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**INSTITUTIONS IN THE FUTURE  
BANGSAMORO NEW POLITICAL ENTITY  
OPTIONS AND CONSIDERATIONS**

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## Abstract

The signing of the Framework Agreement on the Bangsamoro (FAB) last October 2012 brought a sense of optimism. Notable are the significant gains that have been achieved towards the resolution of the protracted conflict in Mindanao. A few months after the FAB was signed, the Transition Commission composed of representatives from the Moro Islamic Liberation Front (MILF) and the Government was constituted. The Commission is mandated to draft the Bangsamoro Basic Law that will govern the new Bangsamoro political entity. As of the writing of this paper, only the Annex on Transitional Arrangements and Annex on Wealth Sharing have been signed. The more contentious annexes on power sharing and normalization are still being negotiated.

The annexes, although central to the implementation of the FAB, however do not detail the options and considerations on how the future Bangsamoro new political entity will look like. The FAB though, was explicit in declaring that the Bangsamoro will have a ministerial form of government and that it will maintain asymmetrical relations between the new regional government and the National Government. And in order to achieve a well functioning ministerial system of government, an electoral system shall be put in place that will “allow democratic participation, ensure accountability of public officers primarily to their constituents and encourage formation of genuinely principled political parties” (FAB). But how will the abstract concepts of autonomy, participation, accountability and inclusion be operationalized under a ministerial form of government that has asymmetrical relations with the central government?

This paper aims to detail the options on how the institutions of the future Bangsamoro may look like and the considerations that are essential guideposts towards making the decisions on which forms to adopt. Specifically,

it will post key questions on four major concerns –on the electoral system, on the ministerial form of government, the participation in the governance process of minorities, specifically, indigenous minorities in the region and on the relations between the local and regional governments. After presenting the options and taking into account the considerations attached to these options, a preliminary judgment on which option or options might be most effective and beneficial to the future Bangsamoro will be discussed.

In presenting these options and considerations on the future Bangsamoro institutions, the paper uses a descriptive structural analysis framework in attempting to put forward institutional solutions to the longstanding conflict in Mindanao. Instead of posting solutions to the problem under the lenses of ethnic and identity politics, the paper will unbundle the main issues of identity and autonomy into concerns such as inclusion, representation, participation, accountability, transparency and good governance under an institutional setting. In creating strong institutions, the gains achieved by the peace process will be sustained and conflict reduced.

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POLITICAL ENTITY**

**OPTIONS AND CONSIDERATIONS**

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## I. Introduction

In August 1989, then President Corazon Aquino signed into law Republic Act No. 6734, creating the Autonomous Region in Muslim Mindanao (ARMM). The terms of its creation were primarily negotiated by the Government of the Philippines (GPH) and the Moro National Liberation Front (MNLF). A separate regional government was formed while the administrative functions of the state were retained in its current regional set up. The creation of an autonomous region was seen as an alternative to the separatist claims to independence of the MNLF. In 1996, the peace agreement negotiated between the MNLF and the Government was finalized. It was seen as a political solution to end the protracted conflict in Mindanao.

Although in the beginning years of the ARMM, the MNLF gained substantial political capital, it was not enough to prevent schisms within the movement. The discontent of some of its members led to the creation of the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf. The Abu Sayyaf, divorced from its ideological roots regressed into becoming a terrorist organization. The MILF on the other hand continued to raise arms, at first, demanding independence for the region. The escalation of hostilities between the MILF and the government led to the initiation of the MILF peace negotiations in 1997.

Adding another dimension of complexity to the peace talks in the ARMM is the claim on ancestral domains intending to expand the territorial boundaries of the region. Even with the Supreme Court ruling against the Memorandum of Agreement between the MILF and the government on Ancestral Domains (MOA-AD) in 2008, the ancestral domains claims remain to be a contentious issue. The peace talks continued intermittently with frequent disruptions due to the

failure of both sides to reach an agreement on major concerns.

A key milestone in the peace talks between the government and the MILF is the signing of the Framework Agreement on the Bangsamoro (FAB) in October 2012. The FAB was signed amidst an optimistic climate with the country apparently earning positive economic indicators and with the overwhelming support of the international community. The FAB sought to create a Bangsamoro new political entity that will eventually replace the ARMM. In February 2013, the 15-member Transition Commission was appointed by President Benigno Simeon Aquino III. The Commission is mandated to draft the Bangsamoro Basic Law (BBL) using FAB and its annexes as guiding documents. However, as of the writing of this paper, only the Annex on Transitional Arrangements and Modalities and the Annex on Wealth – Sharing has been signed. The Annexes on Power –Sharing and Normalization are still being negotiated by the government and the MILF<sup>1</sup>.

Today, the ARMM remains to be one of the poorest and least economically developed region in the country. According to the 2010 Census of Population and Housing published by the National Statistics Office (2012), the region has about 3.25 million inhabitants composed predominantly of Muslim inhabitants with Christian and indigenous minorities. Poverty incidence among the population is the highest at an estimated 52.9% in 2012 compared to the national average of 27.9%<sup>2</sup>. While the country's annual average family

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1 For a comprehensive overview of GPH-MILF Peace Talks please see (1) Philippine Daily Inquirer. (2012). Timeline: Peace talks with the MILF. *Philippine Daily Inquirer*, 27 (309). Retrieved from <http://newsinfo.inquirer.net/289154/timeline-peace-talks-with-the-milf> and (2) Arguillas, C. (2013). GPH, MILF 6 months after FAB signing: 5 documents signed; most important pending. *MindaNews*. Retrieved from <http://www.mindanews.com/peace-process/2013/04/15/gph-milf-6-months-after-fab-signing-5-documents-signed-most-important-pending/>.

2 The figures are according to the data released by the National Statistics Coordination Board (NSCB) last April 2013.

income in 2009 is at Php 206,000, the region's annual average family income is only at Php 113,000<sup>3</sup>. Literacy rates are the country's lowest at 71.6 percent, almost 15 points down from the national average of 86.4 percent<sup>4</sup>. In addition to the region's chronic poverty and underdevelopment, armed conflicts continuously occur<sup>5</sup>. The regional government is heavily dependent on the Internal Revenue Allotment (IRA) from the national government and the political system is dominated by political clans (Institute for Autonomy and Governance, 2011; Lingao, 2013; Mendoza, Beja, Venida & Yap, 2012). Within this context, there is an overwhelming consensus that the ARMM is far from being the autonomous entity that it was intended to be. The national government even deems it as a failed experiment<sup>6</sup>.

A cursory survey of the literature will detail the weaknesses of the region's institutions (Bacani, 2004; Rasul, 2007; Institute for Autonomy and Governance, 2011). The regional and local governments remained heavily controlled by the national government and were not given adequate powers to determine and implement substantive decisions. This adds to a situation in which the local and regional governments are dominated by clans and families, perpetuating patronage politics and entrenching systemic corruption. If the FAB is to succeed, a closer examination on how the future institutions of the Bangsamoro new political entity will function and look like is in order, if we wish to put the hard lessons learned in the ARMM experiment into good use.

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3 The data is sourced from the June 2013 national and regional statistics published by the National Statistics Office (NSO).

4 The data is from the 2008 Functional Literacy, Education and Mass Media Survey (FLEMMS) conducted by the National Statistics Office.

5 For a more comprehensive understanding of the security situation in ARMM, please see Notre Dame University Research Center and the Institute for Autonomy and Governance. 2010. Urban safety profile in the ARMM. *Autonomy and Peace Review*, 6 (4), 11-144.

6 Bordadora, 2011. Palace says ARMM failed experiment. *Philippine Daily Inquirer*, 26 (207).

North (1991) defines institutions as “humanly devised constraints that structure political, economic, and social interaction” (p.97). They define and enforce change. Policy makers are constrained by their institutional context and belief systems. Hence, following North (1994), it is “essential to have an intimate knowledge of the institutional structure and the way it is evolving to understand what is possible” (p.4). Although the annexes and the Bangsamoro Basic Law will be central to the successful implementation of the FAB, it is essential that institutions in the future Bangsamoro new political entity be considered during the entire process. Hence, the focus of the paper is on how the institutions of the future Bangsamoro maybe organized and how they can function.

The FAB (2012) declares that the future Bangsamoro will have a ministerial form of government and will maintain asymmetrical relations with the national government. It will also have an electoral system that will “allow democratic participation, ensure accountability of public officers primarily to their constituents and encourage formation of genuinely principled political parties” (p.1). The paper is an attempt to concretize the concepts of democratic participation, accountability, representation within a ministerial form of government that maintains asymmetrical relations to the national government. Under a structuralist framework, it describes how the future institutions of the Bangsamoro may look like by providing options and considerations in four key areas: a) electoral system, b) ministerial form of government, c) relations between local and regional governments and d) representation and participation of minorities, specifically the indigenous peoples in the Bangsamoro. After presenting the options and the considerations attached to these options, preliminary judgment on which option or options might be most effective and beneficial to the future Bangsamoro will

be forwarded to serve as guideposts in deciding which forms to adopt.



## II. Selecting Electoral Systems<sup>7</sup>

In its simplest definition, elections are political exercises that give the electorate the fundamental right to participate in governance. Through elections, citizens select who their leaders will be, and by extension, express how the government should be run (Co, Tigno, Lao & Sayo, 2005; Teehankee, 2002). An electoral system is the set of rules and laws that govern the conduct of elections. A functioning electoral system will ensure representation of diverse interests and that the will of the electorate is reflected in the government that they will form. A strong electoral system will also incorporate transparency and accountability mechanisms that will hold the elected officials responsible to their constituency<sup>8</sup>. These principles are embedded in the FAB (2012) as it expressly stipulates that in the future Bangsamoro, the electoral system will “allow democratic participation, ensure accountability of public officers primarily to their constituents and encourage formation of genuinely principled political parties” (p.1).

Unless the provisions contained in the 1987 Philippine Constitution are changed, the voting requirements will remain<sup>9</sup>. The 1987 Constitution however does not specify the eligibility requirements for the candidates running for the Bangsamoro regional parliament. Ultimately, it will be the Bangsamoro Basic Law that can determine who are eligible to run for the regional

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7 The sections on the electoral systems and the ministerial form of government are the results of the seminar jointly conducted by the Bangsamoro Transition Commission, the Konrad Adenauer Stiftung Philippine office and the Institute for Autonomy and Governance held in Cotabato City last August 12 – 13, 2013.

8 For a good introduction on electoral systems, see Norris, P. 1997. Choosing electoral systems: proportional, majoritarian and mixed systems. *International Political Science Review*, 18 (3), 297 – 312.

9 According to Article 5, Section 1 of the 1987 Constitution, the right to suffrage can be exercised by Filipino citizens, at least eighteen years old and have resided in the Philippines for at least a year and in the place where they intend to vote for at least six months immediately preceding the elections.

elective posts.

The Bangsamoro regional government may have either a unicameral or bicameral assembly. The FAB (2012) does not specify it. However, the number of elective seats in the assembly will largely be determined by the population of the future Bangsamoro. According to the FAB (2012), the Bangsamoro territory includes the following: "(a) present geographical area of the ARMM; (b) Municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte and all other barangays in the Municipalities of Kabacan, Carmen, Aleosan, Pigkawayan, Pikit, and Midsayap that voted for inclusion in the ARMM during the 2001 plebiscite; (c) the cities of Cotabato and Isabela; and (d) all other contiguous areas where there is a resolution of the local government unit or a petition of at least ten percent (10%) of the qualified voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro..." (p.6). The total population of the ARMM based on the 2010 census conducted by the NSO is 3.25 million. The average growth of the population is pegged at 1.6 percent<sup>10</sup>. Factoring in the growth rate, it can reasonably be estimated that by 2016, the population of the Bangsamoro (at less in the core areas) will be more or less 3.5 million. Following international trends and standards, at least every 100,000 individuals should be represented by one assembly member. Thus, it is possible to say that the regional assembly may have at least 35 members.

The members of the assembly can have the congressional districts as their geographic base. They can also be selected through a province-wide

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<sup>10</sup> The projected annual population growth rate of the Philippines is based on the 2012 World Development Indicators published by the World Bank.

vote, with population as the basis for the number of elected members per province in the assembly. Another option can be electing the members of the assembly through a general region-wide vote. Three options in electoral system design are presented for consideration: a) members of the assembly are elected in single-member constituencies by a simple majority, b) assembly members are elected in a system of proportional representation through party lists and c) members of the assembly are elected through a mixed electoral system, with at least half of them elected in single-member constituencies by simple majority and the other part selected proportionally through a party-list system.

### **Single-member Constituency, Simple Majority**

Under a single-member constituency, a member of the assembly is elected by a simple majority in his geographic constituency. Theoretically, this system directly translates votes into seats in the assembly. This system also provides a direct link between members of the assembly and the electorate. Additionally, elected members are connected to their constituencies because their votes come from a clear geographic base. By forging a direct link to its citizens, it can be argued that the elected members are directly accountable to the electorate (Reynolds, Reilly & Ellis, 2006; ECPRD, 2000). This system has the added advantage of its familiarity. Although the present Philippine electoral system technically can be described as a mixed electoral system with the House of Representatives composed of both directly elected representatives and members selected through the Party List System, it can be argued that it is a mixed system that is heavily leaning towards a simple

majority system<sup>11</sup>.

Elections in the ARMM in particular and in the Philippines in general are dominated by political families and clans. Scholars trace the rise of the clans in Philippine politics back to the colonial times when the Spanish officials exercised political power by co-opting the local elite. The elite-dominated system was continued during the American period when the foreigners controlled the country through local surrogates that were given patronage by the American government. These local surrogates in turn, provide patronage to their respective clients thus strengthening their hold in their respective areas. Political contests are reduced to competitions between prominent local families, making it hard for individuals without the financial resources and political clout to enter government. Further, the transactional characteristic of the current electoral system makes it more vulnerable to distortions such as massive vote buying, intimidation and fraud. As a result, government is dominated by political families and clans that have built intricate and deeply rooted patron-client systems perpetuating the patronage-driven politics of the country (Banlaoi & Carlos, 1996; Teehankee, 2002; Hutchcroft & Rocamora, 2003; Co, Tigno, Lao & Sayo, 2005).

Elections in the Philippines are generally characterized by analysts as a democratic farce dominated mostly by political dynasties that control the “guns, goons and gold” (McCoy, 1993; Co, Tigno, Lao & Sayo, 2005). This situation is worse in the ARMM. Elections in the ARMM are driven and dictated by the region’s powerful clans. A report by Lingao (2013) commissioned by the Philippine Center for Investigative Journalism details

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<sup>11</sup> National elected officials such as the President, the Vice President and the members of the Senate are directly elected. Members of the House of Representatives, on the other hand are composed of directly elected District Representatives and Party list Representatives. The party list representatives only constitute 20 percent of the members of the lower house. Hence, although technically, the Philippine electoral system can be classified as a mixed system, it is heavily leaning towards the majoritarian/plurality system.

how the clans virtually control the region's government. The leaders of the clan decide who can and will run for a particular position. Conflicts arise when one clan member does not give way to another. Hence, in most cases, you will see individuals belonging to similar clans and families fight against each other for the same position.

The ARMM is notorious for the cases of vote buying, fraud, intimidation and vote manipulation during elections. It is nearly impossible to win a seat in parliament without resorting to such practices given these conditions. Since elections are primarily won using unscrupulous methods, accountability is a major concern. When elected officials assume their posts, it is a familiar occurrence that public funds are not disbursed in a transparent manner. Policy decisions are made arbitrarily and implemented haphazardly, if not half-heartedly. The interests of the ordinary citizens are continuously overridden by the influence of the clans. The concerns of the indigenous minorities are almost never included in the general governance agenda. If the Bangsamoro will continue to adopt this system, it will inherit its defects and weaknesses, further perpetuating the clan-dominated, family-oriented politics in the Bangsamoro. Hence, participation, representation, accountability and transparency are difficult to attain under this system.

### **Proportional Representation through Party Lists**

Members of the regional assembly may be elected through party lists in a proportional system of representation. This option can further be classified into two: a) proportional representation through regional party lists and b) proportional representation through provincial party lists. Under a system of proportional representation, the electorate rather than selecting an individual will choose among political parties

contending for the seats. The seats in the assembly are distributed according to the number of votes the political party is able to gather. A political party creates a list composed of candidates elected by the party through internal democratic procedures. This party list will be the basis of who will occupy the number of seats won by the political party during the elections. The political party may create a party list per province or the party list may be region-wide. A provincial party list has the advantage of allowing representation to be proportionally distributed to the provinces based on their population. Additionally, province-wide party lists provide more direct accountability to their constituents compared to region-wide party lists. A region-wide party list may have the danger of being dominated by majority groups representing only a particular interest or geographical area.

Scholars argue that the proportional system reflects more accurately how the electorate have voted. Additionally, there are less wasted votes compared to the simple majority system. Unlike the simple majority electoral system that strongly favours dominant parties, the proportional system makes it easier for smaller parties to gain representation. Since members of the assembly are elected and controlled by their respective political parties, the system encourages the formation of stable majorities for the election of a government built on consensus. However, for the system to effectively work, the formation of genuinely principled political parties is an important requirement (Reynolds, Reilly & Ellis, 2006; ECPRD, 2000).

Observers of Philippine politics argue that the country's political party system is dysfunctional (Lande, 1965; Sidel, 1999; Teehankee, 2002; Hutchcroft & Rocamora, 2003; Co, Tigno, Lao & Sayo, 2005). Political parties in the Philippines are vehicles used by political personalities in agglomerating their private

interests and projecting these into the structures of government. They do not have a clear programmatic platform that provides the electorate with concrete policy alternatives. Largely maintained by patrons with no clear membership base among the ordinary citizens, political parties are most active during election season and remain dormant throughout the years in between. Thus, candidates that affiliate themselves to a certain political party to get elected do so for political convenience and not out of a set of beliefs that are aligned to the party's principles and programs. Additionally, the choice of who can run for a particular position is controlled by the patron or group of patrons who finance a large portion of the party's operations.

The Philippines' unreformed political party system is taken hostage by the clan-dominated politics of the ARMM. In order to secure seats in the local and regional governments and maintain political power, the large, traditional parties forge alliances of political convenience with one or more of the powerful clans in the region. The large traditional parties often look at the clans to deliver the votes needed to propel their members into national political offices. Since internal democratic procedures do not govern the parties as well as the alliances formed, control of who holds office is determined by the clans.

Hence for the system of proportional representation to work effectively, the electoral system should be designed in a manner that supports and institutionalizes the formation of functioning political parties. The rules needed for this system to properly function should encourage the formation of membership based political parties<sup>12</sup> that are composed of both ordinary citizens and professional politicians.

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12 For a comprehensive discussion on political parties, please see Hofmeister, W. & Grabow, K (2011). *Political parties: Functions and organization in democratic societies*. Singapore: Konrad Adenauer Stiftung.

Membership dues should be levied by the party to finance its operations. Membership dues are also a mechanism for members to claim ownership of the political party since the party's resources are attained by a collective effort rather than from the coffers of a patron. With ownership, internal democracy is developed by allowing the members to participate in the decision making processes of the party. It reduces the risk that party leaders are appointed arbitrarily. Further, internal democratic procedures open up spaces for minorities such as the indigenous peoples to participate in the mainstream electoral process by becoming members or supporting a political party that carries their interests. Since political party competition involves differentiation, a political party must have a clear, programmatic orientation that will distinguish them from other parties. The party that can best articulate the electorate's interests and provide policy alternatives that meet these needs logically wins the most seats in parliament. The party's programmatic orientation should serve as the general guide upon which its elected members craft their policies and recommendations. The party's political platform is an important tool for accountability since it serves as the gauge by which the electorate can measure the party's performance in governance. Thus, under this system, the chances for creating a participatory, transparent and accountable government are greater.

### **Mixed System, Part Simple Majority, Part Proportional Representation**

Another type of electoral system that can be established in the future Bangsamoro is a mixed system combining the features of both the single-member constituency elected by a simple majority and the proportional representation system. Under this option, part of the members of the regional assembly is elected through single-member constituencies by simple majority. The

remaining part of the assembly are elected through party lists, with each political party getting the seats based on the votes that they have gathered during the elections. These two systems can run parallel of each other, or it can be a combined mix system where the total number of seats of a party is calculated from their number of votes in the party list election. The seats gained by the respective political party in direct constituency elections are considered to be part of the total number of seats to be attributed to this party.

The principle of consensus must be developed in order to sustain stable governments and consistent policies. A drawback of this system is it makes it more difficult to guarantee representation for minorities and small parties than in a fully proportional system. Additionally, the dual nature of the mixed system may leave voters confused (Reynolds, Reilly & Ellis, 2006).

Since at least half of the assembly is directly elected from single – member constituencies, these constituencies provide them with a geographical base. Additionally, they are directly accountable to the electorate that put them in power. However, it can be argued that half of the members of the assembly will still be elected under the current system – an unreformed one where political dynasties rule and the patronage system leaves little room for transparency, participation and accountability.

The other part of the seats of the assembly is distributed according to the number of votes each registered political party wins during the elections. This allows room for smaller political parties to participate in governing. The political party through internal democratic procedures makes a list and determines who among its leaders will occupy the position through the list. This also makes it possible for indigenous minorities to be included in party lists. However, for political parties to be accountable, they need to be

composed of both citizens and professional politicians. They need to be membership based, possess internal democratic rules and have a programmatic platform.

The choice of which electoral system to adopt will impact greatly the progress of democracy in the Bangsamoro. The electoral system determines the degree of representation and participation afforded to groups and minorities and sets up the accountability and transparency mechanisms. In determining the suitable electoral system, considerations of short term political advantages should not be the governing criteria. The electoral system will affect the nature of the political system in the Bangsamoro as well other institutions such as political parties and the regional government that are essential to the functioning of the autonomous region. The current electoral system does not sustain the development of political parties and makes it easier for the clans and families to dominate. With no real political parties to coordinate and control the government, an unstable situation that subjects governance to the whims of the clans and families is created. In a mixed system, part of the members of parliament is still elected under this unreformed electoral system. It is in proportional systems that the conditions for real political parties to emerge are developed. A successful electoral system design should take into consideration the entire political framework since its re-engineering will most likely create impact in the other related institutions. Thus, an electoral system should not be taken in isolation with the other elements that make democracy work.

### **III. Operationalizing the Ministerial Form of Government**

Introduced as an innovation by the framers of the FAB, the Bangsamoro new political entity will have a ministerial form of government, a deviation from the presidential form practiced under the 1987 Constitution. Otherwise known as the parliamentary form of government, the ministerial form is a type of democratic system of government in which the country's chief executive (also referred to as the head of government) is elected by the members of the legislative branch of government (commonly called the parliament). In the ministerial form of government, the voters directly elect the legislature which in turn decides who leads government. The head of government and the members of the cabinet are directly accountable to the legislature, making the executive and legislative branches of government interconnected and mutually dependent (Stepan & Skach, 1993).

This is in contrast to the presidential system which allows voters to directly elect both the members of the legislature and the chief executive, making both branches mutually independent and separately co-equal. Since the chief executive is chosen independently from the legislature, s/he serves for a fixed term of office commonly outlined in the constitution. Also outlined in the constitution are specific powers that the chief executive can exercise that are not subject to the direct control of the legislative branch. Corollary to this set-up, the other branches of government are also given powers that can block the actions of the other branches of government providing for a system of checks and balances that attempts to promote accountability.

In the ministerial form of government, there is near fusion of legislative and executive functions since the chief executive and the members of the cabinet are usually members of the legislative. In cases where the chief executive is elected from outside of parliament, his/her election is incumbent upon the decision of the legislative. The chief executive, as well as the members of cabinet, remains in office as long as they have the support of the legislature. This arrangement forces both branches to work together, effectively creating the conditions for government that is mutually dependent on executive – legislative cooperation.

Proponents of the ministerial form of government argue that under this arrangement, power is de-concentrated from one branch of government (Stepan & Skach, 1993). The distribution of powers encourages the formation of a government that is built on consensus, fostering legislative efficiency (Abad, 1997; Stepan & Skach, 1993).

In the current ARMM, the regional governor and the members of the regional assembly have fixed terms and are elected directly and independently from each other<sup>13</sup>, creating a hybrid system that strongly maintains the characteristics of the presidential form of government under the present electoral system that heavily leans on the single member constituency that is elected by a simple majority. However, the “Parties agree that the status quo is unacceptable and that the Bangsamoro shall be established to replace the Autonomous Region in Muslim Mindanao” and that the “government of the Bangsamoro shall have a ministerial form” (FAB, 2012 p.1). In choosing a ministerial form of government for the future Bangsamoro NPE, key

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13 The ARMM regional governor and regional vice – governor are elected directly into office. Both have a fixed term of three years. The unicameral ARMM legislative assembly is composed of the three deputy regional governors (one each for the Muslims, Christians and indigenous peoples) and three regional assembly men from each congressional district. All members of the regional legislative have a fixed term of three years, allowing the regular members to serve for three consecutive terms.

questions on how the government is formed, how its leaders and members are selected and supervised are intricately connected to the concerns of inclusive democratic participation, accountability and stability that serve as major challenges in the design of the region's ministerial form of government.

### **Selecting the Regional Chief Executive (Prime Minister) and Members of Cabinet (Ministers)**

There are several options in selecting the leader of government (prime minister) or the regional chief executive. However, for the purposes of this paper, the following three alternatives are offered. Firstly, the leader or official candidate of the political party that gains the majority after the general elections or the leader or official candidate of a coalition of political parties that form the majority block in parliament can be elected as the prime minister. S/he can be nominated by the speaker of the assembly and then confirmed by members of the parliament. A second option would have the speaker of the assembly nominate any qualified member of parliament as the candidate for the prime minister to be confirmed by the members of parliament. The third alternative is for the speaker of parliament to nominate a qualified individual who is not a member of parliament to serve as prime minister. The nominee is then confirmed by the members of the parliament. The confirmation of the three options presented above can be secured by any of the following options: a) by a simple majority of the members of parliament present during the voting; b) a simple majority of all the members of parliament; c) a two-thirds of all the members of parliament present during voting; or d) a two-thirds of all the members of parliament.

The members of the cabinet or ministers can be members of parliament or not. They can be appointed

by the regional chief executive to be confirmed by the legislative assembly as a whole or individually. Confirmation can be secured through the following: a) by a simple majority of the members of parliament present during the voting; b) a simple majority of all the members of parliament; c) a two-thirds of all the members of parliament present during voting; or d) a two-thirds of all the members of parliament. Another option is for the members of the cabinet to be selected by the regional chief executive with no confirmation from the members of parliament.

The ministerial form of government is anchored on the close cooperation between the executive and legislative branches of government. The first and second options for selecting the prime minister can be viable since in both options, the prime minister is selected from the legislative. These arrangements allow mutual dependence between the two branches of government to be reinforced. Additionally, the elected prime minister will be in a better position to lead since his/her legitimacy comes from his/her position as a member of the legislative assembly who is directly elected by the citizens to govern. The same set of arguments can be applied to the members of cabinet who are chosen from the members of the legislature. In this connection, the accountability mechanisms are clearer owing to the chief executive's and the members of the cabinet's link to the electorate.

This legitimacy is in question if the third alternative, a prime minister chosen from outside of parliament, is selected. But, it can also be argued that the prime minister once elected under this alternative is accountable to the legislative that put him/her in power. The legislative in turn is responsible to the electorate that chose them. However, the third option can only be viable in cases when the political parties in parliament are heavily divided and/or members of

parliament are fragmented that a majority decision on who of them should govern as the chief executive cannot be arrived at. Hence, in these extraordinary circumstances, it might be beneficial for parliament to be lead by an individual that is generally acceptable and respected and is instrumental to the consolidation of the institution.

However, in the case of the ministers, it might be easier to accept qualified individuals who are not members of parliament as members of cabinet provided that they have necessary expertise that is required of their office. A cabinet position, although largely political and strategic, has also bureaucratic and administrative elements that a qualified individual, not necessarily a member of parliament can deftly perform. Either way, for the members of the cabinet, both options seem to be viable.

In confirming the selection of the members of the cabinet, the legislative assembly can confirm them as a whole or individually. It can be observed from our current system of government that employs the latter method that individual confirmation tends to further politicize and fragment the appointment process. By confirming the ministers individually, the concentration of power, at least on this aspect tends to tilt towards the legislative branch, putting the prime minister in a difficult position that may result in unwise compromises. The chief executive must be given a certain degree of autonomy that allows him/her to form an effective government without sacrificing the supervision and accountability mechanisms wielded by the legislative. Hence, confirming the cabinet in its entirety provides better conditions for consensus – building.

The question on what majority will be used to elect the chief executive and the members of his/her cabinet, is again connected to the concerns on legitimacy

and accountability. If the leader of government and the ministers are elected with the majority, either simple or two-thirds, of only the members present in the voting session, their legitimacy is seriously questionable in cases where they won with only the minority of the members of parliament present and able to vote. A simple majority or a two-thirds majority of all the members of parliament can be viable options in electing the regional chief executive and his/her cabinet. It should be noted however that on the one hand, a two-thirds absolute majority can be employed as a consolidation mechanism in cases where parliament is fragmented and polarized. These can give the necessary legitimacy to the prime minister and his/her cabinet, giving him/her the perception of authority to govern and also the necessary numbers to effectively pass, enact and implement programs and policies. On the other hand, the need for a two-thirds majority can create circumstances that will make it difficult to form a government.

### **Making Parliament, the Regional Chief Executive (Prime Minister) and Members of Cabinet (Ministers) Representative and Responsive, Accountable and Stable**

Most scholars agree that one of the advantages of the ministerial form of government is its ability to enact legislation efficiently and effectively. This is due in part to the formulation of a legislative agenda that is responsive to the needs of the electorate. There are several options in drafting the agenda of the parliament. The first alternative would be to create a committee tasked to formulate the parliamentary agenda. The members of the committee can be leading figures of the political parties included in parliament, with the seats distributed proportionally. The second option would be to have the legislative agenda decided by the speaker of the legislative assembly.

The second option gives the decision – making power to an individual or by extension to the dominant political party. Under these arrangements, the legislative agenda is unilaterally decided leaving little room for the representation of minority concerns. The first option seems to offer a more democratic way of doing things. This institutional arrangement is necessary in the formation of an inclusive Bangsamoro. Participation in decision – making is guaranteed by the procedures of proportional representation. In this set – up, decisions are generally arrived at a consensus. However to ensure that in finding solutions both dominant and minority interests are cohesively integrated, regulation mechanisms in the working procedures of parliament need to be enforced. Additionally, a coherent and cohesive parliamentary agenda is an effective accountability mechanism. Since the legislative agenda is a product of representative negotiation, it outlines a governance plan that is rooted in the important concerns of the electorate brought forward by their representatives in parliament. It is the yardstick upon which the electorate can concretely measure the performance of their government against. The legislative agenda is also a source of stability for the ministerial form of government. A legislative agenda that is consensually decided is a guarantee against the individual whims of the members of parliament and a source of continuity in extreme cases where the head of government and/or his/her ministers are forced to resign.

In the previous section, it was explained that the prime minister and the members of his/her cabinet are directly accountable to the parliament. If the prime minister is not performing effectively and has lost the confidence of the legislature, the legislative may force the head of government to step down from office. The regional chief executive may be forced to resign by a vote of non – confidence by the legislature. However,

in order to avoid a power vacuum after the resignation of the prime minister, a provision forcing the members of parliament to reach a decision on the replacement of the regional chief executive who was forced to resign should be in place before the resignation of the erring chief executive should be deemed final and irrevocable<sup>14</sup>. Another option is that legislative may call for the dissolution of the current government, paving the way for the conduct of a general election that will place in power a new set of officers.

The members of the government can be forced to resign as a whole or individually. The mechanism that can force the resignation of the cabinet is dependent on the mechanisms that are established to select them. If ministers are selected/confirmed by parliament individually, then it makes sense that resignation of the members of the cabinet can be implemented individually. If the cabinet is confirmed as a whole, then it follows that it may be asked to resign as a whole.

These options can be decided by parliament through a) a simple majority of the members of parliament present during the voting; b) a simple majority of all the members of parliament; c) a two-thirds of all the members of parliament present during voting; or d) a two-thirds of all the members of parliament.

The decision on which majority can force government to resign is essential in maintaining the stability of the ministerial form of government. The decision to dissolve government or force the head of government to resign by a simple majority or two – thirds majority of the members of parliament present during the voting would be riddled by questions of legitimacy and prudence. This option would be susceptible to abuse and brazen manoeuvring. The option to force the prime

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<sup>14</sup> This option is called the constructive vote of no confidence. Originally, a German concept, it is now also practiced in democracies such as Spain, Hungary and Belgium.

minister to resign or to dissolve the government by a simple majority vote or two – thirds majority vote of all members of parliament can work both ways. It can provide a mechanism for accountability by withholding power from those who cannot effectively wield it but it can also be a source of instability and infighting. In order to avoid this, clear mechanisms must be installed in the design of the ministerial system of government for the future Bangsamoro NPE, balancing the concerns of representation and participation against questions of accountability and stability.



## IV. Minority Representation and Participation in Governance<sup>15</sup>

The current Autonomous Region in Muslim Mindanao as well as the future Bangsamoro new political entity, although demographically dominated by Muslims, is also home to Christians as well as the indigenous minorities. The future Bangsamoro new political entity attempts to address the concerns of the indigenous minorities by stipulating in the FAB (2012) that in addition to the basic rights already enjoyed, all citizens of the Bangsamoro shall have “the right to equal opportunity and non – discrimination in social and economic activity and the public service, regardless of class, creed, disability, gender and ethnicity; right to establish cultural and religious associations; and the right to freedom from religious, ethnic and sectarian harassment” (p. 8) It also proclaims that the “indigenous people’s rights shall be respected” (FAB, 2012 p. 8). Further, the “customary rights and traditions of indigenous peoples shall be taken into consideration in the formation of the Bangsamoro’s justice system”.

Although the traditional rights of the IPs are enshrined in the FAB, these rights can only be respected and enforced if the core areas and the profile of the indigenous communities are defined. Official government sources of data estimate the population of the indigenous peoples (IPs) at 60,000 individuals. However, more reliable sources of data place the

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<sup>15</sup> The section on minority representation is largely the result of the consultation - seminar jointly organized for the indigenous minorities by the office of Hon. Froilyn Mendoza of the Bangsamoro Transition Commission, the Institute for Autonomy and Governance and the Konrad Adenauer Stiftung Philippine office held in Cotabato City last June 19, 2013.

population estimate at around half a million<sup>16</sup> (Fischer & Bacani, 2013). The inaccurate baseline data of the IP population is largely due to the difficulty in accessing their communities which are mostly located in the hinterlands of the ARMM. Additionally, some of the members of the community are continuously displaced during to the conflicts between the rebels and the military that occur in their territories. Another problem in the gathering of accurate data is the lack of clear categories for the IPs. Hence, although the IPs comprise about 15 percent of the ARMM's population, they are largely marginalized and excluded from participation and decision making in governance<sup>17</sup>.

However, for the future Bangsamoro to truly allow democratic participation, its electoral system must open up spaces for the representation of minority concerns. The future political entity should have to be inclusive for it to be successful. There are several options for IP representation in the future Bangsamoro. The first option for IP representation in the future Bangsamoro is through a legal provision. A legal provision can be drafted that allows the IPs to be represented by their own member of Parliament. This option is similar to the current set – up in the ARMM Regional Assembly that provides for a deputy governor for the indigenous peoples. Important questions to be decided for this option include considerations on the processes of appointing or electing the IP representative. The process of selecting the IP representative is central to

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16 The IPDEV Project of the Konrad Adenauer Stiftung (KAS) Philippine office is conducting a survey of the indigenous peoples in Southwest Mindanao and the baseline data that the project has gathered showed that the population data of non-Islamized, indigenous peoples has exceeded official government estimates thus far. The project is co – implemented by KAS from February 2012 to January 2015 and is funded by the European Union (EU) and the German Federal Ministry for Economic Cooperation and Development (BMZ).

17 For a more comprehensive discussion on the condition of indigenous minorities in the ARMM, see Institute for Autonomy and Governance. 2011. The indigenous people's struggle for their own RSD and ancestral domain. *Autonomy and Peace Review*, 7 (1), 101 – 110. See also Fischer, M. & Bacani, B. 2013. Fighting for land and identity – the perpetual struggle for the indigenous peoples in Southwest Mindanao. *KAS International Reports*, 29, 43 – 67.

the legitimacy of the individual as the representative of the diverse groups of indigenous minorities in the region.

The second option for IP representation is through participation in the general elections under the current single member constituency, majoritarian electoral system. However, the current political structures are clan-dominated and patron-oriented. Under the current system, the status quo is perpetuated and the IPs do not have a real chance of representation. This option can still be viable if the present regional assembly boundaries are redrafted in favor of IP-dominated areas. In IP-dominated areas, the IPs may have a chance of winning seats but chances are lesser to nil elsewhere. This option is also a long shot because even if the districts are redrafted in favor of the IPs, the setup can only work in areas where they have the majorities, which is not the case.

The third option for IP representation is through participation in the general elections under a proportional representation electoral system. This option can further be divided into two variations: a) proportional representation with region-wide party lists and b) proportional representation with province-wide party lists. Similar to the previous discussion on the options for the electoral system in the Bangsamoro, the third option for IP representation is only viable provided that two conditions are met. First, the current electoral system must be transformed into an electoral system with strong proportional representation elements. Secondly, under a proportional representative system, “genuinely principled political parties” can play a strong role. The IP leaders can be members of political parties that recognize their rights. Active engagement in real political parties will enable IP leaders to be included in the party list of major political parties. Their position in the party list may serve as an incentive to get the

## IPs to vote for the party.

The concerns on indigenous minority representation and participation are more often than not, intricately interwoven with the issues on identity and ancestral domains. However, the questions on the identity and the ancestral domains of the indigenous minorities are contentious concerns that have the possibility of transforming into major tension points during the transition and normalization period of the future Bangsamoro. Hence, these concerns are unbundled into issues of representation and participation that are framed and discussed in an institutional setting. It is argued that an institutional approach to the minority issue is more likely to generate progress compared to other approaches at this stage in the negotiations. The rights approach can still be employed but these rights cannot be protected if the IPs will opt out of the political game too early. The indigenous minorities must assert these rights by taking part in the political structures that distribute power and control of these rights. Thus, for the IPs to be afforded a real chance of representation, they should take part in influencing the decision making towards an electoral system that provides them a greater chance of participation in governance.

## V. Regional – Local Government Relations

The FAB (2012) declares that “the provinces, cities, municipalities, barangays, and geographic areas within its territory shall be the constituent units of the Bangsamoro. The authority to regulate on its own responsibility the affairs of the constituent units is guaranteed within the limit of the Bangsamoro Basic Law. The privileges already enjoyed by the local government units under existing laws shall not be diminished unless otherwise altered, modified or reformed for good governance pursuant to the provisions of the Bangsamoro local government code” (p. 2). The framework agreement also introduces another innovation in the institutional setting of the Philippines by declaring that the future Bangsamoro NPE will have asymmetrical relations with the national government (FAB, 2012 p.2). These provisions are consistent with the decentralization mechanisms that are essential to the creation of an autonomous future Bangsamoro NPE. The regional – local government relations can best be detailed in the Bangsamoro Local Government Code. However, some considerations on the territory of the future Bangsamoro NPE, the distribution of functions between the local governments and the regional government as well as concerns on coordination, supervision and accountability need to be already outlined in the Bangsamoro Basic Law.

The Constituent Local Governments of the Future Bangsamoro New Political Entity and Their Functional Organization

Following the FAB (2012), the Bangsamoro territory includes the following: “(a) present geographical area of the ARMM; (b) Municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte and all other barangays in the Municipalities of Kabacan, Carmen, Aleosan,

Pigkawayan, Pikit, and Midsayap that voted for inclusion in the ARMM during the 2001 plebiscite; (c) the cities of Cotabato and Isabela; and (d) all other contiguous areas where there is a resolution of the local government unit or a petition of at least ten percent (10%) of the qualified voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro...” (p.6). Additionally, “areas which are contiguous and outside the core territory where there are substantial populations of the Bangsamoro may opt anytime to be part of the territory upon petition of at least ten percent (10%) of the residents and approved by a majority of qualified voters in a plebiscite” (FAB, 2012 p. 7).

The FAB (2012) enumerates the core areas of the future Bangsamoro NPE as well as the possibility of inclusion of the additional areas following the general mechanisms (i.e., petition of at least ten percent (10%) of the residents and approved by a majority of qualified voters in a plebiscite) outlined in the document. However, since the FAB (2012) allows for the potential redrafting of territorial boundaries and the creation of new local governments following its provisions, the mechanisms and procedures that will enable these changes need to be further specified in the Bangsamoro Basic Law. The procedures for the determination of the territories of the future Bangsamoro NPE is essential in the distribution of functions, wealth – sharing arrangements, coordination, supervision and control between the regional government and the constituent local governments.

Since the creation of the regional legislative assembly adds another political layer to the structure of the local governments in the future Bangsamoro NPE.

It should be noted that the members of the regional assembly may be elected under a different electoral system that elects the officers of the local government units. There might be a danger that regional political strategies and programs will be countered by patronage – dominated local structures. Thus, there might be a need to look into the synchronization of these electoral systems. An integrated electoral system at both levels may improve the conditions for accountable and participatory governance, weaning local politics away from personalities and clans into a more institutionalized system controlled by “genuinely principled political parties”.

### **Autonomy, Subsidiarity, Supervision and Control of Functions and Responsibilities**

The FAB (2012) declares that “the authority to regulate on its own responsibility the affairs of the constituent units is guaranteed within the limit of the Bangsamoro Basic Law. The privileges already enjoyed by the local government units under existing laws shall not be diminished unless otherwise altered, modified or reformed for good governance pursuant to the provisions of the Bangsamoro local government code” (p. 2). Implicit in these statements are the principles of decentralization and subsidiarity. In local government parlance, the FAB expressively envisions what Sosmena (2007) calls the “Local Autonomy Triangle”; namely, autonomy in administration, autonomy in finance and autonomy in service delivery”.

The administrative functions of the local government units can be organized following the current structure since basic services such as health, education, and public works are organized in a way that regional offices are already established and functioning. Additionally, the Local Government Code of 1991 outlines which powers and functions are specifically reserved for the

local governments. Although the Local Government Code of 1991 has been implemented for more than two decades already, the Code has not undergone a single review since its enactment. Observers, practitioners and scholars of local public administration agree that the defects of the Code especially in the areas of fiscal decentralization and political decision making need to be addressed for it to be effective.

The current ARMM as well as the majority of the local governments in the Philippines is heavily reliant on the internal revenue allotment (IRA) to finance their operations<sup>18</sup>. Guevara (2007) has concluded that although the IRA has transferred resources to the local governments, it has also weakened the capacity of local governments to raise revenues. Additionally, although more functions are devolved to the local governments, this devolution is not matched with financial transfers. And as frequently experienced, the IRA has become an often abused instrument used by the national government to reward allies and punish critics. Sosmena (2007) echoes the need to seriously look into financial decentralization and the reworking of the formula for the IRA. He said that “after the passage of the Local Government Code or Republic Act 7160, the greatest obstacle in the autonomy triangle is the finance sector. This is a major constraint for local governments as they move towards self reliance and self rule” (Sosmena, 2007 p. 73).

Hence, a review of the Code is extremely helpful in order to install the proper mechanisms for the organization of a coordinating body or set of bodies that integrates and harmonizes the work done by both the regional government and the local governments at the functional level in the future Bangsamoro. This

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18 Mastura (2008) examines in his article the correlations between fiscal decentralization and the Bangsamoro’s struggle for self – determination. He concludes that in order to develop the region, the central government must strengthen its financial autonomy. See Mastura, I. 2008. ARMM fiscal decentralization and Bangsamoro economic development. *Autonomy and Peace Review*, 4 (2), 29 – 45.

is a necessary step since mechanisms for inter-local cooperation need to be defined (at least broadly) in the Bangsamoro Basic Law.

Further, these coordinating bodies in addition to the regional government maybe tasked to supervise and monitor the implementation of the delegated functions and responsibilities of the local government units. Supervision under this context is not only limited to legal supervision to ensure that the laws in relation to their functions and responsibilities are faithfully executed by the local governments. Supervision on the coherence and effectiveness of the quality of the services offered is also exercised. However in the fields of local autonomy competences and powers, the supervision by regional bodies has to be limited to legal supervision and the specific implementation procedures of these functions and responsibilities should be left to the discretion and in the realm of the concerned local governments, controlled by their democratically elected councils<sup>19</sup>.

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19 Harbich (2009) provides an interesting discussion on the nuances of state supervision of local governments. See Harbich, J. 2009. State supervision of local government authorities. *Uprava*, 7 (4), 53 – 68.



## VI. Concluding Remarks

The organization of the institutions that are outlined in the Framework Agreement will largely determine how well the future Bangsamoro entity will be able to achieve its goal of having a representative, participatory, stable and accountable government. Fundamental consideration and thought must be given to the type of electoral system that will be installed in the region. The choice of the electoral system will impact how the ministerial government is formed and to what extent the indigenous minorities can be represented in the political system. Under this system, genuine political parties play a strong role considering that they organize and articulate the interests of the different sectors of the population providing avenues for representation and participation. Political parties also act as accountability mechanisms that keep government responsible and responsive. Additionally, the relations between the local governments and the regional government must be organized in a manner that encourages coordination, with supervisory mechanisms that strengthen accountability. If both parties are serious in concretizing these changes, then the general political system must be able to accommodate these institutional changes in the regional level, otherwise the Bangsamoro new political entity will succumb to the same dismal conditions that the current ARMM is now facing.



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