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Overview

The Philippines has been wracked by an insurgency in its Muslim south since the early 1970s. A negotiated settlement at last seemed within reach by 2015. Moros, an umbrella term for thirteen ethno-linguistic groups that practice Islam, make up roughly 5 percent of the population in the predominantly Roman Catholic Philippines.¹ They are concentrated in two non-contiguous areas: the central portion of Mindanao, the large island in the country's far south; and in the Sulu archipelago, which stretches from the western tip of Mindanao to Sabah in eastern Malaysia. Moros began mobilizing against the Philippine state in the late 1960s and launched an armed rebellion in 1972. The first of several peace agreements to grant Moros autonomy was signed in 1976 under martial law.

The 1987 constitution envisioned a Moro autonomous region within the unitary republic. The government created this region by fiat in 1989 but it had few powers and remained under Manila's control. The insurgents did not believe it was truly autonomous. As peace talks dragged out, the armed movement splintered and divisions among Moros deepened. The original organization, the Moro National Liberation Front (MNLF), fractured along ethnic lines in the 1980s, signed a final peace agreement in 1996, and then fragmented further in the early 2000s. The main breakaway group, the Moro Islamic Liberation Front (MILF), has posed the most serious threat to the Philippine state since then. A settlement looked less likely with the MILF, as negotiations were constrained by autonomy provisions in the constitution. When a breakthrough agreement was reached in 2008, spoilers in Mindanao and Manila fiercely opposed it and the Supreme Court ruled it was unconstitutional. Despite these setbacks, the government and the MILF signed new peace agreements in 2012 and 2014.

This chapter explains why it has taken so long to resolve the territorial cleavage in the southern Philippines even though both sides recognize autonomy as the solution. Political interests in Mindanao and in Manila have repeatedly stood in the way, even while the 1987 constitution made autonomy possible. A major constraint has been procedural: to create a Moro autonomous region, the constitution requires legislation in Congress and a plebiscite in affected areas. This two-step process has allowed opponents of autonomy to block its implementation or to limit the territory and powers of such a region.

Background

For decades, peace eluded the southern Philippines for two reasons: the central government tried to impose autonomy unilaterally, and it frequently backpedalled on its promises. Over time, positions on both sides hardened, and the constitution became a sticking point in the negotiations. Four key moments elucidate the difficulties: the 1976 Tripoli agreement signed under martial law; the drafting of the 1987 constitution and the creation of the Autonomous Region of Muslim Mindanao in 1989; the 1996 final peace agreement with the MNLF and its partial implementation by Congress in 2001; and the 2008 memorandum of agreement on ancestral domain with the MILF.

History and more recent political grievances fuelled the insurgency. The MNLF and the MILF trace the Moro right to self-determination back to the existence, centuries ago, of distinct Muslim political structures. When the Spanish colonized the rest of the archipelago in the 1500s, they never gained control over these Islamized areas. It was only during the American period (1898–1946) that Moros were incorporated into what later became the Philippine state. Colonial administrators governed

¹ In the Philippine context, Moro is not considered a derogatory term. The thirteen ethnic groups are Badjao, Iranun, Jama Mapun, Kalagan, Kalibugan, Maguindanao, Maranao, Molbog, Palawani, Sama, Sangil, Tausug and Yakan.

via Moro elites, which established enduring ties between local strongmen and Manila.² From the 1930s onwards, migration of Christian settlers from the Visayas islands and Luzon, and discriminatory land policies pushed the Moros into an ever-shrinking portion of central Mindanao and the Sulu archipelago.³ During this period and after independence in 1946, Moro nationalism and identity emerged, initially among educated Muslims.⁴

The 1968 Jabidah massacre sparked Moro anger. Moro recruits to the Philippine military were killed by their commanding officers when they mutinied rather than foment rebellion in Sabah, in eastern Malaysia.⁵ The incident radicalized Nur Misuari, a university lecturer from Sulu teaching in Manila. He and other younger, educated Moros as well as some elites mobilized in support of secession.⁶ By late 1969, Misuari and 89 others underwent military training in Malaysia; they formed the nucleus of the MNLF when it was set up in 1971. Meanwhile, violence between Moros and Christian settlers in central Mindanao escalated. When President Ferdinand Marcos used this unrest to justify martial law in 1972, the insurgency began. The MNLF, with the support of Malaysia and Libya, became the standard bearer for the armed separatist movement. The fighting took a huge human and economic toll.⁷ Misuari and other senior leaders left to rally support in the Muslim world.⁸

The first agreement, signed in Tripoli, Libya, in 1976, yielded a ceasefire and proposed a Moro territory with distinct powers within the Philippine state. It included thirteen provinces in the 'areas of autonomy', even though most no longer had a Muslim majority.⁹ A provisional government would rule while the new political structures were set up. All subsequent negotiations have adhered to this formula: territory, powers and transition arrangements. The Tripoli agreement also set a precedent for third party involvement in peace negotiations; the pact was co-signed by Libya and the Organization of Islamic Conference (OIC).

A final clause made the Philippine government responsible for 'all necessary constitutional processes' for implementation. Under the 1973 constitution, which consolidated executive and legislative power in Marcos' hands, this simply meant he would decide.¹⁰ In 1977, Marcos unilaterally created two separate autonomous zones, one in central Mindanao and one in western Mindanao and

² Thomas McKenna, *Muslim Rulers and Rebels: Everyday Politics and Armed Separatism in the Southern Philippines* (University of California Press 1998) ch 5.

³ Patricio Abinales, *Making Mindanao: Cotabato and Davao in the Formation of the Philippine Nation-State* (Ateneo de Manila University Press 2000).

⁴ Muslims in Mindanao were not becoming more religiously observant but rather more conscious of their unifying ethnic identity as Moros. McKenna (n 2) ch 5-7.

⁵ The basic facts of the Jabidah massacre, and indeed whether it even occurred at all, are disputed. Marites Danguilan Vitug and Glenda M Gloria, *Under the Crescent Moon: Rebellion in Mindanao* (Institute for Popular Democracy 2000). The Philippine government still claims Sabah. See Gerald Sussman, 'Macapagal, the Sabah claim and Maphilindo: the politics of penetration' (1983) 13 (2) *Journal of Contemporary Asia* 210.

⁶ McKenna refers to this as a 'counter-elite', McKenna (n 2) ch 7.

⁷ The most widely cited figure is 120,000 killed since the 1970s. A World Bank study estimated the economic cost of the conflict from 1970–2001 to be as high as \$2–3 billion. Salvatore Schiavo-Campo and Mary Judd, 'The Mindanao Conflict in the Philippines: Roots, Costs and Potential Peace Dividend' (The World Bank Social Development Papers, Conflict Prevention and Reconstruction February 2005) <http://siteresources.worldbank.org/INTCPR/214578-1111996036679/20482477/WP24_Web.pdf>.

⁸ International Crisis Group, 'Southern Philippines Backgrounder: Terrorism and the Peace Process' (Asia Report No 80, International Crisis Group 13 July 2004) <www.crisisgroup.org/asia/south-east-asia/philippines/southern-philippines-backgrounder-terrorism-and-peace-process>.

⁹ Tripoli Agreement (Government of the Republic of the Philippines-Moro National Liberation Front) (23 December 1976) <www.hdcentre.org/wp-content/uploads/2016/06/The-Tripoli-Agreement-1976.pdf>. The thirteen provinces were Basilan, Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao del Sur, South Cotabato and Palawan.

¹⁰ 1973 Philippine Constitution <www.gov.ph/constitutions/1973-constitution-of-the-republic-of-the-philippines-2/>.

the Sulu archipelago, which were run by co-opted Moro elites. Fighting resumed, but not at the same level. The MNLF fractured along ethnic and geographic lines by 1984. Hashim Salamat, who served as the MNLF's head of foreign affairs, broke away to set up the MILF, taking the central Mindanao-based forces with him. This rivalry has complicated negotiations ever since.

The 1986 democratic transition ended the Marcos era but not the conflict in Mindanao. President Corazon 'Cory' Aquino commissioned a draft constitution, which contained autonomy provisions for Muslim Mindanao. In January 1987, weeks before the new constitution was to be ratified, government negotiators and Nur Misuari signed an accord in Jeddah, Saudi Arabia, which asked the president to suspend the autonomy provisions so the MNLF could conduct consultations with Moros.¹¹ Yet the 1987 constitution came into force with these provisions intact.¹² The first read:

There shall be created autonomous regions ... consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines.¹³

The new constitution specified neither the structure of government nor the exact powers of the autonomous region in Muslim Mindanao. Congress would determine them in legislation to be ratified by a popular vote in the areas included.¹⁴ This vested power in the legislature, although peace negotiations had always been handled by the president. The second step, the plebiscite, meant it would be difficult to include Christian-majority areas in an autonomous region as the MNLF wanted.

The Philippine government set up the region although the MNLF objected. In 1989, Congress passed legislation to create the Autonomous Region in Muslim Mindanao (ARMM).¹⁵ In the plebiscite, only Sulu and Tawi-Tawi from the Sulu archipelago and Maguindanao and Lanao del Sur in central Mindanao voted to join. The two major cities in central Mindanao, Cotabato City and Marawi City, both stayed out. ARMM failed to satisfy Moro nationalist aspirations and the insurgent organizations continued to enjoy popular support.

Decentralization in 1991 transferred fiscal and other powers to provinces, cities, municipalities and *barangay* (villages) across the country.¹⁶ This strengthened local politicians, meaning the patriarchs and scions of sprawling families who wield political power in the Philippines.¹⁷ For Moro elected officials, these changes were welcome as their primary interest is running their communities and controlling the resources of local government.¹⁸ Decentralization increased their access to central

¹¹ Jeddah Accord (Government of the Republic of the Philippines-Moro National Liberation Front) (3-4 January 1987) <www.ucd.ie/ibis/filestore/Jeddah%201987.pdf>.

¹² Jacques Bertrand, 'Autonomy and nationalist demands in Southeast Asia' in Alain-G Gagnon and Michael Keating (eds), *Political Autonomy in Divided Societies: Imagining Democratic Alternatives in Complex Settings* (Palgrave MacMillan 2012) 206.

¹³ 1987 Philippine Constitution, art X (Local Government), s 15.

¹⁴ *ibid* art X (Local Government), ss 20-21. Section 20 provided nine powers to be specified in this legislation, known as an organic act: administrative organization; creation of sources of revenues; ancestral domain and natural resources; personal, family and property relations; regional urban and rural planning development; economic, social, and tourism development; educational policies; preservation and development of cultural heritage; and 'such other matters as may be authorized by law for the promotion of the general welfare of the people of the region'.

¹⁵ Republic Act No 6734 'An act providing for an organic act for the autonomous region in Muslim Mindanao' 1 August 1989 (Philippines) accessed at <www.lawphil.net/statutes/repacts/ra1989/ra_6734_1989.html>.

¹⁶ Republic Act No 7160, 'An act providing for a local government code of 1991', 10 October 1991, (Philippines) accessed at <www.lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html>. Cities and municipalities are distinct administrative units in the Philippines. The act did not give local government comparable powers to those in a federal system, however.

¹⁷ Their power remained undiminished even during martial law. Paul D Hutchcroft and Joel Rocamora, 'Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines' (2003) 3 (2) *Journal of East Asian Studies* 259.

¹⁸ Alfred McCoy (ed), *An Anarchy of Families: State and Family in the Philippines* (University of Wisconsin Press 2009).

government funds and their fealty to Manila. This put Moro politicians increasingly at odds with the insurgents.

The constitution also allowed for an autonomous region in the Cordillera, in northern Luzon. It was never set up. Indigenous highlander communities launched an armed rebellion against the government in the late 1970s during martial law.¹⁹ Unlike in Mindanao, the main insurgent organization, the Cordillera Peoples Liberation Army (CPLA), and other highlander groups backed the autonomy provisions in the 1987 constitution. A plebiscite in 1990 failed due to disagreements between those who drafted legislation on autonomy and groups like the CPLA. Internal rifts deepened and a second plebiscite in 1998 did not rally enough votes to create the region.²⁰ Meanwhile, decentralization and the 1997 Indigenous Peoples Rights Act allowed highlanders to manage their own affairs.²¹ These other laws proved more effective at addressing their grievances.²² In Mindanao the same laws made it even harder to get autonomy to work.

The next president, Fidel V. Ramos, signed a final peace agreement with the MNLF in 1996 that would enhance the powers of ARMM and expand its territory.²³ The peace agreement, brokered by Indonesia under OIC auspices, envisioned two phases. In Phase I, lasting until 1998, the government would create a Special Zone of Peace and Development spanning all the provinces the MNLF had claimed in the 1976 Tripoli agreement, and provide development assistance throughout. In Phase II, the law passed to create ARMM in 1989 would be amended or repealed with new legislation that would reflect ‘the pertinent provisions of the final peace agreement’; another plebiscite would then be held with the MNLF’s blessing throughout the special zone. The peace agreement explicitly stated that interim arrangements in Phase I and the new regional autonomous government to be set up in Phase II would have powers consistent with national laws and the 1987 constitution.

In 2001, Congress acted unilaterally and produced a bill that omitted elements of the 1996 agreement.²⁴ The MNLF was unhappy with this process, as it did not have a clearly defined role in drafting the legislation under the terms of the peace pact. It was also dissatisfied with the substance of the law. A subsequent OIC-led review of the implementation of the 1996 agreement generated a list of

¹⁹ They opposed the Cellophil logging and pulp project in Abra province, and a proposed dam on the Chico river. The Communist Party of the Philippines and its armed wing, the New People’s Army, were largely responsible for mobilizing highlanders.

²⁰ Gerard A Finin, “Igorotism”, rebellion and regional autonomy in the Cordillera’ in Rosanne Rutten (ed), *Brokering a Revolution: Cadres in a Philippine Insurgency* (Ateneo de Manila University Press 2008) 114-19; and David Hyndman, ‘Organic act rejected in the Cordillera: Dialectics of a continuing fourth world autonomy movement in the Philippines’ (1991) 16 (2) *Dialectical Anthropology* 169. In both plebiscites, only one province out of the six that comprise the Cordillera voted in favour.

²¹ Republic Act No 8371, ‘An act to recognize, protect and promote the rights of indigenous cultural communities/indigenous peoples, creating a national commission on indigenous peoples, establishing implementing mechanisms, appropriating funds therefor, and for other purposes’ 29 October 1997 (Philippines), accessed at <www.gov.ph/1997/10/29/republic-act-no-8371/>. The act created new forms of land titles for indigenous peoples, known as certificates of ancestral domain.

²² One scholar argues that the pan-Cordillera identity was simply never fully embraced and that autonomy has greater meaning at village level, Steven Rood, ‘Closure for the CPLA, Autonomy for Cordillera Villages’ *Newsbreak* (Manila 9 July 2011) <<http://archives.newsbreak-knowledge.ph/2011/07/09/closure-for-the-cpla-autonomy-for-cordillera-villages/>>.

²³ Final Peace Agreement with the Moro National Liberation Front (Government of the Republic of the Philippines-Moro National Liberation Front) (2 September 1996) <<http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/phil16.pdf>>.

²⁴ Republic Act No 9054, ‘An act to strengthen and expand the organic act for the autonomous region in Muslim Mindanao, amending for the purpose Republic Act No 6734’ 31 March 2001 (Philippines) <www.lawphil.net/statutes/repacts/ra2001/ra_9054_2001.html>.

42 consensus points between the MNLF and the Philippine government on necessary amendments to the 2001 law.²⁵

The 1996 agreement was a partial success. In a plebiscite held in 2001, Marawi City in Lanao del Sur and Basilan (but not its capital Isabela City) voted in favour. All five Muslim-majority provinces were now within the autonomous region, but further expansion would only be possible if Christian-majority provinces (or portions of them) joined. The 2001 law strengthened ARMM but it was still not genuinely autonomous. The regional legislative assembly did not exercise the full powers accorded to it by Congress, for example by failing to pass enabling laws. Line agencies and offices of the central government did not devolve their powers and budgets to ARMM; they were required to do so under the 1989 law and again in the 2001 law, yet regional agencies still did not function autonomously. Provinces and the lower levels of local government remained more financially autonomous than ARMM.²⁶

The MNLF temporarily gained power through the 1996 peace agreement but failed to transform into a peaceful political actor. Misuari became regional governor but proved hapless. In 2001, President Gloria Macapagal Arroyo and her advisers ousted him as chairman of the MNLF and the organization fragmented. Although thousands of MNLF members were integrated into the military and police,²⁷ others remained armed. Misuari loyalists in his home province of Sulu lashed out violently in late 2001; Misuari himself fled to Malaysia only to be deported and placed under house arrest in Manila until 2008.

Meanwhile, the MILF quietly built itself up and established camps, such that it controlled strategic portions of central Mindanao by the mid-1990s. Negotiations led to a ceasefire in 1997. Nonetheless, in 2000 the military launched an offensive against the main MILF camp. In 2001, the Philippine government invited Malaysia to facilitate peace talks. In 2003, the military launched another offensive. MILF founder Salamat Hashim died of natural causes the same year and was replaced by Al Haj Murad Ebrahim. By 2005, peace talks were finally moving. International attention had increased because of the presence of foreign jihadists in Mindanao and their ties to individuals within the MILF and the Abu Sayyaf Group, an extremist breakaway of the MNLF.²⁸ The Philippine government had a stronger incentive than ever to end the conflict. But five factors made the quest for a peace agreement increasingly complex.²⁹

First, the MILF needed to broker a better deal than the MNLF, with a form of autonomy significantly different from ARMM, to justify its own armed struggle. Second, the MILF simply refused to recognize the 1987 constitution because it was biased against Moros. By extension the MILF resisted

²⁵ 'Updated Q&A on the status of the peace process between the GPH and MNLF' (*Slidedocument.org*, 18 November 2013) <<https://slidedocument.org/updated-q-a-on-the-gph-mnlf-peace-process>>.

²⁶ The International Bank for Reconstruction and Development/The World Bank, 'Joint needs assessment for reconstruction and development of conflict-affected areas of Mindanao: local governance and institutions report, vol 5' (The World Bank 2005) <www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/07/04/000386194_20110704071222/Rendered/PDF/630270WP0Local00Box0361499B0PUBLIC0.pdf>.

²⁷ 5,750 into the Armed Forces of the Philippines and 1,500 into the police.

²⁸ Jihadist groups in Southeast Asia have used Mindanao as a training ground from the 1990s onwards. Some MILF were willing to host the foreigners, notably Indonesians responsible for the 2002 Bali bombings. The MILF leadership expelled foreign jihadists from central Mindanao in November 2005 for the sake of the peace talks; they and their Abu Sayyaf Group allies went to the Sulu archipelago, where they were targeted by the Philippine military, with extensive U.S. support. See Patricio Abinales and Nathan Gilbert Quimpo (eds), *The U.S. and the War on Terror in the Philippines* (Anvil 2008); and International Crisis Group, 'The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao' (Asia Report No 152, International Crisis Group 14 May 2008) <[www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/152_counterinsurgency_vs_counter_terrorism_in_mindanao.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/philippines/152_counterinsurgency_vs_counter_terrorism_in_mindanao.pdf)>.

²⁹ On the challenges facing the peace process see also, Malcolm Cook and Kit Collier, 'Mindanao: A Gamble Worth Taking' (Lowy Institute Paper 17, Lowy Institute 20 November 2006) <www.lowyinstitute.org/files/pubfiles/Cook_Collier%2C_Mindanao.pdf>.

the constitutional process for creating an autonomous region through legislation and a plebiscite. Third, the Philippine government lacked credibility. Fourth, divisions among Moros had deepened, not only between the MNLF and the MILF, but also between local politicians and the insurgent organisations. Fifth, the Philippine public was increasingly sceptical of peace talks and the MILF, partly due to its terrorist links.

Starting in 2005, negotiations with the MILF tackled territorial demands first, and left governance on the back burner. Talks stalled whenever the government insisted that new areas could only join the autonomous area via a plebiscite as required by the constitution.³⁰ Yet in mid-2008, the two sides reached the breakthrough memorandum of agreement on ancestral domain, which proposed a 'Bangsamoro Juridical Entity' to replace ARMM.³¹ The memorandum was a triumph for the MILF. The Philippine government made significant concessions on territory and agreed to sweepingly vague language on governance. At no point did the memorandum mention the constitution, which would prove to be its downfall.

The memorandum proposed a modest 'core territory' for the Bangsamoro Juridical Entity, comprising the five provinces in ARMM, plus six municipalities in neighbouring Lanao del Norte that had voted yes in the 2001 plebiscite, but there was scope for significant future expansion in two steps. Areas listed in category A would vote in a plebiscite held in twelve months' time; areas in category B would vote in twenty-five years' time, after receiving socio-economic assistance. Together, this was a huge expanse of Mindanao, although much less than the MNLF's original thirteen provinces. It was unlikely all areas in categories A and B would vote yes; for example, the projected territory included portions of Christian-majority Zamboanga City (the economic hub of western Mindanao) and the lands belonging to non-Islamized indigenous peoples who do not self-identify as Moro.

Unlike the MNLF, which based its territorial demands on history, the MILF tried to expand the appeal of Moro nationalism to justify a larger autonomous region. This was the rationale for changing the name to the Bangsamoro Juridical Entity. The 2008 memorandum defined the 'Bangsamoro' as Moros, indigenous peoples, and spouses and descendants of both, thus including some Christians as well. This definition of Bangsamoro identity was contested, both by Moros who identified more strongly with their smaller ethno-linguistic group, and especially by indigenous peoples who perceived the memorandum as a land grab by the MILF.³² Christians in areas earmarked for future expansion similarly mistrusted the MILF.

The memorandum had scant information on governance, but the most detailed provision said the relationship between the central government and the Bangsamoro Juridical Entity would be 'associative characterized by shared authority and responsibility ... based on executive, legislative, judicial and administrative institutions with defined powers and functions in the comprehensive

³⁰ See the book written by MILF chief negotiator Mohagher Iqbal, published under the pen name Salah Jubair, *The Long Road To Peace: Inside the GRP-MILF Peace Process* (Institute of Bangsamoro Studies 2007).

³¹ Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001, unsigned agreement negotiated in Kuala Lumpur, Malaysia, 2008 (2008 Memorandum of Agreement) <<http://pcdsp.gov.ph/downloads/2012/10/MOA-%E2%80%93-Ancestral-Domain-August-5-2008.pdf>>.

³² Non-Moro indigenous peoples would like titles to what they also call their 'ancestral domains' under the 1997 Indigenous Peoples Rights Act. None of these groups that live within ARMM has ever received a title for ancestral domain, and their land rights are not secure. For the most part unarmed, indigenous peoples have been caught between Christian settlers and Moro insurgents in violent disputes over land and have often been displaced from their traditional areas. International Crisis Group, 'The Philippines: Indigenous Rights and the MILF Peace Process' (Asia Report No 213, International Crisis Group 22 November 2011) <[www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/213%20The%20Philippines%20-%20Indigenous%20Rights%20and%20the%20MILF%20Peace%20Process.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/philippines/213%20The%20Philippines%20-%20Indigenous%20Rights%20and%20the%20MILF%20Peace%20Process.pdf)>.

compact'.³³ The MILF and the Philippine government were to negotiate the comprehensive compact next, but the language on governance was loose enough to alarm Philippine nationalists.

The memorandum quickly proved unworkable. Christian politicians from Mindanao petitioned the Supreme Court to intervene. Clashes broke out between MILF forces, Christian militias and the military. In Manila, Arroyo's opponents believed she was trying to use the peace process as a Trojan horse to change the constitution, which limits the president to a single six-year term.³⁴ The memorandum seemingly hinted at constitutional change where it guaranteed automatic 'amendments to the existing legal framework'.³⁵ By early September, the Arroyo government announced it would not sign the memorandum in any form.³⁶

Most damaging of all was the Supreme Court ruling in October.³⁷ It concluded that the Bangsamoro Juridical Entity would create 'a state in all but name'. The ruling objected strongly to the idea of an 'associative relationship' with Manila because this would be fundamentally different from that of ARMM. The justices also concluded that President Arroyo exceeded her authority in guaranteeing the MILF changes to the 'legal framework', which the court interpreted to mean the constitution. The power to amend the 1987 constitution resides in Congress, a constitutional convention or the Filipino people through a referendum.³⁸ The president could only recommend but not promise changes to the constitution. In short, the memorandum of agreement on ancestral domain was unconstitutional.

2008 was a major setback for the peace process. The MILF concluded that constitutional change was imperative; the government could not meet its demands otherwise. Yet future presidents were likely to be even more hesitant to broach the issue after the Supreme Court had clarified the limits of executive authority. The chance of a deal with the MILF looked increasingly remote.

The Period of Constitutional Engagement

The 'constitutional moment' for resolving the Mindanao question began in mid-2010 when Benigno Aquino III, the son of Corazon Aquino, became president. The Philippine government and the MILF signed the framework agreement in October 2012 and the comprehensive agreement in March 2014.³⁹ These agreements laid out a vision of a larger, more powerful autonomous region called 'the Bangsamoro'. Remarkably, both substantively and procedurally, they appeared compatible with the constitution. The MILF made significant concessions to secure the deal, believing that President Aquino would be able and willing to implement the agreements in full, unlike his predecessors.

The peace agreements were a clear improvement over the existing autonomous region in terms of territory and powers. The core territory of the Bangsamoro would be all five provinces currently in ARMM; the six municipalities in Lanao del Norte and 39 *barangay* in another neighbouring province in

³³ 2008 Memorandum of Agreement (n 31) Governance, para 4.

³⁴ 1987 Constitution, art VII (Executive Department), s 4.

³⁵ 2008 Memorandum of Agreement (n 31) Governance, para 7.

³⁶ International Crisis Group, 'The Philippines: The Collapse of Peace in Mindanao' (Asia Briefing No 83, International Crisis Group 23 October 2008) <[www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/b83_the_philippines_the_collapse_of_peace_in_mindanao.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/philippines/b83_the_philippines_the_collapse_of_peace_in_mindanao.pdf)>.

³⁷ *The Province of North Cotabato v The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, En Banc, GR No 183591, 14 October 2008 <<http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/183591.htm>>.

³⁸ 1987 Constitution, art XVII (Amendments or Revisions).

³⁹ Framework Agreement on the Bangsamoro (The Philippine Government-Moro Islamic Liberation Front) (15 October 2012) <http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf>; Comprehensive Agreement on the Bangsamoro (The Philippine Government-Moro Islamic Liberation Front) (27 March 2014)

<http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf>.

central Mindanao, North Cotabato, that had voted yes in the 2001 plebiscite; and Cotabato City (in Maguindanao) and Isabela City (on Basilan). This was in fact larger than the core territory proposed in 2008. But unlike the failed memorandum, the new agreements avoided naming specific areas beyond the core territory that might join the Bangsamoro; instead, they allowed for ‘additional contiguous areas’ to join the core territory if there was sufficient popular support.⁴⁰

The sections on governance described an asymmetrical relationship with the central government, with a long list of exclusive (to the Bangsamoro), concurrent, and reserved (for Manila) powers. In contrast to ARMM, the Bangsamoro would have a parliamentary system headed by a chief minister, elected by and accountable to members of parliament. Seats in parliament would be allocated by district, by proportional representation and by sector.⁴¹ In ARMM, voters have separately and directly elected the executive and legislative branches, just as they do for national elections. The MILF argued that a parliamentary system would build consensus among Moros and encourage the formation of political parties, which are weak throughout the Philippines. Regional policing powers were another major triumph for the MILF. Its negotiators consistently argued for a regional police force because local police frequently have ties to the perpetrators of violence, whether they be politicians, criminals or extremists like the Abu Sayyaf Group.⁴² Like the MNLF, the MILF would get to run the region in an interim capacity as the new governance structures in the Bangsamoro were set up. The first elections under the new system would take place in 2016, timed to coincide with general elections and the end of Aquino’s term.

The MILF was also determined that the Bangsamoro enjoy fiscal autonomy so that it could govern independently of the central government. While recognizing that the Bangsamoro would be unable to raise enough revenue on its own for many years, the MILF negotiated provisions on taxation and natural resources with this objective in mind. For example, income from exploitation of fossil fuels would be shared equally, but the Bangsamoro would keep 75 percent of income from metallic minerals.⁴³ The MILF also negotiated for the Bangsamoro’s budget to be released automatically by Manila, akin to how the provinces, municipalities and *barangay* receive their internal revenue allotment, which is a percentage share of national taxes as specified in the 1991 decentralization law.⁴⁴ This would help correct for ARMM’s dependence on Manila and the comparative freedom enjoyed by local governments. However, the peace agreements also made it clear that a stronger regional government would not weaken the provincial governors and mayors, who would continue to have the same powers and budgetary allocations, unless changes were necessary to promote ‘good governance’.⁴⁵

Unlike the failed 2008 memorandum, the framework and comprehensive agreements on the Bangsamoro were not immediately denounced by opponents in Mindanao and Manila. Christian politicians and indigenous peoples who had been up in arms only a few years ago were less fearful. The

⁴⁰ Framework Agreement on the Bangsamoro (n 39), s V (Territory).

⁴¹ The parliament will have a minimum of 60 seats, with 50 per cent drawn from a party-list system open only to regional political parties, 40 per cent elected by district, and the remaining 10 per cent for under-represented sectors. Assuming the Sulu archipelago joins, the islands will have thirteen district seats in the parliament, while central Mindanao would have nineteen district seats. The election of the chief minister is by majority vote, including through a runoff if necessary. Removal of the chief minister requires a higher threshold: a two-thirds vote of no confidence. Draft Bangsamoro Basic Law, art VII (The Bangsamoro Government).

⁴² *ibid* art XI (Public Order and Safety), s 2 (Bangsamoro Police).

⁴³ 2013 Annex on Revenue Generation and Wealth Sharing, s VII (Natural Resources).

⁴⁴ 1991 Local Government Code, Title III (Shares of Local Government Units in the Proceeds of National Taxes), ch I (Allotment of Internal Revenue), ss 284-88. By law, 20 percent of the internal revenue allotment should be spent on development projects.

⁴⁵ ‘The privileges already enjoyed by the local government units under existing laws shall not be diminished unless otherwise altered, modified or reformed for good governance pursuant to the provisions of the Bangsamoro local government code.’ Framework Agreement on the Bangsamoro (n 39), s I, pt 3.

provisions on identity and territorial expansion of the Bangsamoro were carefully worded to respect the freedom of choice of non-Moros. Government and MILF negotiators had also reached out to likely opponents before the agreements were finalized.⁴⁶ Moro politicians with poor relations with the MILF were unlikely to be happy with any peace deal that strengthened their rivals, but they did not feel the agreements threatened their interests and their budgets, at least not immediately, and stayed quiet. Nur Misuari of the MNLF was angry, predictably, as he felt the new agreements were diminishing what his organization had achieved for the Moros, but he had little capacity to derail their implementation. Pundits and members of Congress in Manila objected to certain aspects of the peace agreements, but these were criticisms of technicalities rather than of the principle of stronger autonomy.

Whether the peace agreements were compatible with the constitution was a matter of opinion. The government, namely the Office of the Presidential Adviser on the Peace Process which led the negotiations, was confident none of the substantive powers of the Bangsamoro necessitated constitutional change. The chief negotiator was in fact a constitutional law expert who had had to persuade sceptical members of the cabinet to agree to risky concessions. For example, the constitution does not specify the form of government for autonomous regions, however the legality of the parliamentary structure could be challenged.⁴⁷ The peace agreements would also create in the Bangsamoro a number of regional equivalents to national institutions, some of which have mandates defined by the constitution.⁴⁸ For example, under Article X on local government, the constitution refers to local police agencies in autonomous regions, which would appear to sanction the creation of a Bangsamoro police,⁴⁹ but Article XVI on general provisions mentions only one police force.⁵⁰ President Aquino's advisers felt that provided regional bodies were responsible and answerable to their national counterparts in Manila, the peace agreements were constitutional.

The MILF took the opposite view and believed it had eked out powers that surpassed those permitted under the constitution. To understand how the two sides had managed to sign the peace agreements nonetheless, it is necessary to look in more detail at the three reasons why the MILF wanted to change the constitution – to maximise Moro autonomy, to avoid constitutional procedures for setting up an autonomous region, and to ensure irreversibility of new autonomy arrangements – and how the government addressed these concerns in the negotiations.

First, the MILF wanted to maximise Moro autonomy within the Philippine state and believed that the unitary character of the Philippine republic, as protected by the 1987 constitution, was an unfair constraint in peace negotiations. In the initial phases of the talks under President Aquino, the MILF pushed to discuss constitutional change up front, which the government resisted. Instead, Aquino's negotiators proposed focusing first on political demands, and then assessing whether these could be accommodated under the current constitution. Rather than refuse to consider constitutional change,

⁴⁶ The MILF even appointed a representative from the Teduray tribe in Maguindanao as an alternate member of its negotiating team for the peace talks.

⁴⁷ Interview with a senior official, Office of the Presidential Adviser on the Peace Process (OPAPP) (Manila, the Philippines, 26 January 2012).

⁴⁸ The Commission on Elections, Commission on Audit and Civil Service Commission are called the 'constitutional commissions' and are the subject of art IX in the 1987 Constitution. The Commission on Human Rights is discussed under art XIII (Social Justice and Human Rights), s 17-19. The Office of the Ombudsman is described under art XI (Accountability of Public Officers), s 5-14.

⁴⁹ 'The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised and utilized in accordance with applicable laws. The defence and security of the regions shall be the responsibility of the National Government.' 1987 Philippine Constitution, art X (Local Government), s 21.

⁵⁰ '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.' 1987 Philippine Constitution, art XVI (General Provisions), s 6.

the government side conveyed to the MILF that the president was open to it, but only if necessary. A meeting between MILF Chairman Murad and President Aquino in Tokyo, Japan, in August 2011 began to build trust between the two sides. The MILF subsequently agreed to park the issue of constitutional change rather than allow it to bog down the negotiations, perceiving that the president sincerely wanted peace in Mindanao and could be trusted to act in good faith.

Second, the MILF wanted to avoid the constitutional procedure for creating an autonomous region. Unless the peace agreements were implemented through legislation in Congress and a plebiscite, it would be necessary to change the constitutional provisions on autonomous regions. The 2008 Supreme Court ruling had clarified that the president lacked authority to implement the peace agreements otherwise. For the MILF, the problem with the constitutional procedure was twofold: it was justifiably concerned about legislators interfering in a peace process many knew very little about, and doubted that future plebiscites would favour territorial expansion. Given the MNLFF's experience, the MILF feared legislators would mangle the agreements as they were enshrined in domestic law, by omitting or changing important provisions, and that the results of a plebiscite would be disappointing.

The MILF however agreed to implement the peace agreements according to the constitution. The 2012 framework agreement contained a section on transition and implementation which specified that a new piece of legislation, called the Bangsamoro Basic Law, would be passed and a fresh plebiscite held.⁵¹ The MILF backed down because it perceived that President Aquino had sufficient sway over Congress and the ability to push through priority legislation such that the Bangsamoro Basic Law would faithfully reflect the peace agreements.⁵² The two sides also came up with a way for the MILF to participate in drafting the legislation. The peace agreements created a Bangsamoro Transition Commission, whose fifteen members would be nominated by the government and the MILF, and would reflect the diverse communities within the Bangsamoro. Chaired by the MILF chief negotiator, the commission's main responsibility would be to write the Bangsamoro Basic Law. In addition, it would propose constitutional amendments necessary to accommodate the powers of the Bangsamoro.⁵³

The real revelation was where the plebiscite would be held. The core territory of the Bangsamoro and the provisions on the plebiscite were among the last issues negotiated for the framework agreement. The government's stance was that a fresh plebiscite would have to be held in all areas comprising the core territory of the new region, not just those areas that lay outside ARMM, as had been the case in the 2001 plebiscite.⁵⁴ This reflected the 2008 Supreme Court ruling, which had clarified that results from previous plebiscites could not apply if the proposed autonomy arrangements diverged substantially from current ones.⁵⁵ This troubled the MILF, and ran the risk of the Bangsamoro ending up smaller than the existing autonomous region because of opposition within the Moro community.

The MILF has claimed to be acting in the best interests of all Moros, but this is contested by Moro elites from the three provinces in the Sulu archipelago. Competing ethnic identities have always circumscribed the appeal of Moro nationalism. These divisions have been more problematic for the MILF than the MNLFF, because the former is only really present in central Mindanao. MILF Chairman Murad and other senior leaders are Maguindanao, with a sprinkling of Maranao, the ethnicity from Lanao; almost all of its 12,000 fighters are from the same areas.⁵⁶ The MILF has few followers among

⁵¹ 2012 Framework Agreement, s VII (Transition and Implementation).

⁵² President Aquino's ruling Liberal Party and its allies in Congress had successfully pushed through the controversial reproductive health bill.

⁵³ 2012 Framework Agreement, s VII (Transition and Implementation).

⁵⁴ Interviews with MILF and government negotiators and members of the International Contact Group (Manila, the Philippines, September 2012).

⁵⁵ 2008 Supreme Court ruling.

⁵⁶ The MILF has a base command in the south-east corner of Basilan but is hardly present in Sulu or Tawi-Tawi.

the Tausug, which is the largest ethnic group in the Sulu archipelago. The Tausug however have historically played a leadership role among Moros, yet would likely be sidelined for the foreseeable future with the MILF or its Maguindanao allies poised to run the Bangsamoro on an interim basis and possibly afterwards. The MILF was concerned that Sulu elites might use a new plebiscite as an opportunity to persuade their constituents to vote no, and to reject the new autonomy arrangements as negotiated by the MILF. In other words, rather than expanding the autonomous area, the plebiscite could become a means for provinces to opt out of the Bangsamoro. Not only would this damage the MILF's credibility, and reverse the territorial gains made by the MNLF, it would also deprive the Bangsamoro of a potential source of revenue: taxes from offshore oil and gas believed to lie beneath the Sulu Sea.

The MILF acquiesced because it had little choice. When the government tabled its position on the plebiscite, the parties were very close to finalizing the framework agreement. The MILF was otherwise happy with governance arrangements and the economic and fiscal powers it had negotiated, and was reluctant to let these slip away by taking a hard line on territory and the plebiscite. Third parties directly involved in the negotiations also played a constructive role in back-channelling to secure the MILF's agreement. The members of the International Contact Group, an advisory body comprising foreign governments and international non-governmental organizations that have sat in on the talks since 2009, and the Malaysian facilitator held quiet meetings with MILF central committee members in Mindanao.⁵⁷ Aquino's advisers also assured the MILF that the president would lean on Moro politicians in the Sulu archipelago to rally votes in support of joining the Bangsamoro. In agreeing to the plebiscite and to implementing the peace agreements through legislation in Congress, the MILF had moved very far from its stance in 2008, when it had rejected constitutional processes entirely. The MILF was reluctant to admit it had backed down, and the mandate of the Bangsamoro Transition Commission to propose constitutional amendments later helped save face.

The third reason why the MILF wanted to change the constitution was to ensure irreversibility. By implementing the peace agreements through ordinary legislation, the MILF was running the risk of a future Congress rolling back the powers of the Bangsamoro. By enshrining core provisions of the peace agreements in the Constitution, it would be much more difficult to reverse these gains. Here too, however, the MILF eventually backed down. Instead of constitutional change, the MILF opted to use international involvement in the peace process as a way of keeping the government honest. In 2009, the MILF supported the creation of the International Contact Group because it believed the presence of internationals around the peace table would make it harder for the government to backpedal future agreements, like the Arroyo government had with the 2008 memorandum. This was formalized in the 2012 framework agreement, which proposed creating a third party monitoring team to provide regular reports on implementation and eventually to sign off on an exit agreement.

Resolving the territorial cleavage in Mindanao within the parameters of the 1987 constitution had seemed next to impossible after the collapse of the peace process in 2008. Yet the Philippine government and the MILF managed to negotiate a new deal only four years later. The breakthrough was due largely to the MILF's willingness to be flexible once it became clear that President Aquino was personally committed to the success of the peace process. On the government side, it is unclear if the president was ever really open to changing the constitution, or whether his negotiators perceived that the only way of developing momentum in the early phases of the talks was to convince the MILF that the option was on the table.

Once the framework agreement and the comprehensive agreement were signed, both parties shifted their attention to the urgent matter of implementation. President Aquino was adamant that

⁵⁷ The International Contact Group was comprised of the United Kingdom, Japan, Turkey, Saudi Arabia, Muhammadiyah, The Asia Foundation, the Centre for Humanitarian Dialogue and Conciliation Resources.

Congress pass the Bangsamoro Basic Law and that the plebiscite be conducted before his term ended in 2016. The MILF was of the same view and ultimately did not propose any constitutional amendments through the Bangsamoro Transition Commission, despite its mandate. Steering clear of constitutional change made it more likely that the peace agreements would be implemented quickly, while President Aquino still retained sufficient political capital to control Congress as it reviewed the Bangsamoro Basic Law.

Up until January 2015, implementation was delayed but on track. After prolonged back-and-forth over the final wording with the MILF, the president's office submitted the Bangsamoro Basic Law to Congress in September 2014.⁵⁸ A specially convened ad hoc committee, chaired by Congressman Rufus Rodriguez from Cagayan de Oro in northern Mindanao, led deliberations on the bill in the House of Representatives and held public hearings around the Philippines in late 2014. A committee in the Senate, chaired by Ferdinand 'Bongbong' Marcos, Jr., the son of the former president, deliberated and held its own public hearings in parallel, but was expected to follow the lead of the lower house on the bill. It seemed likely Congress would pass the draft law, with some revisions but none too drastic. Most legislators were not under any pressure from their constituents on the matter; the Philippine public was largely ambivalent and had confidence in Aquino's leadership.⁵⁹ While some legislators queried the constitutionality of certain aspects, such as policing powers, and Moro elites in the Sulu archipelago grumbled during the public hearings, there was little to be gained from vociferously opposing a bill that the president was intent on passing. It seemed the MILF had been right to pin its hopes on President Aquino and let its desire for constitutional change fall by the wayside.

Outcome of the Process

In January 2015, President Aquino's political capital evaporated in the wake of a botched counter-terrorism operation in central Mindanao. The final stages of the peace process hinged entirely on the president's ability to sway Congress and Moro elites in the Sulu archipelago to implement the peace agreements to the MILF's satisfaction. With the president's approval ratings in freefall, skeptics in Manila and Mindanao no longer felt compelled to stay quiet. The strategy for implementation suddenly looked short-sighted. The peace process went nowhere as attention turned to campaigning for the May 2016 elections. The victory of Rodrigo Duterte, the former mayor of Davao City, the country's first Mindanawon president, and a committed federalist, dramatically shifted the politics of the peace process yet again.

On 25 January 2015, elite police commandos entered Mamasapano, Maguindanao, a village under MILF control, to kill Malaysian extremist Zulkifly bin Hir alias Marwan and his local ally Basit Usman. They were hiding with members of an MILF splinter group that rejects the peace process, called the Bangsamoro Islamic Freedom Fighters.⁶⁰ The police did not inform the MILF of this risky

⁵⁸ The final negotiations were a closed door session between three MILF representatives and three government representatives, one of whom was the president's chief legal adviser. Interview with a member of the International Contact Group (Manila, the Philippines, March 2015).

⁵⁹ Public hearings by the two congressional committees were largely attended by Muslims, as the Bangsamoro Basic Law was perceived as a Moro issue. Interviews with government officials, OPAPP (Manila, the Philippines, March 2015).

⁶⁰ For more details on Marwan, see Institute for Policy Analysis of Conflict, 'Killing Marwan in Mindanao' (Report No 17, Institute for Policy Analysis of Conflict 5 March 2015)

<http://file.understandingconflict.org/file/2015/03/IPAC_17_Killing_Marwan_in_Mindanao.pdf>. For details on the BIFF's split from the MILF, see International Crisis Group, 'The Philippines: Back to the Table, Warily, in Mindanao' (Asia Briefing No 119, International Crisis Group 24 March 2011) <www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/B119%20The%20Philippines%20%20Back%20to%20the%20Table%20Warily%20in%20Mindanao>.

operation despite coordination mechanisms on counter-terrorism.⁶¹ A deadly firefight broke out between the police and MILF members; 44 police, seventeen MILF and five civilians were killed. Marwan was dead too, but the political and human cost was extremely high. The Philippine public was outraged and angry at the MILF.

The Mamasapano incident was the first major clash between the MILF and government forces in central Mindanao since 2008–2009. Information emerged that the president had been closely involved in planning and overseeing the police operation.⁶² With the 2016 national elections less than eighteen months away, senators seized an opportunity to grandstand and to question the president's judgment, the MILF's sincerity, and the peace process as a whole in televised inquiries. The president's approval ratings fell below 50 percent for the first time.⁶³ The Aquino government was on the back foot and there were no real champions of the MILF and the Bangsamoro Basic Law beyond the executive branch. The chair of the ad hoc committee, Congressman Rodriguez, ratcheted up his rhetoric against the MILF even while he assured anxious members of the International Contact Group that Congress would still pass the Bangsamoro Basic Law.⁶⁴ Legislators criticizing the bill and the president had little grasp of how difficult it had been to broker a deal, and how many concessions the MILF had made in the negotiations. The firestorm in Congress proved the MILF had been right to be wary of exposing the peace agreements to the politicking of legislators.

The Mamasapano incident changed perceptions of the Bangsamoro Basic Law and refocused attention on the trustworthiness of the MILF. Arguments about defending the constitution and the Philippine state were now more potent. Sceptical legislators and political opponents of the MILF in Mindanao had an opening to water down the bill. In June, a group of former politicians and Catholic church officials filed a petition with the Supreme Court challenging the constitutionality of the peace agreements and requesting the justices issue a temporary restraining order to prevent their implementation. Some within the MILF perceived the delay as an opportunity to reopen negotiations and push yet again for constitutional change, if it proved impossible to implement the framework and comprehensive agreements.⁶⁵ Hopes for passing legislation on President Aquino's watch dimmed and then were finally snuffed out as the May 2016 elections approached.

During his campaign for the presidency, Duterte pledged to bring lasting peace to Mindanao and to shift the Philippines to a federal system. After his inauguration in June 2016, the new president's vision for what this would mean practically began to take shape. First, his administration reconstituted the Bangsamoro Transition Commission and expanded its membership such that it represents groups

⁶¹ The police could have informed the MILF through the Ad Hoc Joint Action Group, through which intelligence related to criminal and terrorist activity is shared.

⁶² The police were the first to release a report on the Mamasapano incident in March; full text of the Board of Inquiry's report can be downloaded from the Philippines Star website 'DOCUMENT: PNP Board of Inquiry's Mamasapano Report' *Philippine Star* (Manila, 13 March 2015) <www.philstar.com/headlines/2015/03/13/1433196/full-text-pnp-board-inquiry-mamasapano-report>. Next was the Senate; for a comparison of its findings and those of the Board of Inquiry, see Camille Diola, 'Juxtaposed: BOI and Senate panel Mamasapano probe findings' *Philippine Star* (Manila, 19 March 2015) <<http://www.philstar.com/news-feature/2015/03/19/1435317/juxtaposed-boi-and-senate-panel-mamasapano-probe-findings>>. Later in March, the MILF released its own investigation, MILF Special Investigative Commission, 'Report on the Mamasapano Incident' (Moro Islamic Liberation Front March 2015) <<http://www.gmanetwork.com/news/story/458026/news/nation/full-text-report-of-the-milf-on-the-mamasapano-clash>>.

⁶³ His approval rating declined from 59 per cent to 28 per cent from November 2014 to March 2015; his trust rating declined from 56 per cent to 36 per cent during the same period. See Kristine Angeli Sabillo, 'Pulse Asia: Aquino trust, approval ratings at their lowest after Mamasapano incident' *Philippine Daily Inquirer* (Manila 17 March 2015) <<http://newsinfo.inquirer.net/679329/aquino-trust-approval-ratings-plunge-to-lowest-levels-after-mamasapano-clash>>.

⁶⁴ Interview with a member of the International Contact Group (Manila, the Philippines, March 2015).

⁶⁵ Interview with a technical advisor, the MILF (Cotabato City, the Philippines, March 2015).

who felt excluded previously – notably the MNLF. The new commission crafted a revised version of the Bangsamoro Basic Law, which reflected the framework and comprehensive agreements signed with the MILF, as well as the 1996 final peace agreement with the MNLF, and any other relevant legislation. In mid-2017, the draft law was submitted to Congress. Progress towards passage of the bill remained slow but it was finally passed in mid-2018. The constitutionality of key provisions, notably on a regional police force, remained in question; language in the bill was modified to reflect these concerns. Meanwhile, a parallel process to introduce federalism – which would require sweeping changes to the constitution – is underway.⁶⁶ How peace agreements struck with insurgents in Mindanao will be reconciled with Duterte’s federalist ambitions before the end of his term in 2022 is unclear.

The election of a federalist to the presidency is an unforeseen twist in the peace process. The MILF had never sought to make common cause with the federalist movement to advance its campaign for constitutional change, even though it ought to be easier to grant more extensive powers to Moros under a federal system. Rather, the MILF stuck to demanding an asymmetrical arrangement within a unitary system. Its leaders did so for good reason: Philippine nationalists who defend the 1987 constitution have always criticized the peace agreements because they believe granting Moros more autonomy encourages other regions or provinces to demand the same. Now that the campaign for federalism is being led openly by the president himself, the political calculations look very different. For the MILF, they have little choice but to back President Duterte’s iconoclastic vision for peace in Mindanao, and hope that he finally succeeds where his predecessors have failed.

Lessons Learned

For four decades, the Philippine government negotiated, intermittently, with Moro insurgents. The contours of the 1976 Tripoli agreement were broadly the same as the 2012 and 2014 agreements. Even when autonomy was clearly the solution and constitutionally viable, it was the politics of implementation that mattered. Several lessons can be drawn from the Philippine experience.

First, it may be possible to resolve a territorial cleavage without changing the constitution. The democratic transition in 1986 was a missed opportunity to end the conflict and draft the 1987 constitution such that it addressed insurgent grievances. While recognizing the limits of the unitary Philippine republic by allowing for decentralization and two autonomous regions, the constitution has constrained the negotiating position of the central government in peace talks with Moros and, more problematically, it has given a prominent role to Congress in implementing autonomy. Nonetheless, when the political will was there on both sides of the negotiating table, it was possible to reach a deal compatible with the constitution.

Second, majority opinion is unlikely to favour granting more power to a marginalized minority. The Philippines has an armed rebellion in Mindanao precisely because Moros feel the rest of the country is not sympathetic to their plight, yet the constitution has an inherent tension: it gave Congress, whose members reflect the views of the majority, the ability to decide what powers this minority could have. There is a strong vein of anti-Moro sentiment in the Philippines that politicians are all too willing to tap for their own purposes, as demonstrated in 2015. In democratic societies like the Philippines, the legislative branch can play an important role in endorsing the devolution of power. In situations where there is a territorial cleavage, however, political solutions like asymmetric autonomy may be unpalatable to a majority that fears for the unity and integrity of the country.

Third, plebiscites may be necessary to democratize an elite-brokered settlement but come with risks. The Aquino government framed the plebiscite not just as a constitutional necessity but also as a means for making the peace process more inclusive. The prospect of the plebiscite encouraged the

⁶⁶ As per the 1987 Philippine Constitution, art XVII (Amendments or Revisions), ss 1-4.

MILF to reach beyond its natural constituency in central Mindanao. Yet political mobilization in Mindanao has weakened since the conflict first began in the 1960s and 1970s. Divisions within the Moro community are deep. The political interests of Moro elites and their capacity to manipulate voters cannot be ignored. The plebiscite will require a well-organized public information campaign and must be conducted cleanly if it is to imbue the peace process with democratic values, as the Aquino government intended. If these conditions are difficult to obtain in a country with regular elections and reasonably good state capacity, they will be even more elusive elsewhere.

Fourth, sequencing of negotiations and constructive ambiguity are crucial to the success of constitutional transitions. By reaching agreement on easier issues first, and postponing the hard questions, the MILF and the government were able to build momentum in the talks. This made it easier to overcome the sticking points on territory and the plebiscite later. The government was also sensitive to the MILF's need to save face even when making major concessions, as it did on constitutional change and territory. Giving the MILF-led Bangsamoro Transition Commission a mandate to look into constitutional amendments was crucial. Territorial provisions for contiguous areas to join the Bangsamoro in the future allowed the MILF to claim that it had not really given up any territory, even if Christian areas that were once inhabited by Moros will never join. However, ambiguity in governance provisions in the 2008 memorandum angered Philippine nationalists and contributed to the collapse of the peace talks. A keen understanding of political context and dynamics between negotiating parties is essential to sequencing and using ambiguity effectively.

Fifth, third parties can provide important support. The International Contact Group was a particularly innovative aspect of the talks under the Aquino government. They championed the peace process when it stalled and provided technical expertise, particularly to the MILF, to bridge the gap in knowledge on constitutional and other legal issues. The blend of foreign states and non-governmental organizations in the International Contact Group meant the MILF and the Philippine government had access to different perspectives. Third party leverage was limited, however, once Congress was making the decisions on implementation. There were also instances in which third parties could have done more, especially the OIC which only intermittently engaged, despite its leverage over the MNLF and its capacity to convene the Moro insurgent leadership. The peace talks have had a high degree of international involvement, yet it has remained a Philippine-owned process throughout, and the credit for reaching the 2012 and 2014 agreements is owed to the MILF and the Aquino government.

The Philippines shows how autonomy can address territorial cleavages within a unitary state. However, autonomy could only end violent political mobilization if negotiated with Moro insurgents. The 1987 constitution made autonomy possible, but also forced the government to implement any peace agreement through legislation and a plebiscite. This exposed the peace process to political forces that proved difficult to control, even for a president as popular and as committed to ending conflict in Mindanao as Benigno Aquino III.

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CONTRIBUTING ORGANIZATIONS

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