



## R2P IDEAS in brief



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### **The Philippines and R2P**

*The Philippines is one of the early supporters of R2P principle in South-east Asia. No less than former President Fidel V. Ramos was a member of the International Commission on Intervention and State Sovereignty (ICISS) that produced the R2P Report in 2001. In the UN Security Council when the Philippines was elected a non-permanent member in 2004-2005, former Philippine Permanent Representative to the UN, Ambassador Lauro Baja Jr., supported calls for timely and decisive action by the UN in crisis areas in Africa (including DR Congo and Rwanda). It was also during this period that the Philippines supported the work of the International Criminal Tribunals on Yugoslavia and Rwanda. In 2009, the Philippines participated in the first Informal Interactive Dialogue on R2P in the UN General Assembly and expressed support for the principle. In September 2011, the Philippines ratified the Rome Treaty that created the International Criminal Court and won a seat in the tribunal early this year. Thus far, only two members of ASEAN—Cambodia and the Philippines—have ratified the Rome Treaty.*

*Following the Ampatuan-led massacre in Maguindanao in 2009, former President Gloria Macapagal Arroyo signed the first domestic law on crimes against international humanitarian law, genocide and other crimes against humanity (RA 9851). Specifically, the law contains provisions for applicability of international laws and conventions (e.g., 1948 genocide convention) that will guide the local courts in the application and interpretation of RA 9851.*

*In the aftermath of the Libyan crisis, the Philippines has been noticeably absent in international bodies—particularly in the UN Human Rights Council and the UN General Assembly—when resolutions condemning systematic human rights violations in Syria since 2011 were passed. In particular, the Department of Foreign Affairs in Manila has adopted a policy “strategic silence” on Syria due to risks involved in antagonizing the Assad government that could endanger the lives of about 8,000 Filipino workers in that country. However, this policy did not sit well with some human rights advocates and opinion-makers in the Philippines. They argued that the government should have issued a carefully crafted statement that expressed concern over protection of civilians without antagonizing the regime in case this put Filipino and other citizens at even greater risk.*

- A Basic Law will be crafted that will govern the Bangsamoro territory
- The Bangsamoro will have a ministerial form of government and its relationship with the central government will be “asymmetrical”
- The central government will have power over the following: defense, foreign policy, common market and global trade, coinage and monetary policy, citizenship and naturalization, and postal service, as well as additional powers that may be agreed upon by both parties
- The Bangsamoro and the central government will negotiate on revenue and wealth sharing agreement
- The territory of Bangsamoro will be expanded to include the current ARMM and other municipalities, cities, and contiguous areas in Mindanao
- A Transition Commission will be created composed of 15 members, which will work on the drafting of the Basic Law, proposals to amend the current Philippine Constitution. The Basic Law that will be submitted by the Transition Commission “shall be certified as an urgent bill by the President” to the national legislature
- Following the enactment and ratification of the Basic Law, a Bangsamoro Transitional Authority (BTA) will be created (thereby abolishing the current ARMM) and will be replaced in 2016 upon the election of members of the Bangsamoro legislative assembly
- A third party monitoring team composed of local and international bodies will be created to monitor the implementation of all agreements
- A process of normalization is included in the Framework Agreement that would address issues related to disarming of MILF troops, transfer of police functions from the Philippine armed forces

to the police force of Bangsamoro, as well as rehabilitation, reconstruction, and development of the Bangsamoro communities, including internally displaced persons and poverty-stricken communities

The Framework Agreement has generated various responses from different sectors within and outside the Philippines since President Benigno Aquino III formally announced it on 7 October. In general, the agreement between Manila and the rebel group elicited positive responses from the international community especially from Australia, the United States, Japan, the European Union and the United Nations. Malaysia, in particular, was supportive of the Framework Agreement as it played an important mediation role in the peace talks.

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Meanwhile, in the Philippines, reactions to the Framework Agreement were more cautiously optimistic. Media editorials and op-ed articles in major dailies were generally positive about the agreement but noted some major challenges ahead. One major concern is about the need for a change in the current constitution of the Philippines to accommodate the Basic Law that will cover the Bangsamoro area. Some national legislators and constitutional experts argued that a constitutional change is necessary to implement the provisions of the agreement, even though the head of the Philippine government's negotiating panel said that this was not necessary. Strong negative responses from some MNLF and ARMM leaders were also expressed, warning of "instability" and possible "outbreak of war" in Mindanao as the agreement basically undermined the status of ARMM, which was categorically labeled as a "failure" in the Framework Agreement. The MNLF also denounced the agreement and claimed that it was not consulted by the peace panel along with local government officials and politicians in areas that will be covered by the Bangsamoro. Nur Misuari, founding head of the MNLF, even said that the group will file a case against the Philippine government in the International Court of Justice and seek the help of the Organization of Islamic Conference (OIC) for undermining the ARMM and Tripoli agreement. He also asserted that the MNLF is the only legitimate representative of the Bangsamoro people. A break-away faction of the MILF – the Bangsamoro Islamic Freedom Movement (BIMF) – reportedly indicated that it will not support the Framework Agreement.

In 2008, it was this faction of the MILF that staged attacks against civilians in Mindanao after the Supreme Court struck down the aborted Memorandum of Agreement on Ancestral Domain (MOA-AD) that was supposed to be signed between Manila and the MILF after local government officials in petitioned the court for a temporary restraining order.

### ***Challenges and Constraints Ahead***

Clearly, the Framework Agreement looks good on paper. However, a number of challenges and constraints lie ahead in implementing its salient provisions, to wit:

- It remains uncertain at this point whether President Aquino would be able to muster enough support in the national legislature to support the enactment of a Basic Law in Bangsamoro either through a national law or constitutional change.
- Local government officials and politicians in Mindanao who will be disadvantaged by an expanded Bangsamoro entity beyond the current ARMM are likely to petition the Supreme Court to declare the Framework Agreement as unconstitutional.
- Mid-term general elections in the Philippines in May 2013 — which include positions in the current ARMM and national legislature—could serve as an important gauge of acceptance of the Framework Agreement at the local and national levels. The outcome of the elections would therefore determine whether President Aquino could sail smoothly in the transition phase of the agreement or face more obstacles in its implementation.
- The MILF is made up of several factions and there is no guarantee that they would all be committed to honoring the Framework Agreement especially if their expectations are not met. For example, with regard to revenue and wealth sharing in the Bangsamoro, one MILF negotiator expressed preference for a 75-25 percent split in favor of the Bangsamoro, which is not realistic. On the issue of territory, local government officials and politicians within and outside the current ARMM may continue to resist the expanded territory of Bangsamoro, which could potentially lead to revival of armed hostilities in these areas. Indeed, the response of the MNLF and the BIMF could ultimately make or unmake the precarious agreement in the near-term.

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- The process of “normalization” is also problematic especially given that rebel troops would not easily lay down their arms and the Philippine armed forces may have some difficulties transferring policing functions to the Bangsamoro. The presence of a monitoring team—as well as the possibility of including an international peace-keeping contingent—may assist in implementing this provision of the Framework Agreement.

### ***Implications for Responsibility to Protect***

The protection of civilians against political violence and mass atrocities remain a continuing concern for many in conflict-affected areas of Mindanao. The Framework Agreement—with its provisions for an international monitoring team and a normalization period for rehabilitation, reconstruction and development for communities and internally displaced persons—will certainly enhance further existing mechanisms on the ground for humanitarian protection during the transition period. In particular, the International Monitoring Team (IMT), which has a civilian protection component, could contribute significantly to the normalization process that includes disarming rebel troops and transfer of policing functions to the Bangsamoro entity.

Notwithstanding the general optimism surrounding the Framework Agreement, political violence in the ARMM and conflict-affected areas of Mindanao may still ensue in the near term for a number of reasons. First, clan-related conflicts (also known as rido) in ARMM and other parts of Mindanao in the run-up to the mid-term elections in 2013 could complicate the transition period envisioned in the Framework Agreement. It must be noted that the Ampatuan-led Maguindanao massacre in 2009 was an election-related clan violence that left some 57 people killed, which includes some 37 journalists. Second, the proliferation of small arms in Mindanao, the MNLF’s non-recognition of the Framework Agreement, the threat posed by the BIFM, and the reluctance of some MILF factions to lay down their arms altogether could undermine the momentum for long-term peace.

### ***Conclusion and Recommendations***

There is no question that the Framework Agreement between the Philippine government and the MILF is an important breakthrough in the search for a political solution to the four-decade Muslim armed rebellion in Mindanao. While it is not yet a final peace agreement, its provisions serve as a good roadmap in creating mechanisms for a more stable peace in that part of the country. A number of obstacles remain however in implementing the agreement in the near term. President Aquino needs the support of national legislators to enact laws that will support the creation of the Bangsamoro—either through legislation or constitutional amendments—even as local government officials, politicians, and community-level stakeholders must also contribute to the realization of the Framework Agreement. The MNLF and the MILF no doubt will play a crucial role in realizing the provisions of the agreement in the affected areas of Mindanao especially if they are able to overcome their differences.

In the near-term, the momentum towards a more stable peace in Mindanao may be sustained based on the following:

- Demonstrating sincerity on the part of the Philippine government by honoring its commitment to the Framework Agreement through allocation of resources and mustering political support for subsequent agreements that may ensue during the transitional period

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- Continuing commitment of the international community—in particular ASEAN member states, the Australian government and other donor countries—to the Philippine government and stakeholders in Mindanao by providing assistance in capability building during the transition period, especially in the area of good governance, human development, and civilian protection
- Encouraging the positive contribution of non-government organizations and civil society groups in peace-building and conflict prevention, in particular the role of women and religious leaders in promoting human rights, responsibility to protect, peace education and training, and humanitarian protection
- Engaging local government officials, community leaders, and security sector agents through education and training in human rights, civilian protection, rule of law, and good governance

### ***Timeline of Philippine Government-MILF Peace Negotiations<sup>2</sup>***

#### **1997**

Peace talks with the Moro Islamic Liberation Front (MILF) begin, months after the government signs a peace accord with the Nur Misuari-led Moro National Liberation Front (MNLF).

#### **2008**

July—After more than a decade of on-and-off talks, the government and the MILF announce an agreement to expand the autonomous Moro region in Mindanao.

Proposed memorandum of agreement on ancestral domain, or MOA-AD, calls for a Bangsamoro Juridical Entity (BJE) with its own “basic law,” police and internal security force, and system of banking and finance, civil service, education and legislative and electoral institutions, as well as full authority to develop and dispose of minerals and other natural resources. The BJE includes the Autonomous Region in Muslim Mindanao (ARMM); six municipalities in Lanao del Norte; hundreds of villages in the provinces of Sultan Kudarat, Lanao del Norte and North Cotabato, which voted in 2001 to become part of the ARMM; and parts of Palawan.

Aug 4—The Supreme Court stops signing of the MOA-AD, scheduled the following day, amid strong public opposition; clashes erupt in Mindanao.

Sept 3—Violence prompts Malacañang to announce that it will not sign the MOA-AD and dissolve its peace panel.

Oct 14—The Supreme Court, voting 8-7, declares the MOA-AD unconstitutional, describes the process that led to its crafting as “whimsical, capricious, oppressive, arbitrary and despotic.” It affirms its decision on Nov. 11, triggering MILF attacks on Christian communities in Mindanao that send 750,000 people fleeing their homes and leaving 400 dead.

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### 2010

July 15—President Aquino assembles new panel to resume talks, names Marvic Leonen, dean of the University of the Philippines College of Law, as chair.

Aug 31—The President announces that Malaysia will remain facilitator of the talks.

### 2011

Aug 4—The President holds secret meeting with MILF chair Murad Ebrahim in Tokyo; two sides agree to speed up peace talks. The meeting is a first since the talks began in 1997.

Aug 22—Exploratory talks begin in Kuala Lumpur.

Oct 18—MILF forces clash with military troops in Al-Barka, Basilan, leaving 19 soldiers and six rebels dead.

Dec 5—Formal talks resume in Kuala Lumpur.

### 2012

Apr 25—The government and the MILF panels announce agreement to create a new autonomous political entity to replace the ARMM.

Oct 7—President says “framework agreement” reached with MILF to establish a new autonomous entity, to be called Bangsamoro, administered by Muslims. Compiled by Inquirer Research

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<sup>1</sup> For the full text of the Framework Agreement, see <http://pcdsपो.gov.ph/downloads/2012/10/GPH-MILF-Framework-Agreement-10062012.pdf>, accessed on 15 October 2012

<sup>2</sup> From “Timeline: Peace Talks with MILF,” 15 October 2012, Inquirer News, <http://newsinfo.inquirer.net/289154/timeline-peace-talks-with-the-milf>, accessed on 15 October 2012

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