash was not coordinated through the ceasefire mechanisms, but the outcry in Manila was immediate and condemnation of the MILF swift. The Central Mindanao-based leadership was angry that they were being blamed for the military's mistakes.<sup>9</sup> The incident could have torpedoed the talks, but as a member of the International Contact Group observed, the negotiations were bound to continue because "neither party wanted them to break down".<sup>10</sup>

The parties next met in early November. The MILF had been insisting that President Aquino continue the peace process from the consensus points that had led to the failed 2008 agreement.<sup>11</sup> The government rejected that suggestion, but gradually came round to the MILF's idea of proceeding along four pillars: governance, wealth sharing, territory and the transition.<sup>12</sup> The draft proposals that had been exchanged were still on the table, but would not be the focus of the negotiations.

By February 2012, the parties had drafted a two-page declaration on principles but then were unable to sign it at the next round in March because of disagreements over the wording.<sup>13</sup> The negotiating teams were under pressure to demonstrate the talks were making progress and signing yet another interim agreement would buy time.<sup>14</sup> Both sides were frustrated. The MILF team believed the government was still unwilling to fundamentally rethink the relationship of the Bangsamoro to the Philippine state. As an MILF ne-

gotiator put it at the time, "while there are discussions, there is no clear destination".<sup>15</sup> The government was anxious for a different reason: the negotiations were eating into the time it wanted to use for implementation, and the window before the May 2013 legislative polls was rapidly closing.<sup>16</sup> When the parties finally signed the decision points on principles in April, few observers thought it amounted to much.<sup>17</sup>

The breakthrough came when the ever-wary MILF started believing that President Aquino was willing to grant real power to the Bangsamoro and that it should seize the opportunity. In response, its negotiators displayed a pragmatism and flexibility that had not been evident before. The parties began drafting the framework agreement in earnest from July onwards, with the president and cabinet closely involved in approving text put forth by the government negotiators.<sup>18</sup> By September, they had chosen a name for the new region: the Bangsamoro. The parties focused on what they agreed on, while setting aside the contentious issues for later. When the government finally put forward its stance on territory, there was enough momentum in the talks so the discussions did not break down, as they so often had before.

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<sup>9</sup> For more on the incident, see Crisis Group Report, *Local Politics in the Sulu Archipelago and the MILF Peace Process*, op cit., pp. 10-11. The MILF and the government signed the Agreement on the General Cessation of Hostilities in July 1997. It led to the creation of the Coordinating Committees of the Cessation of Hostilities (CCCH). These bodies allow the military to alert the MILF to its movements, and vice-versa.

<sup>10</sup> Crisis Group interview, Manila, 21 November 2011.

<sup>11</sup> Crisis Group interview, Manila, 21 November 2011.

<sup>12</sup> Crisis Group interviews, Manila and Davao, 21 and 27 November 2011.

<sup>13</sup> After February, the negotiating teams took the document back to President Aquino and Chairman Murad for their sign off. When they reconvened for the March round, the government had made four changes and the MILF panel members said they could not sign the declaration. Crisis Group interviews, various individuals involved in the negotiations, Cotabato City and Manila, 27, 29 and 30 March 2012.

<sup>14</sup> Crisis Group interview, member of the International Contact Group, Manila, 29 March 2012.

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<sup>15</sup> Crisis Group interview, member of the MILF negotiating team, Cotabato City, 27 March 2012.

<sup>16</sup> Within the peace process office, the lead negotiator Leonen was saying that an agreement would have to be reached by October at the latest. Crisis Group interview, senior OPAPP official, Manila, 29 March 2012.

<sup>17</sup> Crisis Group interviews, Manila-based journalist and diplomats, Manila, May 2012. They split the difference on language; some of the government's modifications were included, but the MILF's preferred wording was used for the sentences on identity and ARMM. See "GPH-MILF Decision Points on Principles as of April 2012", 24 April 2012.

<sup>18</sup> Crisis Group interviews, Manila, 27-28 August 2012.

### III. THE FRAMEWORK AGREEMENT

The “framework agreement on the Bangsamoro” is divided into nine sections: establishment of the Bangsamoro; basic law; powers; revenue generation and wealth sharing; territory; basic rights; transition and implementation; normalization; and “miscellaneous”. The last section states that the agreement cannot be implemented unilaterally and that the parties will complete the agreement by the end of 2012. Four supplementary annexes are still to come.

Some provisions are largely the same as the controversial MOA-AD, while others are vastly different.<sup>19</sup> Overall, the framework agreement provides much more detail on governance. The most problematic parts of the failed 2008 agreement are omitted. Then, much of the controversy centered on an appended list of territories outside ARMM where plebiscites would be held to determine if these areas would join a future Bangsamoro homeland.<sup>20</sup> Christian politicians, representing settlers living in these areas who were angry no one had consulted them, petitioned the Supreme Court, prompting the ruling that killed the MOA-AD.<sup>21</sup> Mindanao’s indigenous peoples also vehemently opposed the 2008 agreement. They were angry the peace pact defined them as Bangsamoro despite their separate identity and decidedly poor relations with the MILF.<sup>22</sup>

This time, a better definition of the Bangsamoro and a brief section on basic rights reassure indigenous peoples and

Christian settlers.<sup>23</sup> Although the sections on the transition and territory come near the end of the text, their terms are crucial to understanding why some of the core issues of the peace process have been resolved; why others have not; and what will happen next.

#### A. THE BASIC LAW, TRANSITION AND IMPLEMENTATION

The framework agreement contains a multi-step process for implementation and more specifics will be in an annex. The president, with the support of Congress, will order the creation of a transition commission in late 2012 or early 2013. The MILF will appoint eight members, including the chair, while the government will select seven. All must be Bangsamoro.<sup>24</sup> The commission will have three tasks: drafting a basic law (to reflect the “Bangsamoro system of life”); proposing amendments to the Philippine constitution; and coordinating development programs in Bangsamoro communities, using two MILF-run institutions, the Bangsamoro Leadership and Management Institute (BLMI) and the Bangsamoro Development Agency (BDA).<sup>25</sup> The MILF wants the transition commission to focus on drafting the basic law and drawing up proposed amendments to the constitution. It believes the third task, overseeing development, is of lesser importance.<sup>26</sup>

Once the basic law is complete, the president will certify it as an urgent bill in Congress.<sup>27</sup> After its promulgation and ratification, the Bangsamoro transition authority will take

<sup>19</sup> For example, the language on reparations is almost identical.

<sup>20</sup> The MOA-AD listed 737 Muslim-majority villages (*barangays*) as “category A” and an additional 1,459 “conflict-affected areas” as “category B”. Residents in category A would vote on inclusion in a plebiscite to be held within twelve months; those in category B would vote 25 years later. See Memorandum of Agreement on Ancestral Domain, Territory Strand and Annexes; and Crisis Group Briefing, *The Collapse of Peace in Mindanao*, op. cit., pp. 3-4. See map in Appendix A.

<sup>21</sup> The politicians behind the petitions were the then vice governor of North Cotabato, Emmanuel Pinol, and the mayor of Zamboanga City, Celso Lobregat. The MILF bases its territorial claims on Islamic political structures – sultanates – that existed centuries ago. Migration of Christian settlers from elsewhere in the Philippines shrank Muslim-majority areas from the 1950s onwards. See Patricio N. Abinales, *Making Mindanao: Cotabato and Davao in the Formation of the Philippine Nation-State* (Manila, 2004).

<sup>22</sup> Indigenous peoples are original inhabitants of Mindanao but did not convert to Islam centuries ago when other ethnic groups – now known as the Bangsamoro – did. The first line of a paragraph-long definition of the Bangsamoro read: “It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as ‘Bangsamoros’”. Memorandum of Agreement on Ancestral Domain, Concepts and Principles, Article 1. For more, see Crisis Group Report, *Indigenous Rights and the MILF Peace Process*, op. cit.

<sup>23</sup> The framework agreement reads: “The Parties recognize Bangsamoro identity. Those who at the time of conquest and colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands including Palawan, and their descendants whether of mixed or of full blood shall have the right to identify themselves as Bangsamoro by ascription or self-ascription. Spouses and their descendants are classified as Bangsamoro. The freedom of choice of other Indigenous peoples shall be respected”. Framework Agreement on the Bangsamoro, Section I (Establishment of the Bangsamoro), Article 5. See also Section VI (Basic Rights), Articles 1-3.

<sup>24</sup> This reflects another provision in the agreement: “[the basic law] shall be formulated by the Bangsamoro people and ratified by the qualified voters within its territory”. Framework Agreement, op. cit., Section II (Basic Law), Article 4.

<sup>25</sup> The idea of “the basic law” is reminiscent of the Hong Kong-China one country, two systems formula.

<sup>26</sup> Crisis Group interview, MILF negotiator, Cotabato City, 30 October 2012.

<sup>27</sup> However, Congress is not mentioned here, or anywhere else in the agreement. The basic law is, in effect, a new organic act for an autonomous region in Muslim Mindanao. The government accepted the MILF’s preferred term of “basic law” early in the negotiations. Crisis Group interview, senior government official, Manila, 27 January 2012.

over from the existing ARMM government, which will be dissolved. It will be in charge until the first regular elections under the new political arrangement in 2016. Throughout this process, the formal negotiating panels may continue to meet if there are problems that crop up that cannot be solved by the transition commission. They will remain in place until the parties sign an exit document signalling the framework agreement is fully implemented.<sup>28</sup>

These provisions do not include an important guarantee made in the negotiations regarding the timeframe for the transition, although there may be more details forthcoming. The government promised the MILF that the transition authority will be in power for at least one year, in other words, that it would be installed by mid-2015 at the latest. The MILF leadership may be tempted to try to accelerate the work of the transition commission so that the basic law will be in place sooner, giving the transition authority more time before the first regular election in 2016.<sup>29</sup>

This matters deeply to the MILF because it has always insisted that it should lead the transition authority and clashed with the government over the duration.<sup>30</sup> The Aquino government's desire to democratise the peace process collided with the MILF's demands that it be allowed to run the new region and determine the content of the basic law. After the failure of the 2008 agreement, MILF leaders tried to reassure sceptics within and outside Muslim Mindanao that they would be, in their words, "inclusive" even while insisting they should be in the "driver's seat" during the transition. No one knows who they are willing to have as passengers. A negotiator explained that "the MILF knows [its] limitations" and "need[s] to prepare for nation-building".<sup>31</sup> The Aquino government bought this line enough to let the MILF chair the transition commission.

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<sup>28</sup> Framework Agreement, *op. cit.*, Section VII (Transition and implementation).

<sup>29</sup> Crisis Group interviews, Manila and Cotabato City, 25 and 27-31 October 2012.

<sup>30</sup> For example, a draft comprehensive compact submitted to the Arroyo government in early 2010 envisioned a six-year transition. In January 2012, the parties swapped roadmaps that differed substantially. The MILF envisioned a four-year Bangsamoro transition authority that would draft a basic law to lay the legal foundations of the new homeland by 2015. At that point, the government would amend the constitution; the first regular elections under the new set-up would happen in May 2016. The government's roadmap had various transition bodies wrapping up their work within a year so a new organic act could be passed by Congress and approved in a plebiscite before elections, to include the MILF, in May 2013. Copies of the draft 2010 comprehensive compact and roadmaps from January 2012 made available to Crisis Group.

<sup>31</sup> Crisis Group interview, MILF negotiators, Manila, 21 January 2012.

The role of international actors in the peace process may also change. Discussions have begun among International Contact Group members about their future involvement, but they are waiting for direction from the parties.<sup>32</sup> The mandate of the Malaysia-led International Monitoring Team (IMT), which helps enforce the longstanding ceasefire, is up for renewal in March 2013.<sup>33</sup> It is likely to be extended, and the MILF would like its role to expand to monitoring humanitarian assistance and the overall implementation of the framework agreement.<sup>34</sup> Most of its members have a military background; its composition and geographic remit would likely have to change if its mandate evolves.<sup>35</sup> The Aquino administration has tended to perceive Malaysia as biased toward the MILF, but it may be more disposed to view Kuala Lumpur's involvement positively now that the framework agreement has been signed.<sup>36</sup> Still, the government is keen to "domesticate, civilianise and streamline" the various bodies around the peace process, which could diminish Malaysia's role, and create space for local civil society groups to participate.<sup>37</sup>

## B. TERRITORY

The MILF and the Aquino government only intended for the framework agreement to determine procedures for making further decisions and to map the way forward until the end of the president's term. But territory was the one issue where details could not be deferred. On the one hand, the

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<sup>32</sup> Crisis Group interviews, members of the International Contact Group, Manila, 25 October and 2 November 2012.

<sup>33</sup> The implementing guidelines for the IMT were agreed in 2001. The mandate is renewed annually.

<sup>34</sup> Press conference with Chairman al-Haj Murad Ebrahim, Camp Darapanan, Sultan Kudarat, Maguindanao, 27 October 2012. Crisis Group interviews, military official and member of the MILF negotiating team, Cotabato City, 28 October 2012. See Framework Agreement, *op. cit.*, Section VII, Article 11: "There will be created a third party monitoring team to be composed of international bodies, as well as domestic groups to monitor the implementation of all agreements".

<sup>35</sup> Crisis Group interviews, various individuals involved in the peace process, Manila and Cotabato City, October-November 2012. The IMT currently operates from Cotabato City, Iligan City, Zamboanga City, General Santos City and Davao City. Most lie outside the "core area" of the Bangsamoro.

<sup>36</sup> Crisis Group interviews, Manila and Cotabato City, 25 and 28 October 2012. The Philippines and Malaysia have a longstanding territorial dispute over Sabah. In the early years of the insurgency, Muslim rebels also trained in Malaysia.

<sup>37</sup> Four non-governmental organisations participate in the IMT through the civilian protection component, agreed by the parties in 2009. One is foreign, three are local. The Aquino government has strong ties to civil society and would like them to be more involved, although some observers worry that Mindanao-based groups are not impartial. Crisis Group interview, senior church official, Cotabato City, 31 October 2012.



government needed language that would make clear to Christian politicians that their areas would not be included. On the other, the MILF needed a formula that was vague enough so its leaders could prove they were getting a better deal than the MNLF did in 1996.<sup>38</sup>

The framework agreement defines the “core area” of the Bangsamoro as:

- ❑ the present ARMM;
- ❑ the six municipalities in Lanao del Norte that voted yes in the 2001 plebiscite on expansion of ARMM;<sup>39</sup>
- ❑ all *barangays* in six municipalities in North Cotabato that also voted yes in same plebiscite;<sup>40</sup>
- ❑ Cotabato City (the hub of Central Mindanao) and Isabela City (the main city on Basilan); and
- ❑ all other contiguous areas where there is a resolution of the local government unit or a petition of at least 10 per cent of the qualified voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro.<sup>41</sup>

The next article explained “ratification”:

The Parties shall work together in order to ensure the widest acceptability of the Bangsamoro Basic Law as drafted by the Transitory Commission and the core areas mentioned in the previous paragraph, through a process of popular ratification among all the Bangsamoro within the areas for their adoption. An international third party monitoring team shall be present to ensure that the process is free, fair, credible, legitimate and in conformity with international standards.<sup>42</sup>

This rolls back one of the core assumptions of the negotiations: the inhabitants of the existing ARMM would be included in whatever political set-up resulted from a final peace with the MILF and would not need to vote again on regional autonomy arrangements. This underpinned the MOA-AD: any new plebiscites would happen only outside

ARMM, but not within.<sup>43</sup> But the Supreme Court disagreed. It pointed out that according to the article on the creation of autonomous regions in the constitution, past plebiscites were not valid if the existing autonomous region was going to be replaced by a new one.<sup>44</sup> Therefore, the 2008 territorial formula could not be recycled for the framework agreement.

The Aquino government had other concerns too. The process of expansion beyond ARMM needed to be open-ended, so that local governments could opt in over time rather than their participation being preordained on a certain date. The mechanism had to be democratic, could not antagonise anyone and, because of the Supreme Court ruling, had to be compatible with the constitution.<sup>45</sup> But the MILF has always resisted the idea that expansion beyond ARMM proceed via “constitutional processes”.<sup>46</sup> Even so, its leaders realised as the MOA-AD was unravelling that not all the areas where plebiscites would have been held wanted to join.<sup>47</sup> And both the MILF and the government knew that the territory that might have resulted from the 2008 agreement was likely to be a non-contiguous, unwieldy patchwork of *barangays* across Central Mindanao and beyond. The Aquino admin-

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<sup>43</sup> The proposed “core area” under the MOA-AD was the existing ARMM plus the six municipalities in Lanao del Norte that voted yes in the 2001 plebiscite. Any new plebiscites would only happen outside this core area. See maps in Appendices A and B.

<sup>44</sup> “That the present components of the ARMM and the above-mentioned municipalities [in Lanao del Norte] voted for inclusion therein in 2001, however, does not render another plebiscite unnecessary under the Constitution, precisely because what these areas voted for then was their inclusion in the ARMM, not the BJE [Bangsamoro Juridical Entity, the name for the new region envisioned in the MOA-AD]”. G.R. no. 183591, *The Province of North Cotabato vs. The Government of the Republic of the Philippines*, 14 October 2008.

<sup>45</sup> Crisis Group interview, government negotiator, Manila, 30 September 2011.

<sup>46</sup> This is because the MILF views the constitution as biased towards a unitary state. As the chief negotiator Mohagher Iqbal wrote in his 2007 book (under the pen name Salah Jubair): “The Constitution is not an even-handed framework to resolve the Moro Problem, because most if not all of the framers, the interpreters, and implementers, do not have Moro interests in their hearts. The Constitution epitomizes the interests of the non-Moros in this country, which is always dubbed as the national interest of the country”. Salah Jubair, *The Long Road to Peace: Inside the GRP-MILF Peace Process* (Cotabato City, 2007), p. 15.

<sup>47</sup> Crisis Group Briefing, *The Collapse of Peace in Mindanao*, op. cit., p. 4. In late 2008, The Asia Foundation conducted surveys in ARMM, Cotabato City and Isabela City, and rural areas included in category A and outside. One finding is that rural areas in category A were largely ambivalent about expansion outside ARMM. “Public Opinion on the Memorandum of Agreement on Ancestral Domain and the Peace Process”, The Asia Foundation, 2008.

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<sup>38</sup> Crisis Group interview, Manila, 28 August 2012.

<sup>39</sup> The municipalities are Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal. The 2001 plebiscite was part of the government’s unilateral implementation of the 1996 final peace agreement with the MNLF. See fn. 3 above.

<sup>40</sup> The municipalities are Kabacan, Carmen, Aleosan, Pigkawayan, Pikit and Midsayap. They border Maguindanao province. For more information on the demographics, see Rudy B. Rodil, “ANGAY-ANGAY LANG: Comments on the Framework Agreement”, *Mindanews.com*, 14 October 2012.

<sup>41</sup> Framework Agreement, op. cit., Section V (Territory), Article 1.

<sup>42</sup> *Ibid*, Article 2.

istration thought it could persuade the MILF to go for a smaller, but more governable space.<sup>48</sup>

In late August 2012, the government disclosed its offer to the International Contact Group. If the MILF insisted on rejecting ARMM and creating the new Bangsamoro government, a new autonomous region would have to be created from scratch, and there would have to be a new plebiscite.<sup>49</sup> The catch was that the vote would have to be held throughout the “core area”, meaning the present ARMM plus anywhere outside. The government explained that the MILF would be told there was no way around the constitutional requirements on the creation of autonomous regions.<sup>50</sup> If the members of the central committee, the top decision-making body, agreed, they would be taking a huge risk. A plebiscite, long conceived as a way for new areas to opt in, could in effect become a way for the provinces currently in ARMM to opt out.

The danger is real because, as an experiment in regional autonomy, ARMM has been an unmitigated disaster. It has become synonymous with corruption and inefficiency and has frequently been a vehicle for Manila to meddle in Bangsamoro politics. It has also failed utterly to foster any greater regional cohesion between Central Mindanao and the far-flung Sulu archipelago. The Bangsamoro government envisioned in the framework agreement may not work any better.

At the September round, the MILF took the news in stride that a new vote would be required.<sup>51</sup> A negotiator explained that the problem was not a plebiscite per se, but whether

the government’s legal reasoning was sound.<sup>52</sup> But in the eyes of other members of the MILF team, it was simply unfair. The Bangsamoro had to be bigger than ARMM; it was unconscionable that after years of negotiations and fighting, the MILF could end up with a smaller area. If provinces and municipalities in ARMM did not want to join the Bangsamoro, that was because Manila had never tried to get regional autonomy to work properly; it had nothing to do with the MILF. Yet the latter’s credibility would be at stake in the plebiscite. In contrast, the process envisioned in the MOA-AD did not risk loss of territory.<sup>53</sup>

After internal deliberations, the MILF accepted the government’s argument and agreed to a vote in all areas to be included in the Bangsamoro, including ARMM.<sup>54</sup> This was a major concession. According to a negotiator, the MILF’s top decision-makers were willing to accept lawyerly arguments about constitutional requirements, and realised that in return the central committee would have to be bold: “Revolutionary leaders take risks but lawyers are cowards!”<sup>55</sup>

The plebiscite is a gamble, but otherwise the terms are better for the MILF than they first appear. The “core area” defined in the framework agreement is in fact larger than in the MOA-AD.<sup>56</sup> The difference lies in where a plebiscite will be held. Although not spelled out in the framework agreement, there are only 39 *barangays* in North Cotabato that voted in favour in the 2001 plebiscite, far fewer than the hundreds that were to vote according to the 2008 pact. But an additional article in the framework agreement leaves the possibility of further expansion open:

Areas which are contiguous and outside the core territory where there are substantial populations of the Bangsamoro may opt anytime to be part of the territory upon petition of at least 10 per cent of the residents and approved by a majority of qualified voters in a plebiscite.<sup>57</sup>

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<sup>48</sup> Crisis Group interview, senior government official, 10 February 2011.

<sup>49</sup> In terms of the necessary legislation, the basic law would therefore be a new organic act, rather than an amendment to the organic act that created ARMM (Republic Act 6734) in 1989 [see fn. 1 and 3]. Because the MILF would be creating a new region through the basic law, this would be markedly different than the legislation that resulted from the MNLF peace process, which was an amendment (Republic Act 9054) to the original organic act.

<sup>50</sup> Crisis Group interviews, September-October 2012. “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, provided that only provinces, cities, and geographic areas voting favourably in such plebiscite shall be included in the autonomous region”. 1987 Philippine Constitution, Article X, Section 18.

<sup>51</sup> Before the sessions got underway, the Malaysian facilitator sat down with Marvic Leonen and Mohagher Iqbal, the chief negotiators for each side. Leonen explained the government’s offer, emphasising the legal and constitutional issues regarding plebiscites. The two men agreed that they should take territory off the agenda, but continue with all the other items. Crisis Group interviews, various individuals involved in the negotiations, Manila, September-October 2012.

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<sup>52</sup> Crisis Group interview, member of the MILF negotiating team, Manila, 11 September 2012.

<sup>53</sup> Crisis Group interviews, members of the MILF negotiating team, September 2012.

<sup>54</sup> To help the central committee think through the constitutional issues, the MILF quietly approached members of the International Contact Group to ask them to bring in external experts who could come to Camp Darapanan, the MILF leadership’s base. Crisis Group interviews, September-October 2012. The Malaysian facilitator was in nearby Cotabato City at the time of the deliberations.

<sup>55</sup> Crisis Group interview, MILF negotiator, Cotabato City, 30 October 2012.

<sup>56</sup> As noted above, this was only ARMM and the six municipalities in Lanao del Norte.

<sup>57</sup> Framework Agreement, op. cit., Section V (Territory), Article 3.

This saves face for the MILF, as its leaders can claim they have not, for the most part, given up any territory. The areas listed in the failed 2008 agreement can still join, but now there is a two-step process: they must opt in first, and then vote to join.<sup>58</sup>

### C. ESTABLISHMENT OF THE BANGSAMORO AND POWERS

The framework agreement explains the objectives of the peace process more simply than any other text previously reached with the MILF. It states unequivocally that “the status quo is unacceptable and ... the Bangsamoro shall be established to replace the Autonomous Region in Muslim Mindanao”. The new government shall have a ministerial form, whose electoral system will encourage formation of “genuinely principled political parties”. The privileges of the provinces and municipalities within the Bangsamoro “shall not be diminished unless otherwise altered, modified or reformed for good governance”. And, crucially, “the relationship of the Central Government with the Bangsamoro Government shall be asymmetric”.<sup>59</sup>

The last article steers clear of language that sunk the MOA-AD. That agreement had used “associative”, which was further explained to mean “shared authority and responsibility”.<sup>60</sup> The Supreme Court determined that it implied either a relationship between two sovereign entities, or transitory phase for an entity that would later become independent.<sup>61</sup> When peace talks resumed in late 2009, the MILF began describing its desired political arrangement as a “sub-state”, which the Aquino government also disliked. It needed to find wording that suggested the new regional government would enjoy extensive powers in order to satisfy the MILF, but without alarming conservative nationalists who fear a peace agreement is a rest stop on the road to independence. “Sub-state” does not appear anywhere in the framework agreement. Yet, because nothing else is spelled out, the MILF can read what it wants into “asymmetry” in defending

the new pact to its base. A government official believes the central committee members need to be able to say they are “still aspiring for a sub-state without calling it a sub-state”.<sup>62</sup>

A forthcoming annex on power sharing will have to clarify what an “asymmetric” relationship means, while avoiding possible constitutional challenges. Some clarity will come from a list of exclusive, reserved and shared powers that will determine which government (Bangsamoro or Manila) controls what. This is still under negotiation. A government official complained that the MILF does not think about what is reasonable and practical: its negotiators are focused on which list in the chart of powers is the longest.<sup>63</sup>

Details in the framework agreement on powers are sparse.<sup>64</sup> The most interesting provisions pertain to Sharia (Islamic law) and accreditation of *halal*-certifying bodies, which will determine what food, drugs and cosmetics are permissible under Islamic law. The agreement mentions that the Sharia justice system is to be strengthened and its jurisdiction expanded, although it will only apply to Muslims.<sup>65</sup> How the MILF interprets Islamic law and envisions its enforcement remains unclear.<sup>66</sup> Some civil society groups in Central Mindanao are already concerned about how an Islamic system will work, especially if the central committee appoints a conservative religious leader to the transition commission.<sup>67</sup>

For the MILF, the agreement’s main selling point is the ministerial government based on a party system, which it argues will open up space for different political actors. Supporters of the deal concur: this will dismantle the existing power structures within ARMM that work to the benefit of extended families that thrive on patronage politics and

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<sup>58</sup> Because the areas must be contiguous, the *barangays* in places like Davao Oriental on the other side of Mindanao that were included in the MOA-AD cannot join. But the framework agreement also gives the Bangsamoro government the option of providing assistance to these communities. *Ibid*, Section VI (Basic Rights), Article 4.

<sup>59</sup> *Ibid*, Section I (Establishment of the Bangsamoro), Articles 1-4.

<sup>60</sup> Crisis Group Briefing, *The Collapse of Peace in Mindanao*, op. cit., pp. 5-6.

<sup>61</sup> For example, the court noted, “while there may be a semblance of unity because of the associative ties between the BJE and the national government, the act of placing a portion of Philippine territory in a status which, in international practice, has generally been a preparation for independence, is certainly not conducive to national unity”. G.R. no. 183591, op. cit.

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<sup>62</sup> Crisis Group interview, Manila, 25 October 2012.

<sup>63</sup> Crisis Group interview, senior government official, Manila, 25 October 2012.

<sup>64</sup> It reiterates some of the text from the April 2012 declaration, for example, a preliminary list of Manila’s powers, including defence and external security; foreign policy; common market and global trade, barring certain powers already enjoyed by ARMM; coinage and monetary policy; citizenship and naturalisation; and postal service. Framework Agreement, op. cit., Section III (Powers), Article 2.

<sup>65</sup> *Ibid*, Section III (Powers), Articles 3-5.

<sup>66</sup> In the negotiations, the MILF was primarily concerned about the lack of an appellate court with expertise in Sharia. Crisis Group telephone interview, 9 October 2012; Crisis Group interview, senior government official, Manila, 25 October 2012.

<sup>67</sup> Crisis Group interview, civil society activist, Cotabato City, 27 October 2012. For an analysis of the Sharia courts that currently exist in the Philippines, and the MILF’s shadow court system, see Matthew Stephens, “Islamic Law in the Philippines: Between Appeasement and Neglect”, Islam, Syari’ah and Governance Background Paper Series, University of Melbourne, 2011.

are wholly unaccountable to the electorate.<sup>68</sup> Although the idea of a parliamentary-style regional government coexisting with the presidential system in Manila has attracted some criticism, the Aquino administration checked with members of Congress, particularly influential senators, before making the offer to the MILF to ensure they would not oppose it.<sup>69</sup> Government negotiators are adamant it is constitutional.

The shift to a political party system paves the way for MILF leaders and supporters to form a party themselves and compete in the first regular elections in 2016. At a press conference shortly after the framework agreement was signed, Chairman Murad explained that the MILF will continue to exist, but as an Islamic organisation and said that the central committee had yet to decide whether it would form a separate party.<sup>70</sup> Despite his non-committal statement, a major reason why the MILF wanted to be in power during a long transition was that its future candidates needed the time to build such a party and to prove they could govern before standing against the well-established players in the region.<sup>71</sup>

#### **D. REVENUE GENERATION AND WEALTH SHARING**

This section of the framework agreement has considerable details on fiscal policy and powers of taxation but is notable largely for what it lacks: a percentage split between the Bangsamoro government and Manila on revenues from natural resources. The wealth-sharing annex will likely contain the numbers. The most important reference point is the 75:25

split agreed in the MOA-AD.<sup>72</sup> The government and long-time observers of the peace process feel the MILF is focused on the wrong things. As an Aquino administration official remarked, “the reality is that the national government will be subsidising the Bangsamoro for the next twenty years ... the MILF seems to think they’ll just put a pipe in the ground and oil will spurt out”.<sup>73</sup> The parties are also still haggling over powers of taxation; the MILF wants the Bangsamoro government to be able to raise its own revenues. But others think the emphasis on taxation in one of the poorest areas in the country is misplaced: “No one is paying their taxes properly, and in the first place there’s nothing to tax”.<sup>74</sup>

Another controversial issue is the fate of the direct cash transfer from Manila to provinces and municipalities. The right to control this money, known as the internal revenue allotment, drives cutthroat competition at election time because it is one of the biggest single spoils available to victors at the local level; ARMM has no control over the funds.<sup>75</sup> The MILF would like the wealth-sharing annex to make clear that all internal revenue allotments will be flowing through the Bangsamoro government, thereby lessening the power of provincial and municipal governments. The MILF knows it will need the support of provincial governors and mayors for the plebiscite, and its negotiators will have to be pragmatic about their demand for control – or so the government believes.<sup>76</sup> If the parties do not resolve the issue in the annexes, it will fall to the transition commission.

#### **E. NORMALISATION**

“Normalisation” is a catch-all term used in the negotiations to describe the return to normal life through reconstruction, rehabilitation, transitional justice and improvement of the security situation – all of which are mentioned in the final

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<sup>68</sup> On the personalised nature of Philippine politics, see Alfred McCoy (ed), *An Anarchy of Families: State and Family in the Philippines* (Madison, 2009). On the gross abuse of power by one family in Central Mindanao, see Crisis Group Asia Briefing N°98, *The Philippines: After the Maguindanao Massacre*, 21 December 2009. On the failure of political parties in ARMM, see Abhoud Syed M. Lingga, “Bangsamoro attempts in building political parties”, Institute of Bangsamoro Studies, September 2008.

<sup>69</sup> Crisis Group interview, senior government official, Manila, 27 January 2012. The government and the MILF discussed the ministerial structure in late 2011. It was one of the first major issues they agreed on. The failure to consult Congress during the negotiations of the MOA-AD was a major reason why the government’s critics in Manila were virulently opposed. For criticism of the ministerial government, see Nelson Laviña, “Agreement of the parties”, *Philippine Daily Inquirer*, 16 November 2012.

<sup>70</sup> Press conference with Chairman Murad, Camp Darapanan, Maguindanao, 27 October 2012.

<sup>71</sup> Crisis Group interview, former Arroyo government official, Davao, 23 March 2012. Here again the experience of the MNLF is instructive. A handful of its leaders are in elected office, but they operate in ways that are no different to the other so-called traditional politicians from the most prominent families.

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<sup>72</sup> “The BJE take or profit split from total production shall be shared with the Central Government on a percentage ratio of 75:25 in favor of the BJE. All royalties, bonuses, taxes, charges, custom duties or imposts on natural resources and mineral resources shall be shared by the Parties on a percentage ratio of 75:25 in favor of the BJE”. Memorandum of Agreement, op. cit.

<sup>73</sup> Crisis Group interview, senior government official, Manila, 25 October 2012. Interviews with MILF members and supporters suggest that most think the route to fiscal autonomy lies in tapping the gas reserves believed to lie beneath a vast marsh in Maguindanao. There are no reliable estimates of potential oil reserves or geothermal resources. See “MILF: Put off oil exploration bids in Liguasan”, *Rappler.com*, 30 October 2012; “DOE prepares inventory of energy resources in Bangsamoro area”, *Interaksyon.com*, 17 October 2012.

<sup>74</sup> Crisis Group interview, journalist, Manila, 25 October 2012.

<sup>75</sup> Crisis Group interview, individual close to the MILF, Cotabato City, 27 October 2012.

<sup>76</sup> Crisis Group interview, senior government official, Manila, 25 October 2012.

substantive section of the framework agreement. These are important because such issues have never previously been included in a signed text between the parties. The deal also mentions cooperation to reduce firearms and disband private armies and other armed groups. But the MILF and the government – as well as many observers<sup>77</sup> – are worried about three issues that will be the focus of a forthcoming annex:

- The creation of a civilian, effective, impartial and fair “police force for the Bangsamoro”, which will be responsible to Manila, the Bangsamoro government and the communities it serves. An independent commission, drawing on local and international expertise, will make recommendations on policing.<sup>78</sup>
- The gradual decommissioning of MILF forces.<sup>79</sup> The parties also agreed to institute programs for MILF combatants, and to attract multi-donor country support to help “combatant and non-combatant” elements of the rebel movement return to normal life.<sup>80</sup>
- The phased and gradual handover of law enforcement functions from the Philippine military to the new police force. In the interim, the MILF will assist in maintaining peace and order.<sup>81</sup>

Policing is a priority for both sides. The hard part will be defining the powers the Bangsamoro government will have vis-à-vis Manila. MILF negotiators are pushing for the ability to recruit, train, control, promote and “inculcate values” in the police. They know policing is not easy but want to be able to exercise the powers soon.<sup>82</sup> The government’s thinking on the issue is still preliminary because its negotiators were never clear what the MILF wanted. A senior official said the Aquino administration thought that, as an autonomous region, the Bangsamoro could have full police powers, but it would depend on the timeframe. Does the MILF expect full powers handed

over immediately or after a couple of years?<sup>83</sup> Another issue is that the constitution permits only one police force, although it does provide for devolution to local executives, meaning provincial governors and mayors.<sup>84</sup> This is the opposite of what the MILF wants, however, and it may be difficult to claw back oversight of the police from these politicians.

The Aquino government implicitly recognised that the MILF controls territory in Central Mindanao and provides security to communities in the framework agreement. The pact suggests fighters will help maintain peace and order while decommissioning is underway. But sceptics note there are plenty of thugs under the organisation’s umbrella who should not be allowed to play any kind of policing role, formally or informally. The MILF understands these concerns, and says that corrupt local police cannot simply be replaced with an abusive regional force. The tricky bit will be determining the degree of oversight by Manila and the form of a new regional police force.

The MILF appears interested in community policing, or a “people’s police”.<sup>85</sup> The government sees problems with this idea, particularly because of land conflicts called *rido* that frequently arise between local commanders or within the broader community of supporters, where a neutral third party needs to intervene.<sup>86</sup> Still, both parties are more willing than ever before to view crime, extortion and political violence as issues they must tackle together. This in turn has opened up space for external input on policing, which could help professionalise the new force.<sup>87</sup>

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<sup>77</sup> The International Contact Group is trying to bring in outside expertise to nudge the positions closer together. There have been several visits to Camp Darapanan by individuals involved in Northern Ireland’s peace process, and the experience of the British government in decommissioning and policing there informed language used in the framework agreement. Crisis Group interview, Manila, October 2012. Both parties have also visited Spain to learn about the structure of its overlapping police forces. Members of the International Contact Group say they worry about how relevant some of these examples are for the Philippines. Crisis Group interviews, Manila, May, July, August 2012.

<sup>78</sup> Framework Agreement, op. cit., Section VIII, Articles 3-4.

<sup>79</sup> Ibid, Article 5.

<sup>80</sup> Ibid, Articles 10-11.

<sup>81</sup> Ibid, Articles 6-7.

<sup>82</sup> “We are not saying that in the first year [the Bangsamoro police force] will be doing well”. Crisis Group interview, member of the MILF negotiating team, Cotabato City, 28 October 2012.

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<sup>83</sup> Crisis Group interview, senior government official, 4 September 2012.

<sup>84</sup> 1987 Philippine Constitution, Section XVI, Article 6: “The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law”. Republic Act 7160, known as the 1991 local government code, further explains that provincial governors and mayors of municipalities and cities (an administrative distinction in the Philippines – in effect cities enjoy more local autonomy than municipalities) “exercise general and operational control over the local police force”.

<sup>85</sup> Crisis Group interviews, MILF negotiators, Manila and Cotabato City, 11 September and 28 October 2012.

<sup>86</sup> Crisis Group interview, government negotiator, Manila, 5 November 2012. These *rido* are the main cause of frequent small-scale displacement in Central Mindanao. They can escalate rapidly into more serious fighting depending on who is involved and whether the military takes sides.

<sup>87</sup> Some interested donors see the Bangsamoro police force as a way to engage the Aquino government in a discussion on security sector issues in the Philippines more broadly. Crisis Group interview, Manila, 25 October 2012.

The framework agreement also commits the MILF to gradually “decommission” its forces but the negotiators did not mean demobilisation, disarmament and reintegration (DDR).<sup>88</sup> Neither the MILF nor the government likes the term and both are only beginning to think about the broader concept – the idea of dismantling rebel groups by providing socio-economic assistance to smooth the return of combatants to their families and normal jobs – as well as a concomitant reduction of military presence in Bangsamoro areas.<sup>89</sup> Discussions in mid-November, the first time the parties met since the framework agreement was signed, touched on the idea of a trust fund for ex-combatants and victims.<sup>90</sup>

The negotiating teams are rightly proud of the agreement, which reflects creativity and flexibility on both sides. For years it was unclear whether the government and the MILF would ever be able to agree on a final peace. Now they at least have a preliminary sketch.

#### IV. DIFFERENCES IN PERSPECTIVE

Not surprisingly, the two sides approached the agreement from perspectives that reflected both different constituencies and competing priorities.

From the outset, the reform-minded Aquino administration saw an agreement with the MILF as part of a broader approach to Mindanao known as the “convergence strategy”.<sup>91</sup> First, the government would try to secure a final peace with the MILF, while consulting other stakeholders. Second, it would tie up the loose ends of the 1996 agreement that many argued had never been fully implemented.<sup>92</sup> Third, it would partner with local politicians and civil society to improve the functioning of ARMM.<sup>93</sup> From its perspective, there were several challenges. One was the division among the Bangsamoro themselves. Unless some degree of unity could be forged, any agreement was doomed. Manila was also concerned about the perceived undemocratic nature of the negotiations, in which the MILF asserted that what it proposed in confidential discussions in Malaysia was automatically the desire of the Bangsamoro. The international facilitators often knew more about proposals under discussion than did the Filipino or Bangsamoro people. Finally, the government was concerned about the MILF’s lack of governing experience and what this might mean for a future entity.<sup>94</sup>

The MILF thought the government was far too worried about internal politics among the Bangsamoro.<sup>95</sup> As far as it was concerned, the convergence strategy distracted attention from the peace process – which it saw as the key to solving all of Mindanao’s problems. Everything else was minor or would fall into place once an agreement was reached.

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<sup>88</sup> DDR in the Philippines has tended to be closely associated with counter-insurgency efforts by the military. See “Discourses, Views and Experiences on Disarmament, Demobilization and Reintegration: International and Local Perspective”, OPAPP, September 2009. In 2004, the UN Development Programme commissioned a desk review by a DDR expert on potential programs for the MILF. See Robert Muggah, “The Prospects for Disarmament, Demobilisation and Reintegration of the Moro Islamic Liberation Front”, desk review commissioned by UNDP, March 2004.

<sup>89</sup> Crisis Group interviews, Manila, September-October 2012. The International Contact Group has brought DDR experts and others with expertise in policing to speak to both parties.

<sup>90</sup> “Trust fund, other issues hindering peace talks”, *Philippine Daily Inquirer*, 19 November 2012.

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<sup>91</sup> Crisis Group Briefing, *A New Strategy for Peace in Mindanao?*, op. cit.

<sup>92</sup> During President Arroyo’s term, the Organisation of Islamic Cooperation (OIC) had begun a tripartite review to respond to the MNLF’s complaints that the government had failed to fully implement the 1996 agreement, which Indonesia had brokered under OIC auspices. See Crisis Group Briefings, *Back to the Table, Warily, in Mindanao*, and *A New Strategy for Peace in Mindanao?*, both op. cit.

<sup>93</sup> For more on the ARMM reform initiative, see Crisis Group Report, *Local Politics in the Sulu Archipelago and the MILF Peace Process*, op. cit.

<sup>94</sup> Donors share these concerns and the UN and World Bank have proposed a technical facility to provide support to the MILF as it drafts the basic law and begins to develop priorities for the transition.

<sup>95</sup> The MILF and its supporters felt that the Bangsamoro could come together of their own volition; outsiders – including the government – should not be the ones pushing the MILF to cooperate with the MNLF, local politicians, indigenous peoples, etc. Crisis Group interviews, Cotabato City, October-November 2011 and January, March 2012.

Manila in its view was too focused on players like the MNLF with no political clout or ability to credibly threaten the use of force. The government was likewise too preoccupied with an institution, the ARMM, that was irredeemably bad because of the structural flaws of existing autonomy arrangements. Even worse, Aquino's reform agenda was trying to turn power-hungry, unaccountable politicians from the region's major political families into champions of good governance and development.

The MILF, like the MNLF before it, sees the Bangsamoro as one nation struggling for self-determination, while the Aquino government perceives a region deeply divided along family, ethnic, geographic, religious, political and sectoral lines. It acknowledged that strengthening autonomy and letting the MILF lead a transition was the only way to get the fighters to lay down their weapons, but it had doubts about how well this would work in practice. Manila felt obliged to create space for non-MILF Muslims. It was particularly worried about the unwillingness of political figures in the Sulu archipelago, whose populations are ethnically distinct from the Maguindanaon and Maranao that predominate among the MILF from Central Mindanao, to be under a new regional government of the MILF's making.<sup>96</sup>

The government and the MILF also have very different ideas on transition and territory. In public, both say the transition commission is a vehicle for including other perspectives on the future Bangsamoro government. But the MILF still wants to singlehandedly determine the content of the basic law and may be able to do so as chair of the commission. To this end, its eight appointees will likely include individuals from the formal negotiating panel and others selected for their "commitment to the struggle" which means people the central committee can control and trusts.<sup>97</sup> The government thinks the MILF will have to negotiate the basic law with the other Bangsamoro on the commission,

which would likely moderate its demands. Manila is not looking to dictate a stance to its appointees,<sup>98</sup> who will probably include someone from the MNLF; someone from civil society; an indigenous person who self-identifies as Bangsamoro; and possibly a sitting member of Congress.<sup>99</sup> The government will also need to think of the Sulu archipelago, as most MILF appointees will be from Central Mindanao.<sup>100</sup>

On the surface, the eventual plebiscite is a constitutional requirement that will boost the popular legitimacy of new autonomy arrangements by securing the consent of the majority of Bangsamoro. For the government, it is also a means of forcing the MILF to consider others, especially the powerful politicians from the Sulu archipelago, in drafting the basic law. If the MILF ignores dissenting voices, it will risk losing the islands in the vote.<sup>101</sup> But before it agreed, this is precisely what the MILF was privately worried about: the plebiscite was a ploy by Manila to placate the local politicians from the islands and give them a way to opt out.<sup>102</sup>

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<sup>96</sup> The MNLF, when it was first negotiating with the government in the 1970s, could more credibly say it had support from a wide cross-section of Muslim Mindanao. After the MILF formally split off in 1984, the MNLF, dominated by the Tausug of the Sulu archipelago, never regained its strength in Central Mindanao. See Crisis Group Report, *Local Politics in the Sulu Archipelago and the MILF Peace Process*, op. cit.

<sup>97</sup> There are no restrictions on dual appointments – to the negotiating panel and the transition commission – so far. Crisis Group interviews, individuals in the negotiations, Manila and Cotabato City, October-November 2012. MILF negotiators downplay the need for technocrats or legal training; they say there will be a secretariat to provide support on such matters. Crisis Group interviews, MILF negotiators, Cotabato City, 28 and 30 October 2012. The MILF says it will make public its appointees by mid-December 2012 and they will include a woman and an indigenous person. "MILF members of Transition Commission known by mid-December", Luwaran.com, 23 November 2012.

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<sup>98</sup> Crisis Group interview, government negotiator, Manila, 5 November 2012.

<sup>99</sup> Crisis Group interviews, Manila, October-November 2012. Prospective candidates are already lobbying the peace process office. The appointment process will probably be similar to that used for the caretaker regional legislative assembly in early 2012, in which the president's advisers tried to strike a balance among ARMM's political forces.

<sup>100</sup> For a prominent civil society organisation's proposed criteria for appointees, see "Support six-point criteria for the transition commission", Mindanao Peoples Caucus, 16 November 2012.

<sup>101</sup> Crisis Group interviews, Manila, September-October 2012.

<sup>102</sup> Crisis Group interview, MILF negotiator, Manila, 11 September 2012.

## V. FUTURE HURDLES

It is difficult to predict at this stage whether the framework agreement will produce a lasting peace. The political environment is far more favourable than it was when the last agreement collapsed in 2008. This time around the president is popular, has slightly over half his term left, and has shown that he is committed to peace with the MILF. But it is clear that there are serious obstacles on the horizon, including whether the basic law will be compatible with the constitution; possible opposition from Christians, indigenous peoples and the Sulu archipelago; the potential for an MILF splinter to grow if implementation stalls; and the future of MILF fighters and their weapons.

### A. THE CONSTITUTION

If it is not possible to establish the Bangsamoro government within the bounds of the constitution, then the 1987 charter will have to be revised or amended. Otherwise, the peace process will fail. The MILF and the Aquino government have different views on the flexibility of the constitution.

For the government, the Supreme Court ruling on the MOA-AD is instructive. The 2008 agreement acknowledged that its terms went beyond the “existing legal framework”, implying that many of its provisions could only take effect after the constitution was revised.<sup>103</sup> The court determined that, as part of the peace process, the president could encourage his or her negotiators to consider options requiring constitutional amendment but that he or she could not unilaterally implement such changes. The president can, however, make recommendations to Congress or to the Philippine people, which are uniquely vested with the powers to amend or revise the constitution.<sup>104</sup> The court ruled that President Arroyo exceeded her authority by in effect guaranteeing to the MILF that the constitution would be changed in line with the terms of the MOA-AD.<sup>105</sup>

<sup>103</sup> See the 2008 MOA-AD, Governance strand, Article 7. The Supreme Court noted that the text does not directly refer to the constitution, but that “the existing legal framework” could encompass the constitution. G.R. no. 183591, op. cit.

<sup>104</sup> Congress, a constitutional convention (which Congress can convene or ask the electorate to vote on convening one), or the people (through a petition known as a “people’s initiative”) can propose amendments or revisions to the constitution. Any changes must be ratified in a countrywide plebiscite. 1987 Philippine Constitution, Article XVII.

<sup>105</sup> “Plainly, stipulation-paragraph 7 on Governance is inconsistent with the limits of the President’s authority to propose constitutional amendments, it being a virtual guarantee that the Constitution and the laws of the Republic of the Philippines will certainly be adjusted to conform to all the ‘consensus points’

The Aquino government knows a final peace with the MILF may be impossible without changing the constitution but is skittish about potential opposition. In the negotiations, the president needed to make sure his team did not agree to anything that would suggest he was promising the MILF a constitutional amendment that he could not deliver.<sup>106</sup> However, government negotiators told the MILF that the president was open to an amendment, but wanted an incremental approach. He first needed to know if the 1987 constitution could accommodate all the powers the MILF wants in the basic law. If not, then he would be willing to consider a constitutional amendment.<sup>107</sup> Constitutional problems will likely only become apparent once the basic law is complete; this explains why the transition commission will also draw up proposed amendments. It is unclear if the president views it as his role to lobby Congress on constitutional change.<sup>108</sup> Statements by government officials suggest the MILF and the transition commission would have to lead the campaign.<sup>109</sup>

The MILF does not want the Bangsamoro to be limited by the constitution’s provisions on local government and autonomous regions.<sup>110</sup> It believes that the future Bangsamoro government’s ministerial structure and powers to hold elections, run the police and oversee the provinces and municipalities in its area will be incompatible with

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found in the MOA-AD. Hence, it must be struck down as unconstitutional”. G.R. no. 183591, op. cit.

<sup>106</sup> Since the framework agreement was unveiled, his spokesmen and ministers have repeatedly reinforced that its terms are constitutional. “Cha-cha not needed to implement Bangsamoro deal – Palace exec”, GMA-News, 26 October 2012.

<sup>107</sup> Crisis Group interview, senior government official, Manila, 27 January 2012.

<sup>108</sup> Some politicians are also trying to push for amendment of the constitution’s economic provisions, which limit foreign investment. President Aquino does not believe this is necessary. “Enrile calls for changes in economic provisions of PHL Constitution”, GMA-News, 23 July 2012.

<sup>109</sup> For example, presidential spokesperson Edwin Lacierda explained, “you and I, as ordinary citizens, we can propose amendments to the Constitution . . . . That is the same right and that is found in the Constitution, and that is also provided to anybody who would like to suggest amendments”. “Cha-cha not needed to implement Bangsamoro deal – Palace exec”, op. cit.

<sup>110</sup> In 2008, the Supreme Court objected to precisely what the MILF wants: “No province, city, or municipality, not even the ARMM, is recognized under our laws as having an ‘associative’ relationship with the national government. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government”. G.R. no. 183591, op. cit. In early December, two petitions were filed with the Supreme Court protesting the terms of the framework agreement. “Petitions filed vs Bangsamoro Framework deal”, *Sun-Star*, 3 December 2012.



the constitution, once elaborated in the basic law.<sup>111</sup> Apart from the legal technicalities, the MILF has political reasons to push for an amendment. First, it would prove once and for all that its leaders drove a harder bargain than the MNLF in 1996. Second, it worries about securing the gains of the peace process for future generations. As a negotiator put it: “Now we have a very good president, who wants to give power to the Moros . . . . But that’s why we need to change the constitution so another president cannot take away all these things and leave us naked”.<sup>112</sup> The MILF signed the framework agreement because it understood the president’s wait-and-see approach and believed he was willing to revisit the constitutional issue at some point before the end of his term.<sup>113</sup>

There are several unknowns that could affect how the constitutional issue plays out. Will the transition commission produce a basic law that is unconstitutional? Is President Aquino really willing to open the issue of constitutional change near the end of his term?<sup>114</sup> And could the results of the 2013 mid-term elections diminish his influence over Congress? The latter is crucial because it is the House of Representatives and the Senate – not the president – which would hold the power to secure a constitutional amendment.

## **B. LIKELY MALCONTENTS**

There is cautious optimism across the board in Mindanao for now. Many believe the framework agreement has been well received so far because the critical details are still to be worked out. Spoilers are more likely to agitate against the peace process once the transition commission is appointed and the contours of the basic law become clear. So far, no one seems to feel sufficiently threatened by the framework agreement to resort to violence.

The noisiest opponent, MNLF founder Nur Misuari, has little capacity to spoil the process. He resents the MILF for

stealing his thunder. But he is largely estranged from the organisation he once led and although he still commands respect, he does not have any control over any fighters, not even those in his home province of Sulu.<sup>115</sup> He remains the official representative of the Bangsamoro people to the OIC, which is now trying to intensify efforts to get him to cooperate with the other factional leaders of the MNLF and the MILF.<sup>116</sup> Misuari’s grumblings attract media attention, but they signify little because the rest of the MNLF plan to take up their remaining concerns about the 1996 peace agreement through the transition commission.<sup>117</sup>

Christians and indigenous peoples have been largely quiet since the framework agreement was announced. They are willing to give the new pact a chance, but they are still worried that giving more power to the Bangsamoro will come at their expense.<sup>118</sup> Two measures could help lessen fears. First, the MILF and the government need to ensure communities receive accurate information about the agreement. For example, the Aquino administration consulted mayors in North Cotabato during the negotiations, so the territorial provisions would not come as a surprise; but Christians living in and around the “core area” of the Bangsamoro still do not understand what the plebiscite will mean.<sup>119</sup> As of late October 2012, the framework agreement had yet to be translated into local languages, or disseminated via radio or other means to more remote areas where indigenous peoples live.<sup>120</sup> Second, the transition commission should have

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<sup>111</sup> MILF Chairman Murad took a more careful line at a press conference. When asked about constitutional change, he explained that the government says a solution to the Bangsamoro problem can be worked out within the constitution, so the MILF responded, if it is possible within the constitution, then well and good. Murad finished by noting that it remains to be seen if that is really the case. Press conference with Chairman Murad, Camp Darapanan, Maguindanao, 27 October 2012.

<sup>112</sup> Crisis Group interview, members of the MILF negotiating team, Cotabato City, 28 October 2012.

<sup>113</sup> The government had a hard time getting this message through to the MILF. Crisis Group interview, senior government official, Manila, 27 January 2012.

<sup>114</sup> One of the reasons the MOA-AD was so unpopular was that President Arroyo’s opponents believed she was trying to use its constitutionally problematic provisions to open the country’s charter and lobby for revision of the one-term limit so she could stay in power.

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<sup>115</sup> After the 1996 agreement, Misuari served as ARMM governor until 2001. His authority rapidly waned as he mismanaged the regional government and eventually a group of senior figures, the “council of fifteen”, ousted him as chairman.

<sup>116</sup> The MNLF and the MILF agreed to create a coordinating body at an OIC meeting in Tajikistan in 2010. Since then there has been little progress. On 16 November, at the OIC foreign ministers’ meeting in Djibouti, Murad met Misuari to discuss a Bangsamoro Coordination Forum. “OIC got Nur and Murad to sit down for Bangsamoro Coordination Forum”, *Mindanews.com*, 25 November 2012.

<sup>117</sup> Crisis Group interview, MNLF figure, Cotabato City, 31 October 2012.

<sup>118</sup> Crisis Group interviews, civil society leader working with indigenous peoples, journalist and senior church official, Cotabato City, 29 and 31 October 2012.

<sup>119</sup> Crisis Group interview, civil society activist, Cotabato City, 30 October 2012. They also misunderstood what the agreement meant for the armed MILF presence. As a senior church official observed, some Christians thought “the MILF signs, and then they put their arms in a pile and that’s it”. Crisis Group interview, Cotabato City, 31 October 2012.

<sup>120</sup> Crisis Group interviews, member of the International Contact Group, Manila, 24 October 2012; local journalists, humanitarian workers, senior church official, Cotabato City, 29 and 31 October 2012. The MILF has said that it will translate the document. “MILF to translate Framework Agreement into several languages”, *Luwaran.com*, 11 November 2012.

a mechanism for consulting Christians and indigenous peoples as it drafts the basic law.

Indigenous peoples, who for the most part are not armed or particularly well-organised, are unlikely to oppose the framework agreement in a way that would prevent implementation. Those who already live in ARMM are resigned to living under the Bangsamoro government and will look for signs that the basic law will allow them to exercise their rights under the Indigenous Peoples' Rights Act to file for and receive titles for their ancestral domains.<sup>121</sup>

Christian discontent could be more of a problem. When the peace process collapsed in 2008, the first place violence erupted was North Cotabato, where MILF fighters clashed with Christian militias allied to the military. The area is a longstanding flashpoint for conflict in Central Mindanao and the MILF and the government need to be vigilant to ensure it does not become one again.<sup>122</sup> Another place to watch is Cotabato City, which twice voted against joining ARMM and will vote for a third time on whether to join the Bangsamoro. The MILF is adamant the city join the new region, given it serves as the economic, transport and administrative hub of Central Mindanao. Although the city was once 50 per cent Christian, Muslims have dominated municipal politics in recent years, likely a reflection of changing demographics. Residents believe a plebiscite may go in the MILF's favour this time. Christians in Cotabato City are not necessarily opposed to joining but are worried about, among other things, whether Manila will supervise the new Bangsamoro police force and protection of property rights.<sup>123</sup>

Since the framework agreement was signed, local politicians in Central Mindanao have been cosyng up to the MILF to protect their interests. Most political clans are focused on getting their candidates elected in the May 2013 mid-term elections. In pro-MILF areas, nothing can be gained from opposing the framework agreement, either now or later.

The major players in the Sulu archipelago are also focused on the mid-term polls, but they could become potential

spoilers as the plebiscite and the 2016 elections approach. The MILF agreed to the territorial provisions assuming Manila would pressure the island provinces into joining the Bangsamoro.<sup>124</sup> It is unclear whether the Aquino government is willing or able to do so.

Some long-time observers of the peace process wonder if the otherwise progressive, reform-minded Aquino administration may be deliberately setting up the MILF by devising a territorial formula that could shrink the size of the autonomous region and destroy the leadership's credibility.<sup>125</sup> The two frontrunners for the 2016 presidential election have been antagonists of the MILF in the past, although, for now, they are backing the framework agreement.<sup>126</sup> Even if Manila wants the Sulu archipelago to join the Bangsamoro, it may not have sufficient leverage. Pragmatic cabinet members say they can "buy" the votes through development projects and other financial assistance.<sup>127</sup> But politics in the Sulu archipelago can be fickle. By the time the basic law is ready for popular ratification, the president's influence will have waned in advance of the 2016 elections and there could be political mileage in opting out of a new autonomy arrangement. The MILF is already trying to reach out to Basilan and Tawi-Tawi; Sulu is harder because the current kingpin and governor, Sakur Tan, is no friend of the MILF.<sup>128</sup>

The best option is to persuade the local politicians from the Sulu archipelago that, if they can secure a power base in the Bangsamoro government, the new arrangement could work to their advantage. The MILF wants the political party system and ministerial structure to weaken the region's tradi-

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<sup>121</sup> See Crisis Group Report, *Indigenous Rights and the MILF Peace Process*, op. cit., and Crisis Group interview, civil society activist working with indigenous peoples, Cotabato City, 29 October 2012.

<sup>122</sup> Violence also flared in Lanao del Norte in 2008, but the commander responsible for the attacks, Bravo, has been publicly very supportive of the framework agreement. "MILF warrior Bravo takes the peace path", *Mindanews.com*, 17 November 2012.

<sup>123</sup> They are worried that the police will be Maguindanaons, whom they perceive as the ones committing most of the crimes in city. Crisis Group interview, local journalist, Cotabato City, 29 October 2012.

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<sup>124</sup> Crisis Group interview, MILF negotiators and members of the International Contact Group, Manila and Cotabato City, September-October 2012.

<sup>125</sup> Crisis Group interviews, diplomats and journalist, Manila, August-October 2012.

<sup>126</sup> The current vice-president and future presidential candidate for the Partido ng Demokratikong Pilipino-Laban (PDP-Laban), Jejomar Binay, is close with Joseph Estrada, the former president. Estrada launched the first "all-out war" against the MILF in 2000, in which the military overran Camp Abu Bakar, the nerve centre of MILF training and operations. Estrada is sceptical of the peace process. See "Erap questions Malaysia's role in Moro peace talks", *ABS-CBN News*, 19 October 2012. Binay's likely rival in 2016 is Mar Roxas of the Liberal Party, who was a staunch opponent of the MOA-AD in 2008.

<sup>127</sup> But the administration lost Secretary Jesse Robredo of the Department of Interior and Local Government, its cabinet member most able to reach out to them, in a plane crash in late August 2012. He has been replaced by Mar Roxas, who is poorly equipped to be the administration's point person with local politicians. Most observers say he is too arrogant to deal with them effectively. Crisis Group interviews, diplomats and journalist, Manila, August and October 2012.

<sup>128</sup> On Tan see Crisis Group Report, *Local Politics in the Sulu Archipelago and the Peace Process*, op. cit.

tional powerbrokers, but there is no guarantee the local politicians will not be able to adapt. Someone like Tan, who is an astute politician and has demonstrated he can forge unlikely alliances within the region, could in fact beat the MILF at its own game in the first elections under the new system in 2016.<sup>129</sup>

### C. THE SPECTRE OF A SPLINTER

A Central Mindanao-based splinter group was a thorn in the MILF's side throughout the negotiations and will remain one for some time without, however, posing a serious threat to the implementation of the framework agreement.

In September 2011, the MILF central committee expelled a disgruntled but widely respected commander who had founded a new group, the Bangsamoro Islamic Freedom Movement (BIFM).<sup>130</sup> The falling out was not entirely surprising, as Umbra Kato had a history of acting in ways that jeopardised the peace process.<sup>131</sup> The decision meant the BIFM was no longer covered by the ceasefire, but the government's hands were tied as Kato and his fighters remained in MILF-controlled areas where military operations are restricted. The Aquino government was alarmed by what the split suggested about the internal cohesion of the MILF and frequently raised the issue in the negotiations.<sup>132</sup>

Kato was a problem for the MILF leadership because he was publicly criticising the lack of progress in the peace talks throughout 2011, when they were not going well.

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<sup>129</sup> Crisis Group interview, member of the International Contact Group, Manila, 25 October 2012. Tan hoped to be appointed the ARMM governor candidate for Aquino's Liberal Party and built up a diverse coalition to support him. In the end, the president chose close personal friend and caretaker ARMM governor Mujiv Hataman. Whoever wins will be dismissed early, whenever ARMM is replaced by the Bangsamoro.

<sup>130</sup> Resolution No. 02/09 Series of 2011, Declaring Ameril Omra Kato, his companions and followers are no longer MILF members, MILF Central Committee, 22 September 2011. "Muslim separatists in Philippines disown rogue commander", Reuters, 30 September 2011.

<sup>131</sup> Kato launched an unauthorised attack in January 2005 that killed eight soldiers; he was suspended and his base command, the 105th, was temporarily deactivated for this serious ceasefire violation. In 2008, he was one of the three "renegades" who launched attacks against Christian and military targets as the MOA-AD collapsed. As a result, he fell out of favour with the MILF leadership. See Crisis Group Briefings, *The Collapse of Peace in Mindanao*, and *Back to the Table, Warily, in Mindanao*, both op. cit.

<sup>132</sup> Counter-terrorism experts were also worried because of Kato's extensive contact with foreign jihadis and homegrown extremists in the past. Crisis Group Briefings, *The Collapse of Peace in Mindanao*, op. cit., p. 8; and *Back to the Table, Warily, in Mindanao*, op. cit., pp. 6-8.

He also questioned the central committee for abandoning the original goal of independence.<sup>133</sup> This is a sensitive point because MILF leaders feel their supporters were never convinced that this was the right decision. And as the negotiations picked up in 2012, the members of the central committee knew they would have to make concessions to secure a deal with the cautious Aquino administration.<sup>134</sup> Kato's criticisms would not help them sell the framework agreement to fighters and supporters. But even if his views resonated with some, this was not reflected in recruitment. No major MILF commanders broke away and the BIFM's numbers never surpassed more than a few hundred.<sup>135</sup>

In August 2012, the BIFM launched a series of attacks against military detachments in Central Mindanao that appeared to be an attempt to sabotage the peace talks just as they gathered steam. If that was the objective, it failed. Sporadic fighting dragged out for weeks and suspicions grew that Kato was receiving material assistance from local politicians.<sup>136</sup> The MILF cooperated with the military as soldiers pursued him and his fighters.<sup>137</sup>

In the wake of the framework agreement, the BIFM has been quiet.<sup>138</sup> The MILF and the government should use

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<sup>133</sup> "Kato: Islam at centre of Moro fight", *Philippine Daily Inquirer*, 20 August 2011.

<sup>134</sup> Crisis Group interviews, MILF negotiators, Manila and Cotabato City, 11 September and 28 October 2012. As an MILF central committee member explained of the stance in the negotiations, "we have a hard time defending our line internally". In consultations with civil society groups, negotiators have been asked whether the pact forecloses the possibility of independence, and what the MILF will do if its terms are not implemented. Some members of civil society are disappointed that the transition is shorter than the MILF wanted. Crisis Group interview, Manila, 25 October 2012; and Crisis Group observations, consultation convened by the Consortium of Bangsamoro Civil Society with MILF chief negotiator Mohagher Iqbal, Cotabato City, 30 October 2012.

<sup>135</sup> In February 2011, most estimates were less than 100. In late August 2012, the estimate was 400. Crisis Group interview, diplomat, Manila, 28 August 2012.

<sup>136</sup> See "MILF: 2 Maguindanao pols support Kato", *Philippine Daily Inquirer*, 11 August 2012; "'A big lie', Mayor Ampatuan says of reports they abandoned towns and supported BIFF", *Mindanews.com*, 18 August 2012. The politicians strongly denied the allegations. In Mindanao, many people believe that if any politicians were involved, they were motivated by political concerns ahead of the May 2013 election, not by opposition to the peace process.

<sup>137</sup> MILF forces at one point surrounded the troublemakers to get them to agree not to launch any further attacks while the peace talks were still underway, but they have since loosened the cordon. Crisis Group interview, military official, Cotabato City, 28 October 2012.

<sup>138</sup> But on 29 September, a week before the framework agreement was announced, the BIFM sent a letter to the MILF cen-

the ceasefire mechanisms that enable them to share intelligence on troublemakers like Kato, and move forward with the framework agreement in the months ahead.<sup>139</sup> The more promising the peace process seems, the less credibility Kato and the BIFM will have.

#### D. THE PROBLEM OF MILF FIGHTERS

What will become of the MILF's combatants is still unclear. As part of the 1996 agreement with the MNLF, thousands of slots were made available for integration into the Philippine military and police. Those integrated were mainly relatives of MNLF members, however, while most of the rank and file only received livelihood assistance and were never disarmed. A promised regional security force that would have absorbed many of them never materialised. The MILF draws a clear lesson from this counter-example: the MNLF fighters were left behind after the 1996 peace agreement and this cannot happen to its rank and file.<sup>140</sup>

The MILF sees many of its fighters, especially the younger ones, being incorporated into a new Bangsamoro police force, but not all could join. One option is creating an internal security force that would quasi-institutionalise the MILF armed presence for a limited number of years. A negotiator said they are open to registering weapons permissible under Philippine law, but want to keep heavier ones, such as rocket-propelled grenades and 50-calibre guns for a set period. The rationale is that these guns are necessary because of the BIFM and heavily armed political families who are their enemies.<sup>141</sup> But the MILF is also reassuring its supporters that it will not disband in case the government does not implement the framework agreement.<sup>142</sup>

In private, the government is circumspect about disarming the MILF. A senior official commented that it is probably more important to "contain" their weapons in the short term. Another one said that Manila had yet to raise options for

disarmament at the negotiating table.<sup>143</sup> An optimistic military official involved in internal inter-agency discussions said that socio-economic assistance will make the difference: if you pump enough in, guns will become irrelevant.<sup>144</sup>

Implementing a DDR program that tied disarmament and demobilisation to assistance to fighters and their families would be hard. The biggest problem is that MILF weapons are not the only illegal firearms to be worried about in the southern Philippines. Preliminary discussions with government have raised the idea of running simultaneous programs to target armed civilians and politicians with private armies who are sympathetic to the MILF.<sup>145</sup> The military understands that in return it would need to reposition its forces and the locally-based paramilitary units it relies upon would also have to go.<sup>146</sup> Another obstacle is that neither the MILF nor the government is serious about alternative livelihoods, normally the centrepiece of reintegration.<sup>147</sup> Both parties think retraining commanders and foot soldiers is simply too difficult. As a senior official remarked, "the line of least resistance" is to find them jobs that use their skills with a gun.<sup>148</sup> The MILF says that most fighters thought they would get jobs in the future Bangsamoro government.<sup>149</sup> Efforts to promote other options will struggle to gain traction.

The biggest obstacles are still a long way off. At this stage, optimism is warranted but should not blind anyone to the ways in which the peace process could fail.

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tral committee which declared the group had withdrawn its support to the peace process. Crisis Group interview, military official, Cotabato City, 28 October 2012. On 26 November, bombs in Maguindanao killed one BIFM member and an escort of the vice-chairman of political affairs. "Moro rebel killed in 2 blasts; 7 hurt", *Philippine Daily Inquirer*, 27 November 2012.<sup>139</sup> The mechanism is the Ad Hoc Joint Action Group (AHJAG), which has existed since January 2005. For details see Crisis Group Report, *Counter-insurgency vs. Counter-terrorism in Mindanao*, op. cit., pp. 10-12.

<sup>140</sup> Crisis Group interview, MILF negotiator, Cotabato City, 28 October 2012.

<sup>141</sup> Ibid.

<sup>142</sup> Crisis Group observations, consultation convened by the Consortium of Bangsamoro Civil Society with MILF chief negotiator Mohagher Iqbal, Cotabato City, 30 October 2012.

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<sup>143</sup> Crisis Group interviews, Manila, 25 October and 5 November 2012.

<sup>144</sup> Crisis Group interview, military official, Cotabato City, 26 October 2012.

<sup>145</sup> Crisis Group interviews, senior government official, Manila, 4 September 2012; military official, Cotabato City, 26 October 2012.

<sup>146</sup> Crisis Group interview, military official, Cotabato City, 28 October 2012.

<sup>147</sup> It seems likely any large-scale program would only begin after the framework agreement is implemented; in the interim, donors are working with the government to brainstorm small-scale quick impact projects that could be carried out with the MILF. Crisis Group communications, donor and member of the International Contact Group, 5 and 27 November 2012.

<sup>148</sup> Crisis Group interview, senior government official, Manila, 4 September 2012. A different official mentioned employing them as security guards. Crisis Group interview, Manila, 5 November 2012.

<sup>149</sup> Crisis Group interviews, MILF negotiators, Cotabato City, 28 October 2012; MILF supporters, Datu Saudi Ampatuan, Maguindanao, 30 October 2012.

## VI. CONCLUSION

The framework agreement is a triumph for the MILF and the Philippine government.

The decision of MILF leaders to move on from the terms of the discredited MOA-AD; put their credibility on the line with a risky territorial formula; and draft the basic law in cooperation with other Bangsamoro proves the depth of their commitment to a negotiated peace. They perceived that President Aquino wanted a settlement and were willing to meet him more than halfway.

The government deserves credit for ensuring politicians in Manila and potential spoilers in Mindanao have been open-minded, so far, about the framework agreement. President Aquino's popularity – in stark contrast to his predecessor – is the government's greatest asset in the peace process. But government officials also thought, throughout the negotiations, that the MILF was "weak" and lacked legitimacy to negotiate on behalf of the Bangsamoro. This is why they devised a strategy that would bring other actors in Mindanao into the peace process and insisted on a territorial formula that requires the MILF to rally support rather than one that presumes other Bangsamoro accept its leadership.

The course the framework agreement maps out through 2016 is a one-way road to greater involvement of other political players, first in Mindanao, then in Manila. On the bright side, this allows the Bangsamoro to negotiate the terms of the basic law among themselves before Congress gets involved. And the MILF now has an opportunity to prove itself in leading the work of the transition commission. But only time will tell if the parties were right to wrap up the formal stage of the negotiations and bring the discussions home to Mindanao while key elements of a final peace – namely the basic law, the constitutional question and the future of MILF forces – are still under debate. This could win over sceptics and spoilers, or it could simply make it even easier for them to derail the process once and for all.

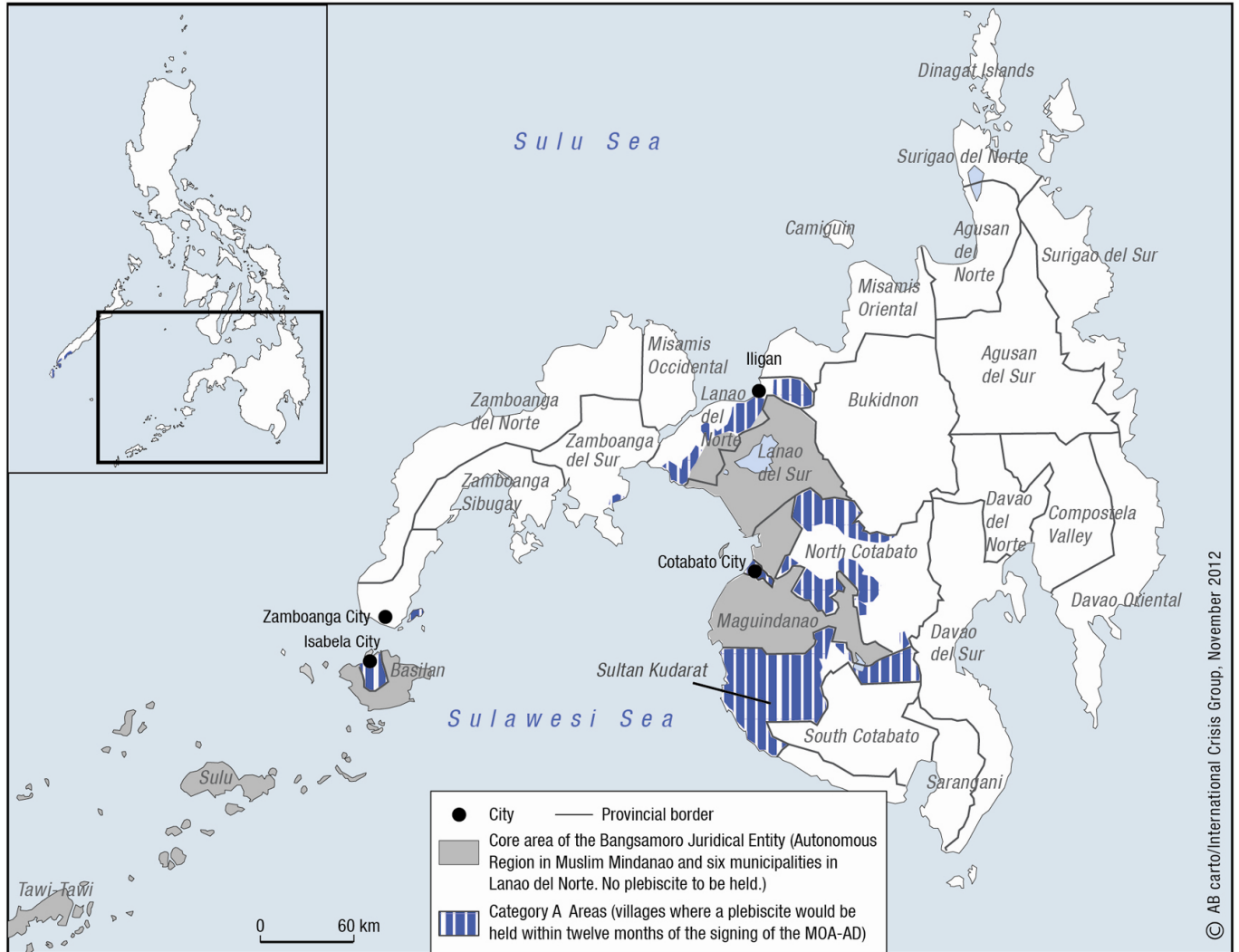
There is as yet no peace in Mindanao. There could be, but only if President Aquino spends his political capital making sure that there is support in Congress whenever the basic law is ready. The MILF and the transition commission cannot lobby all the key players in Manila by themselves. The framework agreement does not mean that by giving the Bangsamoro space to write the basic law, the Aquino government can step back, bask in the glow of a final peace, and wash its hands of what happens next. The MILF and other armed groups in Mindanao have rebelled for decades because there is a deeply-rooted anti-Bangsamoro bias at the core of the Philippine state. This is why autonomy has always been the only solution and why the Bangsamoro cannot achieve it on their own. Peace in the

country's troubled south could well be President Aquino's legacy – but only if he stays the course.

**Jakarta/Brussels, 5 December 2012**

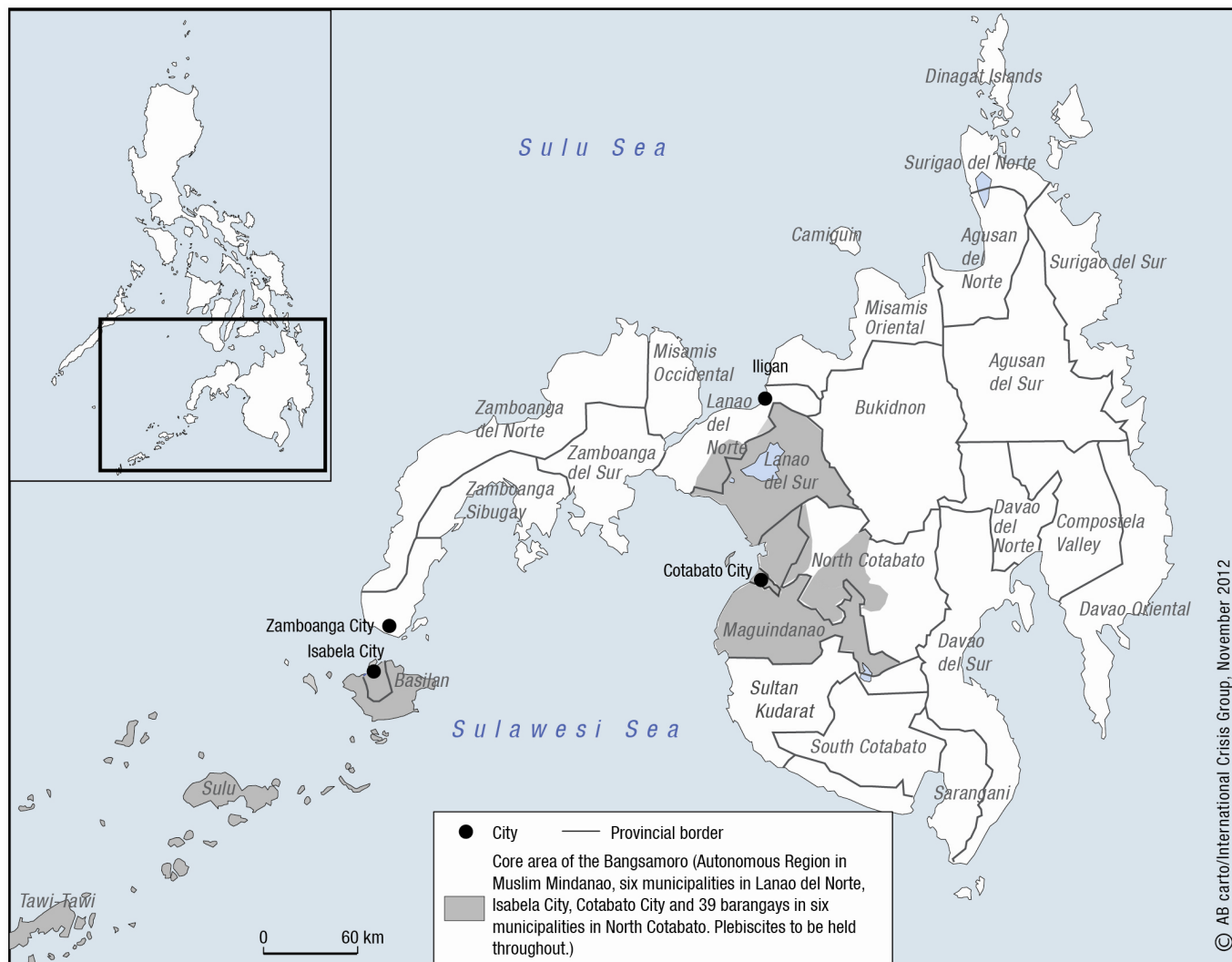
## APPENDIX A

### MAP OF THE BANGSAMORO JURIDICAL ENTITY (2008)



## APPENDIX B

### MAP OF THE BANGSAMORO (2012)



## APPENDIX C

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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**December 2012**



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| <b>Zbigniew Brzezinski</b>                   | <b>Aleksander Kwasniewski</b> | <b>Douglas Schoen</b>              |                          |
| <b>Kim Campbell</b>                          | <b>Todung Mulya Lubis</b>     | <b>Christian Schwarz-Schilling</b> |                          |
| <b>Jorge Castañeda</b>                       | <b>Allan J. MacEachen</b>     | <b>Michael Sohlman</b>             |                          |
| <b>Naresh Chandra</b>                        | <b>Graça Machel</b>           | <b>Thorvald Stoltenberg</b>        |                          |
| <b>Eugene Chien</b>                          | <b>Jessica T. Mathews</b>     | <b>Leo Tindemans</b>               |                          |
| <b>Joaquim Alberto Chissano</b>              | <b>Nobuo Matsunaga</b>        | <b>Ed van Thijn</b>                |                          |
|  | <b>Barbara McDougall</b>      | <b>Simone Veil</b>                 |                          |
|  | <b>Matthew McHugh</b>         | <b>Shirley Williams</b>            |                          |