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GPH and MILF Continuing Peace
Negotiation and Charter Change



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The Philippine Government (PHL) and the Moro Islamic Liberation Front (MILF) will re-engage, for n th time, in a peace process that is shrouded with doubts and uncertainties.

The hope and joy that usually accompany the peace talks are NO longer there and the feeling of a 'déjà vu is, indeed, palpable. This atmosphere does not augur well for it communicates that things in the peace fronts would be more of the 'same' instead of bold actions associated with new and popular leadership whose trust rating remains extraordinarily high notwithstanding the initial 'bungling' and what is commonly perceived as a lackluster cabinet.



The Aquino Government has articulated that it would be sincere in dealing with the issues confronting Mindanao and the Bangsamoro. (Reuters)

Front page photo: The MILF will re-engage in a peace talk with the government (Mark Navales/AFP/Getty Images)

The first source of doubt regarding the outcome of peace talks is the perceived position of the Aquino government vis-à-vis charter change. Charter change is NOT one of the priorities of the present popular government for the simple reason that there is NO real popular cry for it. With few exceptions from those who aspire for 'federalism' and a segment of the business community that would like to amend the 'protective' clauses in the 1987 Constitution, for the greater majority of the Filipino people, the Constitution is NOT an issue.

The popular PNoy Government has articulated a four-pillar peace and security policy framework that spells the President's priorities. These are the following: (a) good governance, (b) delivery of basic services particularly primary health and basic education, (c) sustainable development, and (d) security sector reform. These four pillars jibe with the President's desire to meet the Philippine Government's commitment to the eight UN Millennium Development Goals (MDG) with priority on the reduction of poverty to half by 2015.

On the other hand, the MILF from the outset has stated that the peace negotiation would involve charter change. The 1987 Philippine Constitution cannot adequately address the aspirations as well as the official position of the MILF as contained in the Memorandum of Agreement in Ancestral Domain (MOA-AD).

What the PHL and MILF panels hope to achieve during the n th resumption of the peace talk is a 'reframing' of the consensus points arrived in the said MOA-AD. Once completed the 'reframing work', they can go directly to a 'Comprehensive Compact' without passing through 'ad interim' agreement phase.

The issue is whether it is possible at all to ink a comprehensive compact that addresses territory (ancestral domain), political power (self-determination) and competence and relation of the ‘new’ political configuration without charter change.

The Aquino Government has articulated that it would be sincere in dealing with the issues confronting Mindanao and the Bangsamoro. However, in the same breath, it is NOT keen to move to a charter change mode during the first three years of the six-year term Presidency. Here lies the real uncertainty of the possible conclusion of the peace talk.

The second source of uncertainty is the issue of territory or coverage of a ‘future ARMM or BJE. The bottom line here is the perceived ‘closeness’ of the majority to the issue of ‘re-drawing’ the geography of the present Autonomous Region in Muslim Mindanao. The majority Christian population of the contemplated ‘expansion’ of the area of autonomy is opposed to a re-drawing of the geographical boundaries. Inclusion to any kind of autonomous configuration under the effective control of the Bangsamoro is non negotiable.

On the other hand, the MILF insists on a new geographical ‘engineering’ to determine the coverage of the ARMM or emerging Bangsamoro Juridical Entity (BJE)?

The ‘aborted’ MOA-AD has two categories on territory with specific schedules as contained in Annex A and Annex B. The PHL government ‘stipulates to conduct and deliver’ areas in Annex A, using ‘all possible legal measures, a plebiscite within 12 months following the signing of the Agreement’.

The subject of re-drawing geography that involves inclusion and exclusion of areas is one of the most contentious issues in the peace talks. In fact, the two plebiscites in 1989 (RA 6734) and in 2001 (RA 9054) draw the geographical lines in NO uncertain terms. It is foolhardy to conceive any movement forward that will involve geographical inclusion outside of the seven municipalities in Lanao del Norte (that already voted favorably to RA 9054 during the 2001 Plebiscite), Cotabato City and Isabela City.



Ebrahim “al Haj” Murad, leader of the Moro Islamic Liberation Front (MILF) (Reuters)

Annex A contains areas much beyond the present geography of the Autonomous Region in Muslim Mindanao (ARMM). It includes entire municipalities and barangays spanning three Regions (IX, X and XII) and the Province of Palawan.

In Region IX, it includes the entire Isabela City, six barangays of Zamboanga City, eight barangays of Dinas, Zamboanga del Norte, and five barangays of Mabuhay, Zamboanga Sibugay.

In Region X, it includes the entire seven municipalities in Lanao del Norte (that voted 'yes; to RA 9054 in 2001) plus the entire municipalities of Kauswagan, Linamon, Magsaysay, Matungao, Lanao Pantao Raga, Poona Piagapo, Salvador, Sapad, and Sultan Naga Dimaporo. It also includes one barangay in Tubod, four barangays in Bacalod, six barangays in Kolambugan, one barangay in Maigo, and eight barangays in Iligan City. In the Province of Bukidnon, it includes one barangay in Kalilangan.

In Region XII, it includes the entire Cotabato City. In North Cotabato, it includes the entire municipalities of Pikit and Kabacan plus three barangays in Mlang, 12 barangays in Matalam, 19 barangays in Midsayap, 20 barangays in Pigcawayan, one barangay in President Roxas, and seven barangays in Tulunan. In the Province of Sultan Kudarat, it includes the entire municipalities of Bagumbayan, Columbio, Esperanza, Kalamansig, Lambayong, Lebak/Salaman, Lutayan, Palimbang, President Quirino, and Sen. Ninoy Aquino plus the three barangays in Isulan.

In Region IV-B that includes the Province of Palawan, the entire Municipalities of Balabac and Bateraza are also included in Annex A.

The other contentious issue of territory in the relations between the Central Government and the new ARMM or BJE would, definitely require charter change.



Marvic Leonen, Philippine government's chief negotiator for the peace talks with the MILF (Associated Press)

Atty. Sedfrey Candelaria, during the MOA-AD controversy, said that the constitutional provisions that may be affected are Sections 1, 5, 18, 20 and 21 of Article X under Local Autonomy. (Memorandum dated 24 September 2008).

On the hand, Atty. Camilo Montesa, former ASEC in OPAPP during the Arroyo Administration, contends that the listing of the provisions in the 1987 that need amendments is grossly incomplete. He outlines below amendments to the following provisions of the Constitution:

1. Article 1 on the National Territory;
2. Section 3, Article II on the role of the Armed Forces of the Philippines as "protector of the people and the State;"

3. Article III on the Bill of Rights. The MOA-AD does not state that the Bill of Rights will apply to the BJE (the MOA AD refers only to “internationally recognized human rights instruments);
4. Section 1, Article VI on the Legislative Department (In the MOA-AD, the BJE shall “build, develop and maintain its own institutions” like a legislature whose laws are not subordinate to laws passed by Congress.);
5. Section 1, Article VII on executive power (The BJE shall have its own Chief Executive who will not be under the supervision of the President);
6. Section 16, Article VII on the President’s power to appoint certain officials, including military officers from the rank of colonel or naval captain, with the consent of the Commission on Appointments (All public officials in the BJE, including military officers of any rank in the BJE internal security force, will be appointed in accordance with the BJE’s own basic law or constitution.);
7. Section 17, Article VII on the President’s control over all executive departments (The President will not control executive bureaus or offices in the BJE, like foreign trade missions of the BJE);
8. Section 18, Article VII on the President as “Commander-in-Chief of all armed forces of the Philippines (Under the MOA-AD, the President will not be the Commander-in-Chief of the BJE’s internal security force. The BJE’s internal security force will not be part of the AFP chain of command.);
9. Section 21, Article VII on the ratification of treaties and international agreements by the Senate (Under the MOA AD, the BJE has the power to enter into economic and trade treaties with other countries);
10. Section 1, Article VIII on judicial power being vested in one Supreme Court (The BJE will have “its own judicial system and the BJE will also have its own Supreme Court);
11. Section 2, Article VIII on the power of Congress to define and apportion the jurisdiction of lower courts (Under the MOA-AD, Congress cannot prescribe the jurisdiction of BJE courts.);



Mohager Iqbal, chief negotiator for the MILF (BBC News photo)

12. Section 5(2), Article VIII on the power of the Supreme Court to review decisions of lower courts and to promulgate rules of pleadings and practice in all courts (the BJE will have its own judicial system. Decisions of BJE courts are not reviewable by the Supreme Court.);
13. Section 5(6), Article VII on the power of the Supreme Court to appoint all officials and employees in the Judiciary (This power will not apply to courts in the BJE.);
14. Section 6, Article VIII on the Supreme Court's administrative supervision over all courts and their personnel (The Supreme Court will not exercise administrative supervision over BJE courts and their personnel.);
15. Section 9, Article VIII on the appointment by the President of all judges in the Judiciary from nominees recommended by the Judicial and Bar Council (This provision will not apply to courts in the BJE.);
16. Section 11, Article VIII on the power of the Supreme Court to discipline judges of all lower courts (This power will not apply to judges in the BJE.);
17. Section 1(1), Article IX-B on the power of the Civil Service Commission to administer the civil service (The Civil Service Commission will have no jurisdiction over the BJE's civil service.);
18. Section 2(1), Article IX-C on the power of the Commission on Elections to enforce and administer all election law (The Commission on Elections will have no jurisdiction over the BJE's electoral system.);
19. Section 2(1), Article IX-D on the power of the Commission on Audit to examine and audit all subdivisions, agencies and instrumentalities of the Government (The Commission on Audit will have no jurisdiction over the BJE or its subdivisions, agencies or instrumentalities.);
20. Section 1, Article X on the political subdivisions of the Philippines (A new political subdivision for the BJE will have to be created.);
21. Section 4, Article X on the power of the President to exercise general supervision over all local governments (Under the MOA-AD, this provision will not apply to the BJE.);
22. Section 5, Article X subjecting the taxing power of local governments to limitations prescribed by Congress (The BJE shall have "its own legislation.);
23. Section 6, Article X on the "just share" of local government units in national taxes (The BJE is independent from the national government.);
24. Section 10, Article X on the alteration of boundaries of local government units, which requires a plebiscite "in the political units affected (Under paragraph 2(d) on Territory of the MOA-AD,[50] the plebiscite is only in the barangays and municipalities identified as expansion areas of the BJE.);
25. Section 15, Article X on the creation of autonomous regions within the framework of the Constitution, national sovereignty and territorial integrity of the Philippines (Under the MOA-AD the BJE has all the attributes of a state.);
26. Section 16, Article X on the President's power to exercise general supervision over autonomous regions (This provision will not apply to the BJE, which is totally independent from the President's supervision.);
27. ((Section 17, Article X which vests in the National Government residual powers, or those powers which are not granted by the Constitution or laws to autonomous regions (This will not apply to the BJE.);

28. Section 18, Article X which requires that personal, family and property laws of autonomous regions shall be consistent with the Constitution and national laws (The BJE which will have its own basic law or constitution.);
29. Section 20, Article X on the legislative powers of autonomous regional assemblies whose laws are subject to the Constitution and national laws (This provision will not apply to the BJE.);
30. Section 21, Article X on the preservation of peace and order within autonomous regions by the local police as provided in national laws (The BJE shall have “its own police” to preserve peace and order within the BJE.);
31. Section 2, Article XII on State ownership of all lands of the public domain and of all natural resources in the Philippines (The Concepts and Principles of the ancestral domain, which consists of ancestral lands and the natural resources in such lands, does not form part of the public domain. The MOA-AD negates the Regalian doctrine in the 1935, 1973 and 1987 Constitutions.);
32. Section 9, Article XII on the establishment of an independent economic and planning agency headed by the President (The BJE will have its own economic planning agency.);
33. (Section 20, Article XII on the establishment of an independent monetary authority, now the Bangko Sentral ng Pilipinas (The BJE will have its own financial and banking authority.);
34. Section 4, Article XVI on the maintenance of “a regular force necessary for the security of the State (The BJE shall have “its own internal security force” which will not be under the command and control of the President.);
35. Section 5(6), Article XVI on the composition of the armed forces, whose officers and men must be recruited proportionately from all provinces and cities as far as practicable (The BJE’s internal security force whose personnel will come only from BJE areas.); and
36. Section 6, Article XVI on the establishment of one police force that shall be national in scope under the administration and control of a national police commission (The BJE will have “its own police”, which is a regional police force not administered



“With Congress as the ‘default’ mode, the final result of the peace negotiation will undergo the congressional usual legislative mill...”
(wordpress.com)

or controlled by the National Police Commission.).

There are three major hurdles confronting the Peace Negotiations (MNLF and MILF) in Southern Philippines.

The first is flexibility and pragmatism that address the present realities of demography, territory and the lack of national consensus to amend the 1987 Constitution. The flexibility required is NOT the backward look but the forward look at the present demography of Mindanao. This is a given that no amount of rhetoric, historical or otherwise, can change it. The two plebiscites that attempted to re-draw the boundaries of the ARMM tell all and sundry that the issues of inclusion or exclusion to existing ARMM coverage is not only highly emotional but also very volatile.

The issue of pragmatism includes among others that any charter change would require the full support not only of a popular but also strong President. Both the Constitutional Convention of 1970 that produced the 1971 Constitution (the Marcos Constitution) and the 1986 Constitutional Commission that produced the 1987 Constitution (Aquino Constitution) are clear examples, at least the Philippine experience, of the need of the full backing of popular and strong Presidents.

Atty. Sedfrey Candelaria and Atty. Camilo Montesa have shown the need for major revisions of the 1987 Constitution to 'contain' the major consensus points in the aborted MOA-AD. Any peace agreement without charter change would only be an exercise in FUTILITY. The present 1987 Constitution, simply, does NOT allow the concepts, the substance and the power and the wealth relationship that are contained in the MOA-AD.

On October 14, 2008, the Supreme Court, unanimously (all 15 justices), ruled that **'the MOA-AD cannot be reconciled with the present Constitution and Laws. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the BJE, are unconstitutional'** (Breakthrough 2010, p.234).

Moreover, the same SC also ruled that the process by which the MOA-AD is negotiated 'runs contrary to and in excess of the legal authority, and amount to a whimsical, capricious oppressive, arbitrary and despotic exercise thereof'. The very act **'guaranteeing amendments to the legal framework by itself, [is] sufficient to constitute grave abuse of discretion'**. The Supreme Court, further, cites the Presidential Adviser on the Peace Process (Gen. Hermogenes Esperon) to have **'committed grave abuse of discretion when he failed to carry out the pertinent consultation process as mandated by the Executive order No. 3, RA 7160, and RA 8371'** (ibid. p.234).

The prevailing 'default' option for institutionalizing peace agreement/s is through legislation. This means that the 'final' peace settlement or comprehensive peace compact between the PHL and the MILF will go the same way as the 1996 Final Peace Accord between the GRP and the MNLF.

In gist, Congress will have the final say on the actual configuration of any autonomous region be it ARMM or BJE. With Congress as the 'default' mode, the final result of the peace negotiation will undergo

the Congressional usual legislative mill and the final output will be subjected to a plebiscite as provided for by law.

In here lies the second hurdle for the two peace panels. Will the MILF be flexible and pragmatic enough to accept that their peace settlement would be simply 'appendage' the MNLF amendatory process of RA 9054 (the Organic Act of the present ARMM)?

With the dim possibility of charter change in the coming years when President Aquino's trust rating is high, the more realistic course is the amendment of RA 9054. Congress through its usual legislative process can shape the issues of territory (ancestral domain) and devolved powers (self-determination) of the present ARMM.

The third hurdle is to find a balance between the 'pragmatism' of Congressional legislative mill that may not be acceptable to the MILF constituency, on the one hand, and the 'idealism' of MOA-AD that is 'constitutionally infirmed', on the other.

Moreover, when the formula is found, would it be fair to all stakeholders – be they 'Indigenous peoples, Moros, or Christians'? This is, precisely, the million-dollar question confronting the stakeholders in any autonomous arrangement.

The views and opinions expressed in the policy paper belong to the writers. IAG as a platform for policy debates continues to publish articles and analyses from various authors to create more "tables" in our common search for genuine autonomy and governance.



Philippine Army reinforcement line up to board a military plane bound for Mindanao in this file photo (Reuters/Cheryl Ravelo)

Shaping Public Policy for Peace and Good Governance

The Institute for Autonomy and Governance (IAG) is an independent and non-partisan think tank founded in 2001 to generate ideas on making autonomy an effective vehicle for peace and development in the Southern Philippines. IAG is an institutional partner of the Konrad Adenauer Stiftung in the Philippines.

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