

Implementation of Peace Agreements – Lessons Learned from Philippines and Indonesia

1. Background – Philippines

The Philippines is a country with 80% Roman Catholic population and a 5% Muslims, living mostly in the south. In the Philippines' southern island of Mindanao, the conflict between political actors representing the Moro Muslim people and the Government of the Philippines has been ongoing since the 1960s. The first negotiations produced the Tripoli Agreement on local autonomy in 1976 between the Moro National Liberation Front (MNLF) and the government of Ferdinand Marcos. However, the government later jeopardized the agreement by encouraging large numbers of Christian immigrants to settle in Mindanao.

In the 1996, the government of Fidel Ramos signed an Agreement on local autonomy with the MNLF. However, not all MNLF commanders were happy with the deal, which prompted a split within the group and the formation of the Moro Islamic Liberation Front (MILF), a group that continued fighting the government. President Arroyo returned to negotiations with the MILF, leading to the Memorandum of Agreement on Ancestral Domain in 2008, which was ultimately recognized as invalid by the Philippines Supreme Court due to perceived threat to territorial integrity and possibly due to influence of powerful Christian settlers-politicians, who were concerned about the agreement's focus on ancestral lands.¹

In January 2014, the Government of Benigno Aquino signed the Comprehensive Agreement on Bangsamoro with the MILF after 17 years of negotiation, which would establish a Muslim majority political entity in Mindanao. President Aquino maintained significant influence in both houses of the Congress, making it possible to pass some contentious legislation. However, as the 2016 presidential elections were approaching, his influence in the Congress started waning. The final peace agreement has not been ratified by Congress yet and will be likely refilled with the new government, elected in May 2016. The newly elected president Duterte expressed his support to the peace process, as well as spoke out in favor of federalism in the past.

¹ A.South&C.Joll, *From Rebel to Rulers: The Challenges of Transition for Non-state Armed Groups in Mindanao and Myanmar*, Critical Asian Studies, 48:2, 2016, p175

1.1 Bangsamoro peace agreement – main features

The Comprehensive Agreement on Bangsamoro benefitted from input of legal experts and judges, and the Bangsamoro Basic Law (BBL) was drafted after that to become the legal foundation of the Bangsamoro political entity. The specially established in 2013 Bangsamoro Transition Commission was tasked with drafting the BBL. The commission consisted of 15 members, half from the government and half from the MILF. The MNLF did not join the commission, despite the invitation from the government.

The BBL determines the structure of the Bangsamoro Transitional Authority, which will take power once the law is enacted in Congress and will oversee the elections. The BBL will grant more powers, greater resources and potentially bigger territory, the latter to be determined in a plebiscite in the core territory of the Bangsamoro region as identified in the Framework Agreement on Bangsamoro. One of the key provisions of the agreement is the application of Sharia law to Muslim communities in Mindanao. To address secession fears, the mentions that Bangsamoro will stay part of the territory of the Republic of Philippines.

In order to better coordinate relations between the central government and Bangsamoro, there will be an Intergovernmental Relations Body between the two governments. Furthermore, to coordinate legislative activities, Philippines Congress – Bangsamoro Parliament body will be established.

The BBL was submitted to the Congress as an urgent bill by the President. It needs to be approved by the Congress and after that signed by the President to become law. Subsequently, a local referendum will be held to determine the territorial borders of the Bangsamoro political entity. If passed, the Bangsamoro will replace the Autonomous Region in Muslim Mindanao (ARMM).

1.2 Challenges to implementing the peace agreement

- Imposed time frame
The government linked the transitional period to the end of the presidential term in May 2016, but the negotiating teams have been moving more slowly. If there is no significant progress in implementing the BBL, confidence in the peace process may be affected.

On the other hand, it is questionable whether the initially proposed timeline was realistic in the first place.²

- Lack of clarity regarding constitutional amendment

The BBL provides for a parliamentary form of government in a unitary presidential republic. The government of the Philippines thought that the peace agreement could be implemented without a constitutional change. However, despite the Agreement benefitting from the input of lawyers and judges, the Congress and potentially the Supreme Court may not agree it complies with the constitution. Concerns have been raised by some MPs and prompted debates in the Congress about whether the special autonomy for Bangsamoro is in line with the constitution.³ A potential constitutional amendment would require ratification by a majority in the national referendum, which might be difficult to implement and unpopular.

- Revenue sharing provision can be considered “unfair” to other regions

Currently, ARMM already enjoys a 50-50 split in revenue sharing with the central government, while other local government units in the Philippines have a 40-60 arrangement in favor of the government.⁴ The Annex on Revenue Generation and Wealth Sharing expresses the need for a special arrangement in Bangsamoro and fiscal autonomy, due to the decades-long conflict. This resulted in the agreement on 75% of taxes and profits from metallic minerals to be retained by Bangsamoro, 100% of profits from other minerals and equal share for income from energy sources.⁵

Legislators in the Congress, however, questioned the large amount of taxes retained by future Bangsamoro, compared to that of their own districts.⁶ Concerns over revenue sharing can also refer to the point above. While taxation can be modified through enacting legislation, all natural resources belong to the State according to the Constitution.

- Public support might be lacking

² NOREF report

³ Peace Brokers Grilled: Does Bangsamoro Bill create a substate, Rappler 23 September 2014. <http://www.rappler.com/nation/special-coverage/peacetalks/69950-bangsamoro-basic-law-sub-state>

⁴ Bangsamoro gets 75% of taxes, resources, Rappler, 15 July 2013, <http://www.rappler.com/nation/special-coverage/peacetalks/33714-bangsamoro-gets-75-of-taxes-natural-resources>

⁵ Ibid

⁶ Philippine Bill Would Give Muslims Autonomy, The New York Times http://www.nytimes.com/2014/09/11/world/asia/philippine-bill-would-set-up-autonomous-region-in-muslim-dominated-south.html?_r=0

Distrust between the Christian and Muslim sectors of the society. Successive governments equaled the Mindanao conflict with economic marginalization, while the insurgency was unable to articulate a clear discourse that the whole country could understand. (NOREF, p.6) This results in a potential lack of public knowledge and support to implement the agreement, especially, as far as revenue sharing is concerned.

- Possible intervention by the Supreme Court of the Philippines
The 2008 precedent does not bode well for agreement ratification. The possible intervention by the Supreme Court is another reason (besides politics) why the bill has been remained stuck in the Parliament.

1.3 Attempts to develop legislation

As the peace negotiations were led by the executive, parliament was not given much space, although several Congress members were invited to witness the negotiations (NOREF, p.5). When the BBL was submitted to the Congress for ratification, ad-hoc parliamentary committee was formed, which conducted 35 public hearings in different parts of Mindanao. Although at the beginning the Congress planned to vote on the bill section by section, eventually the BBL had to be re-written into two separate bills, proposed by the Senate. The BBL was followed “to the extent the Constitution allows,” in order to avoid its blocking by the Supreme Court. Some significant provisions included excluding a few municipalities from the possibility of an opt-in plebiscite, limiting the extent of the Sharia law, deleting the ten-year suspension period for remitting tax to the national government and deleting the Special Development Fund for Bangsamoro aimed at assisting post-conflict recovery.⁷

Due to changing political climate, President Benigno Aquino was unable to persuade the Congress to pass the legislation. Furthermore, the tragic incident at Mamasapano, damaged public confidence in the peace process, as well as delayed the deliberations in Congress.⁸ It remains to be seen whether the BBL could be passed in its original form. When the legislative process starts again, the BBL or the two bills could be refilled again, but the Bangsamoro Transition Commission could as well come up with a new version of BBL taking into account objections from the Congress. If the peace agreement is not implemented in its original form,

⁷ Third Party Monitoring Team, Third Public Report: January 2015 to February 2016, p.8

⁸ Third Party Monitoring Team, Third Public Report: January 2015 to February 2016, p.27

it could further alienate some parts of Moro Muslim population. According to MNLF, even the previous 1996 peace agreement had not been fully implemented, being ultimately watered down in the Congress.⁹ This fact encouraged the MILF to continue fighting. A similar split might occur again.

2. Background – Indonesia

The conflict in the Aceh province spanned three decades, but efforts at resolving it began only in the 1990s. It represented a self-determination struggle of the Acehnese, as well as opposition to the oppressive and exploitative policies of the Indonesian regime. The insurgency was led by Free Aceh Movement (GAM), which was trying to achieve independence from the Indonesian government. After the 2004 Tsunami, the parties agreed that only a peaceful settlement would enable the rebuilding of Aceh. During the negotiations, reframing the demands of the Acehnese movement in terms of self-government, rather than independence or autonomy, proved to be key to achieving progress in the negotiations.¹⁰

2.1 Aceh peace agreement – main features

The drafting of the MoU involved a large number of stakeholders, resulting in numerous compromises and lack of clarity in wording. In legal terms, the Memorandum of Understanding is not a treaty and is not supposed to be ratified by the parliament. It details the principles that will guide the transformation process. The MoU states that a new law on the governing of Aceh shall be implemented with a roughly ten-month deadline for it to enter into force. The MoU outlined principles for new self-government arrangements and provisions for political participation (i.e. Aceh-based political parties), revenue-sharing, reintegration and human rights. According to the MoU, Aceh is allowed to retain 70% of revenue from natural resources.

The MoU did not provide for a constitutional reform. Substantive provisions needed to be enacted through legislation, while some operational provisions could be implemented rapidly through an agreement between government and GAM leaders. Furthermore, vague wording of some provisions left them open to interpretation. Despite some problems in the implementation, the deadline stated in the MoU was only missed by five months. The GAM was successful in transforming itself in a political party and competed in the election. A former GAM member, Irwandi Yusuf, was elected governor of Aceh.

⁹ House Panel Set to Vote on Bangsamoro Bill,
<http://www.rappler.com/nation/92804-house-committee-vote-bangsamoro>

¹⁰ Source

2.2 Challenges in implementation

The Law on the Governing of Aceh was developed through a multi-step process. GAM drafted an initial proposal that was further developed through consultations with civil society in Aceh. This was sent to the government, which used it as a reference for drafting legislation. Finally, it was sent to the legislature, which ultimately altered many governance reform provisions expressed in the MoU. It had not been a stakeholder in the negotiations, and treated the MoU as general guidelines, rather than commitments.

Another challenge the Parliament faced is harmonizing the existing legislation with the newly defined relationship between Aceh and the Government of Indonesia, while acting in the limits of the Constitution.¹¹ This led to the fact that the four key legal principles of the MoU were diluted. The GAM expected to be granted more autonomy than it turned out to be. For instance, the MoU did not state who will regulate and license new explorations, but only mentioned 70% of revenue to be retained by Aceh. However, tight government controls and rules regarding issuance of concessions, permits and licenses related to investment and exploration of natural resources disappointed the post-conflict Aceh administration.¹²

2.3 Parliament involvement in the peace process

The Parliament was kept uninformed about the issues under discussion in the negotiations. Indonesian vice-president Jusuf Kalla stated in an interview that it was made on purpose to achieve a compromise without the involvement of the parliament, since not doing so could have resulted in potential opposition by the latter and delayed progress in talks.

3. South Africa

South Africa underwent a successful transition from an apartheid regime based on ethnic segregation to a democracy. For much of the 20th century, the anti-apartheid movements relied on non-violent means to resist the state, but in the 1960s violence escalated. The process of negotiation a democratic transition started in the 1990s, culminating in the 1991 National Peace Accord, followed by a transitional government and drafting of a new constitution. A Constituent Assembly with a strong public consultation component was tasked with drafting the constitution adopted in 1996.

¹¹ Learning from the Indonesia-Aceh Peace Process, Policy brief , Accrod, 2008

¹² Source – Interview Aceh governor

Public participation created a sense of legitimacy and ownership and contributed to developing a culture of peaceful co-existence. All meetings of the Constitutional Assembly were open to the public, and all results of negotiations were available through the Internet.

4. Lessons learned from the Philippines, Indonesia and other countries

Implementation needs to be thought through right from the beginning. As international experience shows, peace agreements can look good on the paper, but translating political agreements into legal ones may face serious bottlenecks in the implementation process. There is a risk of failure, if those who are supposed to implement the agreement are not involved.¹³

- To minimize the risks, lawyers and judges can be included in the drafting of the agreement (check clarity of the wording, see if any contradictions with the constitution). However, opinions even among experts vary, which does not make it a guarantee against potential obstacles.
- Include the legislature in the peace process
This would make sure that lawmakers have a good understanding of what was discussed and deliberated upon in the peace process. At least, it could save time in the implementation process. At most, it might provide an insurance against the possibility that the government might try to hide behind the parliament's sovereignty to reject some provisions at a later stage.
- The time frame should be reasonable
In broad terms, it should not be either too long (currently, eight years for the Nepali Constitutional process), or too short. Grievances and demands that have to be addressed at a later date may exceed those at the time of the original settlement (Indo-Sri Lanka accord). On the other hand, if rushed to the deadline, the peace agreement may result in a product, which is not well thought in terms of wording, legal clarity and potential implications for implementation.
- Parties to the conflict may take advantage of unclear provisions
Many peace agreements end up with compromises and unclear wording, which could as well be a tool to achieve a breakthrough in negotiations. In the case of Aceh, the GAM perceived there would be more autonomy than it was eventually granted.

¹³ Interview with Democracy Reporting International

- Address concerns about constitutionality of potential problematic provisions of the agreement
Reconfiguring power and resource sharing almost always leads to the question about how it fits with the constitution. Ensure there is clarity whether a constitutional amendment is sought/needed.
- Address capacity gaps to develop appropriate legislation in the Parliament
This could be done through provision of technical support to MPs involved in the drafting of relevant legislation. Lack of capacity was not necessarily the case in the two case studies, but is to be considered as a potential bottleneck due to the eventual delay in the implementation
- Ensure transparency and accountability to the public
This is essential to guarantee a buy-in from the majority of the population. This will in turn help ensure that the national parliament as the expression of the will of the people will translate a political agreement into a legal one. A lack of public support and lobbying by powerful politicians might have been a reason behind the Philippines Supreme Court's rejection of the 2008 agreement.

5.1 Potential Scenarios in Myanmar

There is significant amount of uncertainty about how the Myanmar peace process will evolve and what would be the final product. Let us consider the following possibilities, while omitting the possibility that the peace process will collapse.

1. The peace agreement will be reached quickly, within five years, as hoped by the current administration. It will be submitted for the ratification to the current Parliament.
This is a very optimistic scenario, but potentially very difficult to achieve, despite the current government's and Tatmadaw's expressed commitments to the peace process. The large number of stakeholders and different visions on the same issues among ethnic groups make it very difficult.
2. Final peace settlement will be a long process, spanning a few administrations or possibly interrupting on the way.
In this case, legislation related to the peace process might be developed upon recommendations or partial agreements coming from the Panglong conference in a step-by-step process, in order to achieve tangible benefits

in the short-to-medium term. The final peace agreement may or may not be achieved.

3. Nothing is agreed until everything is agreed

Peace implementation will only be initiated upon the ratification of the final peace agreement. This may take from five years to a few decades.

4. Legislation and potentially constitutional amendments, which have relevance to conflict issues, made in Parliament but are not directly connected to the Panglong conference

This for example concerns social issues, such as education, which as of now has not been given space in the negotiation agenda.

5. Constitutional drafting

Developing a new constitution for Myanmar looks quite unlikely in the medium term, due to the military's commitment to the 2008 Constitution. This hypothesis should not be excluded.

5.2 Potential challenges in Myanmar

1. Lack of a buy-in from the majority Burman population

This is a big concern, given the fact that the Burman population has been kept uninformed about ethnic grievances during the decades of military dictatorship. However, to date there have been no concerted efforts to inform the Burman majority population about the developments in the peace process. Being unaware about ethnic grievances, the Burman population may potentially oppose a peace settlement, which might grant significant autonomy and revenue decentralization in favor of ethnic states. This may become a problem in peace agreement ratification in the Parliament, if MPs face opposition from their constituencies – see more in the next point.

2. Problems in ratifying a peace agreement or enacting relevant legislation.

The nationwide ceasefire agreement (NCA) was passed in the USDP-dominated parliament without any objection. Currently, the mirror situation with the NLD MPs holding a significant majority and the popular support of Daw Aung San Suu Kyi, is likely to guarantee a buy-in from the majority in the parliament. However, due to uncertainty in the complicated Myanmar peace process, one should be prepared to the possibility that a peace settlement will not be achieved in the medium term. Generally, Myanmar has been characterized by a weak Parliament, but the situation may also change in the long term, with MPs being more responsive to their constituencies.

The 25% quota of military MPs

A constitutional amendment is an issue that will have to be addressed with special caution to ensure a buy-in from the Tatmadaw. Ethnic Armed Organizations are explicitly seeking constitutional amendment to protect themselves from changing politics.

3. Potential intervention by the Constitutional Court

As the Philippines case has shown, this could be a serious obstacle in translating a peace agreement into legislation. In the case of Myanmar, however, the weakness of the Constitutional Court and all its members being appointed by the dominant party, make it unlikely that it would go against the government and the Parliament. Depending on what scenario the Myanmar peace process would follow, this situation may change in the long term.

4. Capacity to develop legislation should not be underestimated

Myanmar Parliament is relatively new, as well as lacks resources compared to developed countries: for instance, outside research assistance to MPs. Depending on how the agreement is framed and whether provisions are well-thought-out to be easily implementable, additional support may be necessary.

5. Who will be drafting the legislation? In the Philippines and Indonesia, representatives of ethnic armed opposition actors with input from civil society participated in the actual drafting of the law, besides the peace agreement itself. While it may guarantee more local ownership to the final settlement in ethnic areas of Myanmar, it could also prolong the development of the relevant legislation. (What about State level?)

6. Lack of clarity in the development of provisions, especially the most contentious ones. As has been mentioned above, peace agreements often settle on unclear compromises, which may eventually lead to obstacles in implementation. The input from lawyers could mitigate against this possibility. (The NCA process benefitted from support of lawyers, who revised the wording).

6. If peace negotiations drag on or implementation faces problems, this may affect ethnic groups' trust in the peace process. Furthermore, as time passes, the demands of stakeholders may change and grievances to be addressed exceed the original ones. This concerns for instance the conflict sensitivity aspect in development activities, including service provision. Land issues, as well as local structures becoming replaced by state structures (i.e. community schools and health facilities) may lead to a

disconnection from the realities on the ground. Agreements regarding interim arrangements would minimize the risks, but might have to be dealt with bilaterally, due to the wide variety of contexts and local governance structures. The NCA mentions the need for coordination in planning for development and education, but an implementation mechanism is lacking.

7. Parliament proceeds legislating on issues relevant to the peace process without an agreement/input from stakeholders involved in the process (or if the peace process faces problems). This may create or exacerbate disconnection between the two processes. In particular, ethnic armed organizations may feel alienated, if they are not consulted in the development of legislation with a wide impact in ethnic areas.