

***Politics of Constitutional Design and Implementation:
Addressing Community Diversity in Mindanao***

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The so-called Mindanao problem has faced the Philippines for five centuries and remains unresolved to this day. Most analysts have regarded it as a political and economic issue, which is not rooted in cultural or religious considerations. In fact, the economic, political, cultural and religious dimensions have become so intertwined in the perceptions of Christians and Muslims in Mindanao that it is difficult to segregate them from each other.

The Memorandum of Agreement on the Ancestral Domain Aspect (MOA-AD) would have been the beginning of the solution, had it been handled well by the present government. It sought the expansion of the geographical coverage of the Autonomous Region in Muslim Mindanao (ARMM) under a Bangsamoro Juridical Entity (BJE). This juridical entity would be empowered to establish its own courts, security, trade, education and election systems and explore and develop natural resources in its own territory.¹

The date set for the signing of that historic document was on 5 August 2008 in Kuala Lumpur, Malaysia. It was prevented from happening when the Philippine Supreme Court issued a Temporary Restraining Order the day before the scheduled signing.

¹ Amina Rasul, “How to Make the the GRP-MILF Peace Process Work,” in *Voices of Dissent: A Postscript to the MOA-AD Decision* (Mandaluyong City: Magbassa Kita Foundation/ Philippine Council for Islam and Democracy, 2009), p. 115.

The consequences were tragic and immediate. After the resumption of hostilities between government forces and the Muslim insurgents, a hundred lives were lost and some 600,000 persons in Mindanao were displaced from 4 August to 4 September 2008.²

On 14 October, the Supreme Court by an 8-7 vote declared that the MOA-AD was “contrary to law and the Constitution.”

The objectives of this paper are (1) to examine the factors that led to constitutional recognition of the right to autonomy of Muslim communities in Mindanao; (2) to analyze the constitutional institutions and processes aimed at establishing the autonomy of Muslim communities in Mindanao; (3) to evaluate the consequences of constitutional provisions intended to institutionalize the autonomy of Muslim communities in Mindanao; and (4) to present the arguments for and against the MOA-AD.

This paper draws its data from documents and studies that have been made on the issue, as well as the author’s experiences as a framer of the 1987 Constitution. The Constitutional Commission was convened after the 1986 People Power peaceful revolution that overthrew the authoritarian regime of Ferdinand Marcos.

Historical Background

The Muslim communities of the Philippines were not fully subjugated during the Spanish and American colonial periods.

Mindanao has been the traditional homeland of Muslim Filipinos and the indigenous peoples (*Lumad*).³ In 1380, Arab missionaries began the conversion of the native population into Islam. After 1457 when the Sultanate of Sulu was established, the

² 2009 Report of the Norwegian Refugee Council on the humanitarian crisis, cited in *Voices of Dissent: A Postscript to the MOA-AD Decision*, op. cit., p. iii.

³ See J.R. Nereus Acosta, “Loss, Emergence, Re-tribalization: The Politics of *Lumad* in Mindanao,” Ph.D. Dissertation (Honolulu: University of Hawaii, 1994); Gutierrez M. Mangansakan II, *Children of the Ever Changing Moon: Essays by Young Moro Writers* (Manila: Anvil, 2007).

Sultanates of Maguindanao and Buayan were founded. For their part, the Maranaos had a Confederation of Four Royal Houses (*Pat a Pangampong ko Ranao*).

The Muslims in the Philippines resisted the colonial rule of Spain and that of the United States. After independence, they were engaged in generally peaceful efforts to gain just treatment from the Christian-majority government. The Muslim movement was radicalized after the Jabidah tragedy which refers to the massacre that took place on the Luzon island of Corregidor. In the evening of March 1968, government soldiers killed at least 28 Muslim recruits. The lone survivor reported to the members of the Philippine Congress.⁴

In 1967, the Marcos regime organized "Operation Merdeka" (Operation Freedom), which recruited some 200 Muslims aged 18 to 30 from Sulu and Tawi-Tawi for intelligence training. They comprised the Jabidah commando.

In December, 1967, the recruits boarded a Philippine Navy vessel for the island of Corregidor in Luzon. After a few months, however, they were not paid the promised monthly stipend. They demanded to be returned home and when their officers refused, they staged a mutiny.

When the massacre was exposed in the media in March 1968, Muslim students in Manila staged several protests. Despite court-martial proceedings brought against 23 military personnel, the case remained unresolved.

It is ironic that the incident which served as catalyst for the resumption of Muslim insurgency after Philippine independence was not rooted in religious conflict. The mutiny was triggered by an economic grievance and complaints about their living conditions.

The tragedy radicalized many young Muslim leaders and led to the formation of the Moro National Liberation Front (MNLF) and subsequently in 1977, the Moro Islamic Liberation Front (MILF).

⁴ Rizal Buendia, *Ethnicity and Sub-Nationalist Independence Movements in the Philippines and Indonesia: Implications for Regional Security* (Manila: Yuchengco Center, De La Salle University, 2002), 38-40.

“Moro” was the term used by the Spaniards to refer to Muslims when Spain was under Moorish rule from 711 to 1492. During the Spanish colonial period in the Philippines from 1565 to 1898, Muslims were called “Moros,” which through the centuries assumed pejorative connotations. During the Marcos regime, the radicalized Muslims adopted the term to represent their political and cultural identity, in order to dramatize their victimization and to turn their marginalization into unity and strength.

Since then, despite several peace talks and peace agreements, military conflict has persisted in Mindanao and has to this day taken its heavy toll on thousands of non-combatants.

Constitutional Recognition of Muslim Mindanao

The 1987 Constitution created autonomous regions in areas in Mindanao which are predominantly Muslim, as well as in the Cordilleras --the largest mountain range in northern Luzon, which is home to many indigenous communities. It was stipulated that these autonomous regions will operate “within the framework of this Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines.”

There were two Muslims –Lugum Uka and Yusuf Abubakar-- out of 47 delegates to the Constitutional Commission, which was convened in June 1986. There were active lobby groups representing Muslim associations as well as the *lumad* (indigenous communities). Most delegates consulted the prominent Muslim constitutionalist, Michael Mastura, who made himself available during the deliberations on Muslim Mindanao.

The Constitution directed the Congress to frame an organic act for each autonomous region. It was mandated to provide legislative powers over (a) administrative organization, (b) creation of sources of revenues, (c) ancestral domain and natural resources, (d) personal, family and property relations, (e) regional urban and rural planning development, (f) economic, social and tourism development, (g) educational policies, (h) preservation and development of the cultural heritage, and (i) such other matters as may be authorized by law for the welfare of the people of the region.

The preservation of peace and order within the regions would be the responsibility of the local police agencies "which shall be organized, maintained, supervised, and utilized in accordance with the applicable laws" while the defense and security of the regions would be the responsibility of the national government (Sec. 21, Article 10: Local Government).

The Autonomous Region of Muslim Mindanao region was first created in August, 1989 through Republic Act No. 6734. A plebiscite was held in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and in the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga.

Only Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi voted favorably for inclusion in the new autonomous region. The ARMM was officially inaugurated on November 6, 1990 in Cotabato City, which was designated as its provisional capital.

In 2001, Republic Act 9054 was passed for the expansion of the ARMM to include the areas which initially did not want to be included as well as the provinces which were carved from them. However, only Marawi City and Basilan with the exception of Isabela City opted to be integrated in the region.

In July 2008, the Supreme Court annulled "Muslim Mindanao Autonomy Act 201", which created Shariff Kabunsuan (carved out of Maguindanao, Autonomous Region in Muslim Mindanao). It ruled that "(1) Section 19, Article VI of RA 9054 is unconstitutional insofar as it grants to the ARMM Regional Assembly the power to create provinces and cities; (2) MMA Act 201 creating the Province of Shariff Kabunsuan is void; and (3) COMELEC Resolution No. 7902 is valid."

The Supreme Court decision stressed that "only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts. Creation of province or a city inherently involves the power to create a legislative district. The Constitution mandates that a

province or a city with at least 250,000 inhabitants is entitled to at least one representative."

The Supreme Court also declared unconstitutional the power of the Regional Legislative Assembly (RLA) to create provinces and cities in the region but it did not pass upon the constitutionality of the creation of new municipalities and barangays. Under Republic Act No. 9140 or the Expanded ARMM Law, the RLA has the power to create new Local Government Units and to set its own criteria in creating, dividing, merging, or abolishing LGUs.

In enacting MMA Act 201, the ARMM Regional Assembly's creation of the Province of Shariff Kabunsuan was void. The Supreme Court further pointed out that the ARMM Regional Assembly could not create a province without a legislative district because the Constitution mandates that every province shall have a legislative district. Moreover, the ARMM Regional Assembly could not enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Section 20, Article X of the Constitution.

Constitutionally Designed Institutions Adopted

The Autonomous Region of Muslim Mindanao (ARMM) is headed by a Regional Governor. The Regional Governor and Regional Vice Governor are directly elected like local government executives. Regional elections are usually held one year after general elections (national and local). Regional officials have a fixed term of three years, which can be extended by an act of Congress.

The Regional Governor is the chief executive of the regional government, and appoints the members of the cabinet, subject to confirmation by the Regional Legislative Assembly. He has authority over the regional executive commissions, agencies, boards, bureaus and offices.

The executive council advises the Regional Governor on matters of governance of the autonomous region. It is composed of the regional governor, one regional vice governor, and three deputy regional governors. Each of these deputy regional governors represents the Christians, the Muslims, and the

indigenous cultural communities respectively. The regional governor and regional vice-governor have a three-year term, with a maximum of three terms. The terms of deputies are co-terminus with the term of the regional governor who appointed them.

The Regional Legislative Assembly is the legislative branch of the ARMM government. The regular members (three members per district) and sectoral representatives, have three-year terms, with a maximum of three consecutive terms. The RLA exercises legislative power in the autonomous region, except on the following matters: foreign affairs, national defense and security, postal service, coinage and fiscal and monetary policies, administration of justice, quarantine, customs and tariff, citizenship, naturalization, immigration and deportation, general auditing, national elections, maritime, land and air transportation, communications, patents, trademarks, trade names and copyrights, foreign trade. In addition, the RLA may legislate on matters covered by the Shari'ah , the law governing Muslims.

Republic Act 9054 provides that ARMM "shall remain an integral and inseparable part of the national territory of the Republic." The President of the Philippines exercises general supervision over the Regional Governor. The ARMM government has the power to create its own sources of revenues and to levy taxes, fees, and charges, subject to constitutional provisions and the provisions of RA 9054.

Based on the 2007 census, ARMM has a population of 4.1 million. It is the country's poorest region, where average annual income was just 89,000 pesos (\$ 2,025) in 2006, less than 1/3 of Manila level.

Peace Process Arrangements

On July 18, 2008, Hermogenes Esperon, then peace adviser to Philippine President Gloria Macapagal-Arroyo, announced a further expansion of the ARMM in line with an agreement reached between the Philippine government and the Moro Islamic Liberation Front. The deal, concluded after nearly six years of dialogue, gives the ARMM control of an additional 712 villages on the island of Mindanao, as well as far-reaching political and economic powers.

The signing by the GRP and MILF panels of the Memorandum of Agreement on Ancestral Domain (MOA-AD) was met by massive protests. The majority of Local Government Units to which these villages are connected had already voted not to join the ARMM in two instances, 1989 and 2001.

Finally, on October 14, 2008, the Supreme Court of the Philippines, by a highly divided vote of 8–7, declared “contrary to law and the Constitution” the MOA-AD Aspect of the GRP-MILF Tripoli Agreement of Peace of 2001. The high court ruled that “In sum, the Presidential Adviser on the Peace Process committed grave abuse of discretion when he failed to carry out the pertinent consultation process, as mandated by EO No. 3, RA 7160, and RA 8371. The furtive process by which the MOA-AD was designed and crafted runs contrary to and in excess of the legal authority, and amounts to a whimsical, capricious, oppressive, arbitrary and despotic exercise thereof. It illustrates a gross evasion of positive duty and a virtual refusal to perform the duty enjoined.”

The bases for the Supreme Court’s decision were the following: (1) That no consultation was made on an issue that affects significantly a large territory and population; 2) That the Indigenous Peoples’ Rights Act (IPRA) had provided a clear procedure on how ancestral land may be granted to indigenous peoples and the Executive Branch does not have the power to unilaterally supersede a procedure mandated by law; 3) That it would have been a binding international agreement that would compel the Philippines to support the right to self-determination of the Bangsamoro people; (4) That the Executive Branch cannot guarantee that the Constitution will conform with the MOA; and 5) The concept of “Associative” relationship is a “transition point to independence” which threatens the territorial integrity of the country.

Arguments against the Supreme Court Decision

Interestingly, the main defenders of the Memorandum of Agreement on Ancestral Domain were Christians, some of whom members of the Catholic clergy.

Fr. Joaquin Bernas, a member of the 1986 Constitutional Commission and former Dean of the Ateneo de Manila University Law School, underscores that the issue of unconstitutionality can

come up only after something has been done which can result or has resulted in deprivation of a constitutional right. He says that this situation has not happened.⁵

He describes the MOA-AD as “nothing more than an elaborate collection of the ‘wish-list’ of those who want to revise the Organic Act of Muslim Mindanao and even the Constitution.” Amendment proposals cannot be illegal and much less unconstitutional. He said that if that were so, no law or constitutional provision could be amended.

Fr. Bernas elaborates: “Whether or not the ARMM Organic Act should be amended to accommodate more territory than presently included in it and whether or not the ARMM or a Bangsamoro Juridical Entity (BJE) should be given powers that presently are not allowed by the Constitution are not for the Court to decide. These are ‘political questions’ which should be addressed by a constituent assembly, whether Congress or a Constitutional Convention, and ultimately by the people in their sovereign capacity.”

In another article, the constitution expert asked the question, “Can you really have a peace negotiation that is totally closed to any change in the fundamental law? Perhaps you can, in an ideal world. But we are not there.”⁶

Soliman Santos, Jr., the regional focal point for Asia of the South-South Network (SSN) for Non-State Armed Group Engagement, also disagrees that the unsigned Government of the Republic of the Philippines (GRP)-Moro Islamic Liberation Front (MILF) Memorandum of Agreement on Ancestral Domain (MOA-AD) was unconstitutional merely because some of its provisions admittedly go beyond the framework of the 1987 Philippine Constitution.⁷

⁵ Joaquin G. Bernas, *Philippine Daily Inquirer* 18 August, 2008.

⁶ Joaquin Bernas, “The MOA-AD Decision, *Voices of Dissent: A Postscript to the MOA-AD Decision*, *op. cit.*, p. 107.

⁷ Soliman M. Santos, Jr., “Peacetalk: Negotiating beyond the Constitution, not Unconstitutional,” *MindaNews*, 5 August, 2008.

He states that “it is even normal for peace processes, as shown by the experience of many countries, to seek and effect constitutional change and reform as needed for a negotiated political settlement.”⁸ He points out that in the case of the GRP-MILF peace negotiations, they started in 1997 with the MILF’s single talking point: “To solve the Bangsamoro problem.” Santos observes that it took no less than 11 years for the GRP to recognize that the emerging ancestral domain aspect of a “just, lasting and comprehensive solution to the Bangsamoro problem” would entail changes in the existing legal, including constitutional, framework, and for the MILF to acknowledge this “existing legal framework” albeit with a view to some key changes.

Santos claims that the Memorandum of Agreement on the Ancestral Domain Aspect would have given substance to the spirit of the 1987 Constitution. It recognizes that a Bangsamoro (Moro Nation) identity is a birthright of all Muslims and indigenous peoples of Mindanao. It likewise affirms the existence of the Bangsamoro homeland, which is not part of the public domain.

Patricio Diaz, a noted Mindanao political analyst, asserts that the five consensus points under “Concepts and Principles” defining the “Bangsamoro people”, their “ancestral domain” and “ancestral lands”, and “the authority and jurisdiction of the Bangsamoro Juridical Entity” should not alarm the majority of the Filipinos and their leaders.

He submits that the MOA-AD is consistent with four sections (15, 18, 19 and 20) of Article X of the Philippine Constitution.

Moreover, the consensus points of the negotiating panels did not threaten the Philippine republic.⁹

The first consensus is that Bangsamoro is an identity. By birth, “all Moros and all indigenous peoples of Mindanao” [and its adjacent islands] have the right to “identify themselves and be accepted as ‘Bangsamoros’”, although in the case of the indigenous people or *lumads*, their “freedom of choice ... shall be respected”.

⁸ *Ibid.*

⁹ Patricio P. Diaz, *MindaNews*, 5 September 2008.

This identity “refers to those who are natives or original inhabitants of Mindanao and its adjacent islands and their descendants whether mixed or of full native blood.” The identity also refers to their “[s]pouses and descendants”.

Diaz sees nothing wrong about this declaration, since ethnic groups in the Christian areas of the country assert their identity as Ilocanos, Tagalogs, Ilongos, Cebuanos, etc. The right to identity can never be *unconstitutional*.

The second consensus is about the Bangsamoro homeland: “It is essential to lay down the foundation of the Bangsamoro homeland in order to address the Bangsamoro people’s humanitarian and economic needs as well as their political aspirations.” The homeland is defined as “such territorial jurisdictions and geographic areas being their natural wealth and patrimony [which] represent the social, cultural and political identity and pride of the Bangsamoro people.” The right to their homeland is defined as “ownership to the homeland is vested exclusively in them by virtue of their prior rights of occupation that had inhaled in them as sizeable bodies of people, delimited by their ancestors since time immemorial and being the first politically organized dominant occupants.”

Each ethnic group is proud of their homeland as the source of their humanitarian and economic needs, their political aspirations, and their social, cultural and political identity. Diaz asks, “Why deny the same to the Muslims? Tracing the historicity of their right to their homeland strengthens them as a people. Distinguishing themselves will not dismember the Philippines.”

He believes that the Bangsamoro Juridical Entity is an amplification of Article X, Section 15 of the Constitution, which provides that Muslim Mindanao autonomy should consist of “...provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics...”

The third consensus has reference to ancestral domain and ancestral land, which is distinguished from public domain: “Both Parties acknowledge that ancestral domain does not form part of the public domain but encompasses ancestral, communal, and customary lands, maritime, fluvial and alluvial domains as well as

all natural resources therein that have inured or vested ancestral rights on the basis of native title.”

Definitive elements of “ancestral domain and ancestral land” are identified with respect to

i. Ownership: “... those held under claim of ownership, occupied or possessed, by themselves or through the ancestors of the Bangsamoro people, communally or individually...”

ii. Tenure: “... since time immemorial continuously to the present except when prevented (a) by war, civil disturbance, force majeure, or (b) other forms of possible usurpation or displacement by force, deceit, stealth, or (c) as a consequence of government project or any other voluntary dealings entered into by the government and private individuals, corporate entities or institutions.”¹⁰

Professor Sedfrey Candelaria, who was the chief legal consultant of the GRP peace panel for talks with the MILF, explains that the MOA-AD was not a stand-alone document but constituted “a codification of consensus points (e.g. principles, territory, and resources) prior to Governance and the Comprehensive Compact.” It was the product of more than a hundred consultative dialogues with various stakeholders conducted by the GRP Panel over three to four years, inclusive of the periodic technical working group meetings here and abroad between the Parties.¹¹

He stresses that there was no cause for worry that a new state may be created as a result of the provision for a Bangsamoro Juridical Entity (BJE) in the MOA-AD: “In this regard, the Montevideo Convention of 1933 provides for the qualifications of a state: (1) permanent population; (2) a defined territory; (3) a government that is in effective control of its territory and independent of any other authority; and, (4) a capacity to enter into relations with other states.”

¹⁰ *Ibid.* See also Michael Mastura, “Analyses and Comments on the MOA-AD Supreme Court Decision,” *Voices of Dissent: A Postscript to the MOA-AD Decision*, pp. 48- 103.

¹¹ Sedfrey Candelaria, “The Story of MOA-AD.” http://newsbreak.com.ph/index.php?option=com_content&task=view&id=5311&Itemid=88889094

Candelaria notes that nowhere in the MOA-AD could one conclude that all these requisites of a state in the making are present. On the contrary, “the reference to ‘Central Government’ and the need to undertake legal processes within the GRP panel confirm the hierarchical relationship similar to an empowered autonomous region which already exists in our Constitution. . . . Nothing in the MOA-AD grants territory to the BJE without the benefit of plebiscites at three levels: the more than 700 barangays in Category A (within 12 months from signing of MOA-AD), Category B (not earlier than 25 years from the signing of the Comprehensive Compact) and the implementation of the BJE after the Comprehensive Compact. There were reasonable criteria for choosing the areas subject of the plebiscites such as: historical, population patterns, contiguity, and functionality.”

Candelaria reiterates that there was never any attempt to supplant the powers of a co-equal branch of the Government by entering into the MOA-AD. Presidential executive orders -- E.O. No. 125 (September 15, 1993) and E.O. No. 3 (February 28, 2001)— assures that the comprehensive peace process will require administrative action, new legislation or even constitutional amendments. It is within the mandate of the GRP panel to submit recommendations to the executive branch of government derived from discussions at the negotiating table. In turn, the executive branch may consider these recommendations for appropriate coordination with Congress which could undertake the necessary legal processes.¹²

All is not lost, however. The Supreme Court did make an encouraging statement in its decision, saying that “the present MOA-AD can be renegotiated or another one can be drawn up to carry out the Ancestral Domain Aspect of the Tripoli Agreement of 2001” provided that this be done pursuant to the “controlling principles to guide the bench, the bar, the public and, most especially, the government in negotiating with the MILF regarding Ancestral Domain.”

¹² *Ibid.*

Needed Consensus on Basic Premises on Mindanao

According to Archbishop of Cotabato Orlando B. Quevedo, former two-term President of the Catholic Bishops Conference of the Philippines, the decision to declare the MOA-AD unconstitutional meant the loss of a historic opportunity to find a lasting solution to the Bangsamoro problem. He examines what he considers to be the key to improving Muslim-Christian relations in Mindanao:

“The non-Moro should begin with Moro history to understand Moro self-determination. It is undisputed that Islam was brought to the Philippines *before* the Spaniards came, even before there was such a name as ‘Philippines.’ It is undisputed that Muslim Sultanates exercised sovereignty and wielded political power over most of Mindanao, Tawi-Tawi and Sulu, a territory considerably larger than the present ARMM or the “expanded ARMM” that the MOA-AD envisions. It is undisputed that the demographic composition of the population and the subject of political authority in Mindanao were completely reversed from Moros to non-Moros within only the 50 years between 1920 to 1970, such that Moros became a minority in the large swath of territory over which they, through their Sultanates, once held sway.

“We, therefore, need to accept the fact that the Moro aspiration for self-determination is based on indisputable recorded history. Our historical consciousness needs to go back to the times of the southern Sultanates and the religion they professed. There we see a people from the Malay race but with a distinct religion and political identity. They had been part of the indigenous peoples who had converted to Islam. We know that the term “Moro” came much later in their history, introduced by Spanish colonizers to refer derogatively to the people who had the same religion as the Moors that had conquered southern Spain. Through the Sultanates this distinct people from various indigenous tribes held political sway, sovereignty, if one may use the term, over a territory covering most of Mindanao and Sulu. Through the Sultans they governed themselves. At documented periods and occasions, Moros expressed their aspiration for self-determination either by peaceful means or by armed interventions. This aspiration has endured through four centuries of relative peace and short periods of war. Restlessness for self-determination lies deep in the collective Moro subconscious. Like Rizal and the Filipino elite of

their time, Moro scholars, intellectuals, writers, warriors and leaders kept this aspiration alive.

“These then are the two-fold realities that are fundamental to any peace negotiation: the recognition of Moro self-determination and the acceptance of national sovereignty and territorial integrity.

“These two concepts are not contradictory. They do not cancel each other out. One can exist with the other. It is the balancing and concrete implementing of these two fundamental postulates that is the central task of peace negotiating.”¹³

Prospects of Resuming the Peace Talks

Fr. Eliseo Mercado, who was designated Chief Peace Negotiator with the Muslim Fronts, believes that any further negotiations or pronouncements in the remaining 15 or so months under the Arroyo administration should be deemed as “*ad interim*” and should no longer aim at a sustainable and enduring peace and development in Southern Philippines.¹⁴

In order to rebuild the social capital of both the national and local governments, specifically the ARMM government, he thinks that there is need to “go back to the drawing board and begin mending the structures, institutions and relationship that were destroyed by corruption, ambitions and the recent but tragic events following the ‘non-signing’ of the MOA-AD.”

In the event of the resumption of the GRP-MILF peace talks, the substantive issues must include among others: (a) shared security; (b) ARMM’s actual social and political infrastructures on the ground; (c) the economic integration and livelihood development of the region; and (d) the over-arching issue of “Philippine citizenship”.

Fr. Mercado also proposes a united MNLF-MILF Negotiating Front in the renewed peace talk, combining the two trajectories of the Tripartite Review on the Implementation of the 1996 Final peace Agreement and GRP-MILF Peace Process.

¹³ Orlando B. Quevedo, “Peacetalk: Two Fundamental Postulates for Lasting Peace in Mindanao,” *MindaNews*, 5 September 2008.

¹⁴ Eliseo Mercado, “Forging Ahead Post MOA AD,” *Policy Forum*, 31 December, 2008. 1-4.

Secretary Avelino Razon, Presidential Adviser on the Peace Process, had announced that the two peace panels are working out a schedule for the resumption of the peace talks.¹⁵ The guidelines that were laid down for the Peace Panel are as follows:

1. Any consensus or agreement, whether interim or otherwise, reached by the peace panels in the peace talks shall always be subject to constitutional processes.

2. Any future agreement with the MILF must be within the purview of Philippine citizenship. There shall be no talk of independence.

3. The government peace panel shall endeavor to exert utmost efforts and utilize available mechanisms to reflect in the agenda and the agreements the values, sentiments and principles of the Filipino people.

4. Disarmament, Demobilization and Reintegration (DDR) shall be the overall framework and context governing our engagement with the MILF in the peace talks.

5. Whether the negotiations succeed and result to a peace agreement or not, cessation of hostilities on the ground must continue.

6. While peace negotiations are ongoing with the MILF, the Philippine government shall also intensify development efforts in the conflict-affected areas as part of its confidence-building measures.

Secretary Razon stated that the government panel will propose improvements in the nature and structure of the facilitation process. It will be open to proposals and concepts allowing the involvement of "eminent persons." The government panel will seek to put closure to the Ancestral Domain discussions so that negotiations on the Comprehensive Compact can begin. It is now guided both by the Supreme Court decision and the outcome of our continuing consultations on the ground, in resolving the substantive issues at the negotiating table.

¹⁵ Secretary Avelino Razon, Speech at the First International Solidarity Conference on Mindanao Davao Convention and Trade Center, March 16, 2009.

However, the recent massacre in the Maguindanao province has complicated the resumption of the peace talks. The mass murder occurred on the morning of November 23, 2009. The victims were about to file a certificate of candidacy for Esmael Mangudadatu, vice mayor of Buluan town. Mangudadatu was going to challenge Andal Ampatuan, Jr., mayor of the town of Datu Unsay and son of the incumbent Maguindanao governor Datu Andal Ampatuan Sr., in the forthcoming Maguindanao gubernatorial election. The 57 casualties included Mangudadatu's wife, his two sisters, lawyers, aides, and motorists who were witnesses or were mistakenly identified as part of the convoy. At least 34 journalists are known to have died in the massacre.

ARMM Governor Zaldy Ampatuan is the brother of the prime suspect in the massacre. In June of this year, President Macapagal-Arroyo had named Governor Ampatuan as the regional head of the ruling Lakas-Kampi party.

However, in the aftermath of the mass murder, the Lakas-Kampi National Executive Committee unanimously voted to expel three members of the Ampatuan clan: ARMM Governor Zaldy, Maguindanao Governor Andal Sr., and Datu Unsay Mayor Andal Jr.

President Arroyo placed the ARMM under the supervision of the national government and authorized Interior Secretary Ronaldo Puno to suspend and appoint civilian and police officials in the region. He was granted the full powers of supervision over the ARMM.

This recent development further exacerbates the "Mindanao problem," which has taken a heavy toll on the unity, progress and security of the entire Filipino nation. The innocent children in conflict areas have been the principal victims of the resultant mass poverty, malnutrition and lack of education.

As was indicated in this study, the 1987 Constitution of the Philippines recognized the right to autonomy of Muslim and indigenous communities in Mindanao. Both the Constitution and legislative measures established the structures and processes aimed at institutionalizing the autonomy of these communities. However, the events of the past 22 years have demonstrated that constitutional recognition and design are not enough to realize the

aspirations for self-determination. Deeply rooted prejudices are not easily erased. In the end, it is the political will of policy-makers that will determine whether five centuries of violence in Mindanao will finally find a solution.

###

APPENDIX A

MEMORANDUM OF AGREEMENT ON THE ANCESTRAL DOMAIN ASPECT OF THE GRP–MILF TRIPOLI AGREEMENT ON PEACE OF 2001

IN THE NAME OF GOD
THE BENEFICENT, THE MERCIFUL

MEMORANDUM OF AGREEMENT ON THE ANCESTRAL DOMAIN ASPECT OF THE GRP-MILF TRIPOLI AGREEMENT ON PEACE OF 2001

The Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) herein referred to as the “Parties” to this Agreement,

TERMS OF REFERENCE

The Agreement for General Cessation of Hostilities dated July 18, 1997 Between the GRP and the MILF, and its Implementing Administrative and Operational Guidelines;

The General Framework of Agreement of Intent Between the GRP and the MILF dated August 27, 1998;

The Agreement on the General Framework for the Resumption of Peace Talks Between the GRP and the MILF dated March 24, 2001;

The Tripoli Agreement on Peace Between the GRP and the MILF dated June 22, 2001;

The Tripoli Agreement Between the GRP and the Moro National Liberation Front (MNLF) dated December 23, 1976 and the Final Agreement on the Implementation of the 1976 Tripoli Agreement Between the GRP and the MNLF dated September 2, 1996;

Republic Act No. 6734, as amended by R.A. 9054, otherwise known as “An Act to Strengthen and Expand the Autonomous Region in Muslim Mindanao (ARMM)”;

ILO Convention No. 169, in correlation to the UN Declaration on the Rights of the Indigenous Peoples, and Republic Act No. 8371 otherwise known as the Indigenous Peoples Rights Act of 1997, the UN Charter, the UN Universal Declaration on Human Rights, International Humanitarian Law (IHL), and internationally recognized human rights instruments; and

Compact rights entrenchment emanating from the regime of *dar-ul-mua'hada* (or territory under compact) and *dar-ul-sulh* (or territory under peace agreement) that partakes the nature of a treaty device. For the purpose of this Agreement, a “treaty” is defined as any solemn agreement in writing that sets out understandings, obligations, and benefits for both parties which provides for a framework that elaborates the principles declared in the Agreement.

HAVE AGREED AND ACKNOWLEDGED AS FOLLOWS:

CONCEPTS AND PRINCIPLES

1. It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as “Bangsamoros”. The Bangsamoro people refers to those who are natives or original inhabitants of Mindanao and its adjacent islands including Palawan and the Sulu archipelago at the time of conquest or colonization and their descendants whether mixed or of full native blood. Spouses and their descendants are classified as Bangsamoro. The freedom of choice of the Indigenous people shall be respected.

2. It is essential to lay the foundation of the Bangsamoro homeland in order to address the Bangsamoro people’s humanitarian and economic needs as well as their political aspirations. Such territorial jurisdictions and geographic areas being the natural

wealth and patrimony represent the social, cultural and political identity and pride of all the Bangsamoro people. Ownership of the homeland is vested exclusively in them by virtue of their prior rights of occupation that had inhaled in them as sizeable bodies of people, delimited by their ancestors since time immemorial, and being the first politically organized dominant occupants.

3. Both Parties acknowledge that ancestral domain does not form part of the public domain but encompasses ancestral, communal, and customary lands, maritime, fluvial and alluvial domains as well as all natural resources therein that have inured or vested ancestral rights on the basis of native title. Ancestral domain and ancestral land refer to those held under claim of ownership, occupied or possessed, by themselves or through the ancestors of the Bangsamoro people, communally or individually since time immemorial continuously to the present, except when prevented by war, civil disturbance, force majeure, or other forms of possible usurpation or displacement by force, deceit, stealth, or as a consequence of government project or any other voluntary dealings entered into by the government and private individuals, corporate entities or institutions.

4. Both Parties acknowledge that the right to self-governance of the Bangsamoro people is rooted on ancestral territoriality exercised originally under the suzerain authority of their sultanates and the *Pat a Pangampong ku Ranaw*. The Moro sultanates were states or *karajaan/kadatuan* resembling a body politic endowed with all the elements of nation-state in the modern sense. As a domestic community distinct from the rest of the national communities, they have a definite historic homeland. They are the "First Nation" with defined territory and with a system of government having entered into treaties of amity and commerce with foreign nations. The Parties concede that the ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights and resources as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people.

5. Both Parties affirm their commitment to mutually respect the right to one's identity and the parity of esteem of everyone in the political community. The protection of civil rights and religious liberties of individuals underlie the basis of peace and justice of

their totality of relationships.

6. Both Parties agree that the Bangsamoro Juridical Entity (BJE) shall have the authority and jurisdiction over the Ancestral Domain and Ancestral lands, including both alienable and non-alienable lands encompassed within their homeland and ancestral territory, as well as the delineation of ancestral domain/lands of the Bangsamoro people located therein.

7. Vested property rights upon the entrenchment of the BJE shall be recognized and respected subject to paragraph 9 of the strand on Resources.

TERRITORY

1. The Bangsamoro homeland and historic territory refer to the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, and the aerial domain, the atmospheric space above it, embracing the Mindanao-Sulu-Palawan geographic region. However, delimitations are contained in the agreed Schedules (Categories).

2. Toward this end, the Parties enter into the following stipulations:

a. The GRP and MILF as the Parties to this Agreement commit themselves to the full and mutual implementation of this framework agreement on territory with the aim of resolving outstanding issues that emanate from the consensus points on Ancestral Domain.

b. The Parties confirm their understanding that the mutual goal of reaching an agreement on Bangsamoro territory specific to mapping the outlying borders and the boundaries affecting local government units will lead to consolidation of the agreed texts on the Ancestral Domain Strands.

c. The Parties affirm that the core of the BJE shall constitute the present geographic area of the ARMM, including the municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte that voted for inclusion in the ARMM during the 2001 plebiscite.

d. Without derogating from the requirements of prior agreements, the Government stipulates to conduct and deliver, using all

possible legal measures, within twelve (12) months following the signing of the MOA-AD, a plebiscite covering the areas as enumerated in the list and depicted in the map as Category A attached herein (the “Annex”). The Annex constitutes an integral part of this framework agreement. Toward this end, the Parties shall endeavor to complete the negotiations and resolve all outstanding issues on the Comprehensive Compact within fifteen (15) months from the signing of the MOA-AD.

e. The areas covered by Category B are reflected on a map and list attached herein as agreed to by the Parties. Category B (the “Special Intervention Areas”) refers to conflict affected areas outside the BJE which shall be the subject of special socio-economic and cultural affirmative action implemented by the Central Government pending the conduct of a plebiscite not earlier than twenty-five (25) years from the signing of the Comprehensive Compact to determine the question of their accession to the BJE. The areas reflected are subject to further negotiations by the Parties. The Annex constitutes an integral part of this framework agreement.

f. Internal Waters:

The BJE shall have jurisdiction over the management, conservation, development, protection, utilization and disposition of all natural resources, living and non-living, within its internal waters extending fifteen (15) kilometers from the coastline of the BJE area.

g. Territorial Waters:

(1) The territorial waters of the BJE shall stretch beyond the BJE internal waters up to the Republic of the Philippines (RP) baselines south east and south west of mainland Mindanao. Beyond the fifteen (15) kilometers internal waters, the Central Government and the BJE shall exercise joint jurisdiction, authority and management over areas and all natural resources, living and non-living contained therein. The details of such management of the Territorial Waters shall be provided in an agreement to be entered into by the Parties.

(2) The boundaries of the territorial waters shall stretch beyond the 15-km. BJE internal waters up to the Central Government’s

baselines under existing laws. In the southern and eastern part of the BJE, it shall be demarcated by a line drawn from the Maguling Point, Palimbang, Province of Sultan Kudarat up to the straight baselines of the Philippines. On the northwestern part, it shall be demarcated by a line drawn from Little Sta. Cruz Island, Zamboanga City, up to Naris Point, Bataraza, Palawan. On the western part of Palawan, it shall be demarcated by a line drawn from the boundary of Bataraza and Rizal up to the straight baselines of the Philippines.

The final demarcation shall be determined by a joint technical body composed of duly-designated representatives of both Parties, in coordination with the appropriate Central Government agency in accordance with the above guidelines.

h. Sharing of Minerals on Territorial Waters:

Consistent with paragraphs 5 and 6 of the provisions on Resources, all potential sources of energy, petroleum in situ, hydrocarbon, natural gas and other minerals, including deposits or fields found within the territorial waters, shall be shared between the Central Government and the BJE in favor of the latter through production sharing agreement or economic cooperation agreement.

i. Activities Allowed on Territorial Waters:

(1) The Parties shall have authority to carry out the following activities within the territorial waters:

(a) Exploration and utilization of the natural resources, whether living or non-living, within the territorial waters;

(b) Establishment and use of artificial islands, installations and structures;

(c) Marine scientific research;

(d) Protection and the preservation of the marine environment;

(e) Conservation of living resources;

(f) Regulation of shipping and fishing activities;

(g) Enforcement of police and safety measures, including interdiction of the entry and use of the waters by criminal elements and hot pursuit of suspected criminal elements;

(h) Regulation and control of contraband and illegal entry of prohibited materials and substances, including smuggling; and

(i) Such other measures as the Parties may otherwise mutually agree.

(2) Activities relating to exploration and utilization of non-living resources, as well as paragraphs (c) and (d) of the Authorized Activities will be carried out on a joint basis agreed by the Parties which may be in the form of production sharing agreements or joint development pacts.

j. Establishment of a Joint Commission:

(1) The Parties shall establish a Joint Commission, which shall elaborate the modalities for the implementation and the carrying out of the Authorized Activities and the measures adopted in cases of allegation of breach, and carry out any other functions which may be assigned to it by the Parties for the purpose of implementing the joint management of resources.

(2) The Joint Commission shall consist of one representative from each Party, who are assisted by advisers as may be needed. The conclusions of the Joint Commission shall be adopted by consensus and shall only be recommendatory in nature. Only when the conclusions of the Joint Commission are adopted by the Parties do they become binding on the Parties.

k. Demarcation and Status of Territorial Waters:

The demarcation and status of the BJE territorial waters shall be finally determined together with the demarcation and final status of Category B territory of the BJE.

3. From and after entrenchment of compact rights over the Bangsamoro homeland and the territorial jurisdictions for associative governance shall likewise embrace those under proclamation for agricultural and human settlements intended for

the Bangsamoro people, all alienable and disposable lands, pasture lands, timberlands together with all existing civil and military reservations, parks, old growth or natural forests declared as forest reserves, watersheds, mangroves, fishponds, wetlands, marshes, inland bodies of water; and all bays, straits and channels found within the BJE.

4. All territorial and geographic areas in Mindanao and its adjacent islands including Palawan, and the Sulu archipelago that have been declared recognized, and/or delineated as ancestral domain and ancestral land of the Bangsamoro people as their geographic areas, inclusive of settlements and reservations, may be formed or constituted into political subdivisions of the Bangsamoro territorial jurisdictions subject to the principles of equality of peoples and mutual respect and to the protection of civil, political, economic, and cultural rights in their respective jurisdictions.

5. For purposes of territorial delimitation, the Parties have agreed to the joint determination of geographic areas encompassed within the territorial borders of the Bangsamoro homeland and territory based on the technical maps and data submitted by both sides as provided above.

RESOURCES

1. The BJE is empowered with authority and responsibility for the land use, development, conservation and disposition of the natural resources within the homeland. Upon entrenchment of the BJE, the land tenure and use of such resources and wealth must reinforce their economic self-sufficiency. Among the purposes or measures to make progress more rapid are:

- a. Entry into joint development, utilization, and exploitation of natural resources designed as commons or shared resources, which is tied up to the full setting of appropriate institution, particularly affecting strategic minerals;
- b. Stimulation of local economy by a range of mechanism, in particular the need to address unemployment and improvement of living conditions for the population in the BJE;
- c. Intensification of measures needed to uproot the cause of poverty in the BJE through responsible harnessing and

development of its natural resources; and

d. Undertaking program review of public services, industrial or trade-related and agrarian-related issues in situations of different sectors of the society in the BJE, which acquire communal character deriving from the special nature of their industry.

2. The Bangsamoro People through their appropriate juridical entity shall, among others, exercise power or authority over the natural resources within its territorial jurisdiction:

a. To explore, exploit, use or utilize and develop their ancestral domain and ancestral lands within their territorial jurisdiction, inclusive of their right of occupation, possession, conservation, and exploitation of all natural resources found therein;

b. To conserve and protect the human and natural environment for their sustainable and beneficial enjoyment and their posterity;

c. To utilize, develop, and exploit its natural resources found in their ancestral domain or enter into a joint development, utilization, and exploitation of natural resources, specifically on strategic minerals, designed as commons or shared resources, which is tied up to the final setting of appropriate institution;

d. To revoke or grant forest concessions, timber license, contracts or agreements in the utilization and exploitation of natural resources designated as commons or shared resources, mechanisms for economic cooperation with respect to strategic minerals, falling within the territorial jurisdiction of the BJE;

e. To enact agrarian laws and programs suitable to the special circumstances of the Bangsamoro people prevailing in their ancestral lands within the established territorial boundaries of the Bangsamoro homeland and ancestral territory within the competence of the BJE; and

f. To use such natural resources and wealth to reinforce their economic selfsufficiency.

3. The BJE, and the Central Government agree on wealth-sharing based on a mutually agreed percentage ratio in favor of the BJE through an economic cooperation agreement or arrangement over

the income and revenues that are derived from the exploration, exploitation, use and development of any resources for the benefit of the Bangsamoro people.

4. The BJE is free to enter into any economic cooperation and trade relations with foreign countries: provided, however, that such relationships and understandings do not include aggression against the Government of the Republic of the Philippines; provided, further that it shall remain the duty and obligation of the Central Government to take charge of external defense. Without prejudice to the right of the Bangsamoro juridical entity to enter into agreement and environmental cooperation with any friendly country affecting its jurisdiction, it shall include:

- a. The option to establish and open Bangsamoro trade missions in foreign countries with which it has economic cooperation agreements; and
- b. The elements bearing in mind the mutual benefits derived from Philippine archipelagic status and security.

And, in furtherance thereto, the Central Government shall take necessary steps to ensure the BJE's participation in international meetings and events, e.g. ASEAN meetings and other specialized agencies of the United Nations. This shall entitle the BJE's participation in Philippine official missions and delegations that are engaged in the negotiation of border agreements or protocols for environmental protection, equitable sharing of incomes and revenues, in the areas of sea, seabed and inland seas or bodies of water adjacent to or between islands forming part of the ancestral domain, in addition to those of fishing rights.

5. Jurisdiction and control over, and the right of exploring for, exploiting, producing and obtaining all potential sources of energy, petroleum, in situ, fossil fuel, mineral oil and natural gas, whether onshore or offshore, is vested in the BJE as the party having control within its territorial jurisdiction, provided that in times of national emergency, when public interest so requires, the Central Government may, during the emergency, for a fixed period and under reasonable terms as may be agreed by both Parties, temporarily assume or direct the operations of such strategic resources.

6. 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.

7. The legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenures, or their marginalization shall be acknowledged. Whenever restoration is no longer possible, the GRP shall take effective measures or adequate reparation collectively beneficial to the Bangsamoro people, in such quality, quantity and status to be determined mutually by both Parties.

8. All proclamations, issuances, policies, rules and guidelines declaring old growth or natural forests and all watersheds within the BJE as forest reserves shall continue to remain in force until otherwise modified, revised or superseded by subsequent policies, rules and regulations issued by the competent authority under the BJE.

9. Forest concessions, timber licenses, contracts or agreements, mining concessions, Mineral Production and Sharing Agreements (MPSA), Industrial Forest Management Agreements (IFMA), and other land tenure instruments of any kind or nature whatsoever granted by the Philippine Government including those issued by the present ARMM shall continue to operate from the date of formal entrenchment of the BJE unless otherwise expired, reviewed, modified and/or cancelled by the latter.

10. The Parties recognize an immediate need to establish a five-member BJE economic-expert mission (the "Mission") bearing in mind that the functioning of the economy and the operation of institutions involve financial and other resource management as well as parallel or complementary means, by which the Bangsamoro Development Agency (BDA) will manage and administer resources acquired for the above purposes, especially in coordinating strategies and programs for cooperation in all fields.

11. The Mission acts as a link in the conduct of BJE's associative parallel relationships and shall cooperate fully with all

organizations involved in implementation of the peace settlement. It shall launch a plan and joint international appeal for the reparation and development of the conflict affected areas in Mindanao. Persons appointed thereto must be familiar with the specific economic, political and legal characteristics in the Mindanao-Sulu-Palawan region and must possess recognized competence, integrity, and high moral standing.

12. Cognizant that the Mission will benefit from international expertise, both the Central Government and the BJE hereby join the Third Party facilitator in inviting international funding institutions or equivalent entities for reconstruction and development to appoint two members and to designate one as the Chairman. The BJE shall designate one member as Co-Chairman. The remaining two members shall each be designated by the Central Government and the BJE.

GOVERNANCE

1. The recognition and peaceful resolution of the conflict must involve consultations with the Bangsamoro people free of any imposition in order to provide chances of success and open new formulas that permanently respond to the aspirations of the Bangsamoro people.

2. The ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights and resources as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people. The Parties respect the freedom of choice of the indigenous peoples.

3. The Parties agree to invite a multinational third-party to observe and monitor the actual implementation of the comprehensive compact which will embody the details for the effective enforcement of this Agreement. The participation of the third-party shall not in any way affect the status of the relationship between the Central Government and the BJE.

4. The relationship between the Central Government and the BJE shall be associative characterized by shared authority and responsibility with a structure of governance based on executive, legislative, judicial and administrative institutions with defined

powers and functions in the Comprehensive Compact. A period of transition shall be established in a Comprehensive Compact specifying the relationship between the Central Government and the BJE.

5. In the context of implementing prior and incremental agreements between the GRP and MILF, it is the joint understanding of the Parties that the term “entrenchment” means, for the purposes of giving effect to this transitory provision, the creation of a process of institution building to exercise shared authority over territory and defined functions of associative character.

6. The modalities for the governance intended to settle the outstanding negotiated political issues are deferred after the signing of the MOA-AD.

The establishment of institutions for governance in a Comprehensive Compact, together with its modalities during the transition period, shall be fully entrenched and established in the basic law of the BJE. The Parties shall faithfully comply with their commitment to the associative arrangements upon entry into force of the Comprehensive Compact.

7. The Parties agree that the mechanisms and modalities for the actual implementation of this MOA-AD shall be spelt out in the Comprehensive Compact to mutually take such steps to enable it to occur effectively.

Any provisions of the MOA-AD requiring amendments to the existing legal framework shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework with due regard to non derogation of prior agreements and within the stipulated timeframe to be contained in the Comprehensive Compact.

8. The Parties agree that the BJE shall be empowered to build, develop and maintain its own institutions, inclusive of, civil service, electoral, financial and banking, education, legislation, legal, economic, and police and internal security force, judicial system and correctional institutions, necessary for developing a progressive Bangsamoro society, the details of which shall be discussed in the negotiation of the Comprehensive Compact.

9. The Parties further agree to undertake activities which will enhance the capacity of the government institutions during the transition through technical assistance, information-sharing and human resource development.

10. Matters concerning the details of the agreed consensus points on Governance not covered under this Agreement shall be deferred to, and discussed during, the negotiations of the Comprehensive Compact.

IN WITNESS WHEREOF, the undersigned, being the representatives of the Parties hereby affix their signatures.

Done this 5th day of August, 2008 in Kuala Lumpur, Malaysia.

FOR THE GRP:

(SGD) RODOLFO C. GARCIA

Chairman

GRP Peace Negotiating Panel

FOR THE MILF:

(SGD) MOHAGHER IQBAL

Chairman

MILF Peace Negotiating Panel

WITNESSED BY:

(SGD) DATUK OTHMAN BIN ABD RAZAK

Special Adviser to the Prime Minister

IN THE PRESENCE OF:

(SGD) ALBERTO G. ROMULO

Secretary of Foreign Affairs

Republic of the Philippines

(SGD) DATO' SERI UTAMA DR. RAIS BIN YATIM

Minister of Foreign Affairs

Malaysia

Initialed by:

Sec. Rodolfo Garcia

Mohagher Iqbal

Sec. Hermogenes Esperon

Witnessed by:

Datuk Othman bin Abd Razak

Dated 27 July 2008