

# The Sun Rises Anew in Mindanao: Towards Recognizing the Bangsamoro Nation Within the Context of the Philippine Republic

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## I. TRACING THE ROOTS OF THE “MINDANAO CONFLICT”<sup>1</sup>

Ethnic wars manifest the minority’s perception that the majority recognizes neither their cultural identity nor their socio-economic and political grievances.<sup>2</sup> In the Philippines, Mindanao has the highest incidence of

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1. Jamail A. Kamlian, Professor of History, Mindanao State University-Iligan State University, *Ethnic and Religious Conflict in the Southern Philippines: A Discourse on Self-Determination, Political Autonomy, and Conflict Resolution*, Address at the Islam and Human Rights Fellow Lecture at the Emory University School of Law, Atlanta, Georgia, U.S.A. (Nov. 4, 2003) (transcript available at [aannaim.law.emory.edu/ihr/worddocs/jamail1.doc](http://aannaim.law.emory.edu/ihr/worddocs/jamail1.doc) & [www.law.emory.edu/ihr/worddocs/jamail1.doc](http://www.law.emory.edu/ihr/worddocs/jamail1.doc) (last accessed Jan. 2, 2015)). This article described “[t]he Bangsamoro rebellion, popularly known as the Mindanao conflict, [as] a deep-rooted problem with strong historical underpinnings that can be traced as far back as the colonial era.” *Id.*
2. P. Sahadevan, *Ending Ethnic Wars: The South Asian Experience*, 8 INT’L NEGOT. 403, 404 (2003). This article posits that “an ethnic war is rooted in a situation where one group’s core sense of ‘self’ (identity)-‘interest’ (politico-cultural-

unemployment, illiteracy, and poverty.<sup>3</sup> For this reason, Raymundo B. Ferrer and Randolph G. Cabangbang suggest that “economic marginalization and destitution, political domination, physical insecurity, threatened [*Moro*] and Islamic identity, a perception that government is the culprit[,] and a perception of hopelessness under the present order of things”<sup>4</sup> are the primary movers of the conflict.<sup>5</sup>

George Baylon Radics, however, suggests that religion remains at the heart of the conflict.<sup>6</sup> Arab traders brought Islam to Mindanao in the 14th Century and converted the natives.<sup>7</sup> When the Spaniards arrived in the 16th Century intending to spread Catholicism, the people of Mindanao resisted and refused to convert.<sup>8</sup> This resulted in hostilities between the *Moros*<sup>9</sup> and the inhabitants of the archipelago’s northern and central islands, who converted to Catholicism and were brought by the Spaniards to Mindanao to fight on the latter’s behalf.<sup>10</sup> Consequently, the Filipino identity emerged as an exclusive concept pertaining solely to lowland Christians or *indios*.<sup>11</sup> The *Moros*, who were members of indigenous upland tribes, and Chinese migrants, who did not intermarry, were not considered Filipinos.<sup>12</sup>

Some argue that Mindanao was never subjugated by colonial powers,<sup>13</sup> but was only made a part of the Philippine archipelago in 1898 by virtue of

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economic position) is perceivably or really threatened by demands of or denials by another.” *Id.*

3. Raymundo B. Ferrer & Randolph G. Cabangbang, *Non-International Armed Conflicts in the Philippines*, in *NON-INTERNATIONAL ARMED CONFLICT IN THE TWENTY-FIRST CENTURY* 267 (Kenneth Watkin & Andrew J. Norris, eds., 2012).
4. *Id.*
5. *Id.*
6. George Baylon Radics, *Terrorism in Southeast Asia: Balikatan Exercises in the Philippines and the US ‘War against Terrorism,’* 4 *STAN. J. E. ASIAN AFF.* 115, 121 (2004).
7. *Id.*
8. Michigan State University Asian Studies Center, *Philippines — Religion*, available at [http://asia.isp.msu.edu/wbwoa/southeast\\_asia/philippines/religion.htm](http://asia.isp.msu.edu/wbwoa/southeast_asia/philippines/religion.htm) (last accessed Jan. 2, 2015).
9. See Ferrer & Cabangbang, *supra* note 3, at 268.
10. *Id.* The term “*Moro*” was “derived from the term early Spanish colonizers used to refer to the Moors and has[,] over time[,] become the collective word used for all the various Muslim ethnic groups in Mindanao.” *Id.*
11. *PHILIPPINES: A COUNTRY STUDY* 76 (Ronald E. Dolan ed., 1993).
12. *Id.*
13. Susan D. Russell, et al., *The Mindanao Conflict and Prospects for Peace in the Southern Philippines* (A Paginated File that Contains Excerpts from

the Treaty of Peace between the United States (U.S.) and Spain.<sup>14</sup> Consequently, Mindanao scholars trace back the origins of contemporary separatist or secessionist movements to the incorporation of *Moro* sultanates to the Philippine Republic.<sup>15</sup> They claim that the U.S. ignored the Dansalan Declaration of 1935,<sup>16</sup> where the *Moros* expressed their desire to be a separate independent state.<sup>17</sup> Moreover, the U.S. pursued the assimilation of the *Moros* and Filipinos through public school education.<sup>18</sup> Homesteading, or internal migration to Mindanao, was also promoted by the American colonial government to increase population in the island and to force the *Moros* to join mainstream society.<sup>19</sup> Sadly, the project resulted in the marginalization of the *Moros* in their homeland; thus, furthering their antagonism and territorial insecurity.<sup>20</sup>

When the Philippines gained independence from the U.S. in 1946, the new administration adopted the policy of internal migration; thus, by the 1970s, the *Moros* had become a minority in Mindanao.<sup>21</sup> As of 2005, only

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MINDANAO: A PERSPECTIVE ON YOUTH, INTER-ETHNIC DIALOGUE, AND CONFLICT RESOLUTION IN THE SOUTHERN PHILIPPINES) 2, available at [http://www.niu.edu/cseas/current\\_initiatives/PYLP/MindanaoConflict\\_Russell.pdf](http://www.niu.edu/cseas/current_initiatives/PYLP/MindanaoConflict_Russell.pdf) (last accessed Jan. 2, 2015).

14. *Id.* (citing Treaty of Peace Between the United States of America (U.S.) and the Kingdom of Spain, U.S.–Spain, Dec. 10, 1898, T.S. 343 (entered into force Apr. 11, 1899)).

15. Kamlan, *supra* note 1.

16. *Id.* This declaration, signed by 120 *datus* of Lanao, expressed their desire to be excluded from the proposed independence to be granted to the Filipinos in the north of the archipelago. The declaration reads in part —

[W]e do not want to be included in the Philippines for once an independent Philippines is launched, there would be trouble between us and the Filipinos because from time immemorial these two peoples have not lived harmoniously together. Our public land must not be given to people other than the [*Moros*.]

*Id.* (citing Philippine Muslim News (Manila), July 1968, at 7–12).

17. *Id.*

18. Russell, et al., *supra* note 13, at 10.

19. *Id.* at 3.

20. *Id.* at 7.

21. *Id.* at 3.

20.44% of the inhabitants in Mindanao are Muslims.<sup>22</sup> Today, they constitute a mere five percent of the Philippine population.<sup>23</sup>

The Spaniards' zeal to convert natives to Catholicism,<sup>24</sup> the U.S.' determination of the territory of the independent Philippine Republic, and the forced assimilation of its people<sup>25</sup> constitute acts of consolidating and protecting the interest of colonial empires.<sup>26</sup> These acts ignored "ethnic, linguistic, or other 'national' considerations, leaving such complexities to be dealt with by the independent states that emerged from decolonization."<sup>27</sup>

In 1961, a bill seeking the independence of Sulu was filed in Congress.<sup>28</sup> When the bill was shelved, it marked the beginning of the contemporary secessionist movement.<sup>29</sup> The bill was tabled but the sentiment was not. In 1968, the Mindanao Independence Movement (MIM), which sought the recognition of the Bangsamoro<sup>30</sup> identity and homeland,<sup>31</sup> its traditional system of governance, and its educational methods,<sup>32</sup> was established.<sup>33</sup>

In 1972, military detachments in the provinces of Sulu, Cotabato, and Lanao were attacked by members of the Moro National Liberation Front (MNLF),<sup>34</sup> which replaced MIM.<sup>35</sup> Nurullaji P. Misuari, who was then a

22. National Statistics Office, Mindanao Comprised About 24 Percent of the Philippines' Total Population, *available at* <http://census.gov.ph/content/mindanao-comprised-about-24-percent-philippines-total-population> (last accessed Jan. 2, 2015).

23. World Population Statistics, Philippines Population 2013, *available at* <http://www.worldpopulationstatistics.com/philippines-population-2013/> (last accessed Jan. 2, 2015).

24. Russell, et al., *supra* note 13, at 2.

25. *Id.*

26. HURST HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: ACCOMMODATION OF CONFLICTING RIGHTS 56 (2011).

27. *Id.*

28. Kamlian, *supra* note 1 (citing H.B. No. 5682, 4th Cong., 4th Reg. Sess. (1961)).

29. Abhoud Syed M. Lingga, Philippines: The Muslim Minorities, *available at* [http://www.seacsn.usm.my/index.php?option=com\\_content&view=article&id=128:philippines-the-muslim-minorities-abhoud-syed-m-lingga&catid=40&Itemid=350&showall=&limitstart=3](http://www.seacsn.usm.my/index.php?option=com_content&view=article&id=128:philippines-the-muslim-minorities-abhoud-syed-m-lingga&catid=40&Itemid=350&showall=&limitstart=3) (last accessed Jan. 2, 2015) [hereinafter Lingga, *Philippines*].

30. Ferrer & Cabangbang, *supra* note 3, at 268. The term "Bangsamoro" means "Moro nation." *Id.*

31. Kamlian, *supra* note 1.

32. *Id.*

33. *Id.*

34. *Id.*

professor at the University of the Philippines Diliman,<sup>36</sup> founded the MNLF and asked for independence of the “Bangsamoro Islamic State.”<sup>37</sup> Through the intervention of the Organization of Islamic Conference, Misuari relented and acceded to genuine political autonomy.<sup>38</sup> The MNLF and the national government signed the 1976 Tripoli Agreement, wherein the latter promised the former autonomy.<sup>39</sup> But the agreement was not implemented; thus, the MNLF pursued armed struggle.<sup>40</sup>

In 1987, the Philippines ratified a new Constitution,<sup>41</sup> which incorporated the 1976 Tripoli Agreement,<sup>42</sup> by mandating the creation of

autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this

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35. ISLAM IN ASIA: CHANGING POLITICAL REALITIES 189 (Jason F. Isaacson & Colin Rubenstein eds., 2009).

36. Nur P. Misuari, Central Committee Chairman and Founding Leader, Moro National Liberation Front (MNLF), Speech at the 17th MNLF Grand Summit Gathering at the Crocodile Park, Davao City (Oct. 21, 2012) (transcript *available at* [http://mnlfnct.com/MNLF%20Meetings,%20Gatherings,%20Summits,%20Etc/17th%20MNLF%20Grand%20Summit%20Davao%20City%20Oct%2021,%202012/Speech\\_17th%20Grand%20Summit%20Oct%2021,%202012.htm](http://mnlfnct.com/MNLF%20Meetings,%20Gatherings,%20Summits,%20Etc/17th%20MNLF%20Grand%20Summit%20Davao%20City%20Oct%2021,%202012/Speech_17th%20Grand%20Summit%20Oct%2021,%202012.htm) (last accessed Jan. 2, 2015)).

37. Kamlian, *supra* note 1.

38. *Id.*

39. Government of the Republic of the Philippines & the Moro National Liberation Front, The Tripoli Agreement (An Agreement Between the Government of the Republic of the Philippines (GPH) and the MNLF in Order to Establish an Autonomous Muslim Mindanao, Among Other Purposes), *available at* <http://pcdspo.gov.ph/downloads/2012/10/Tripoli-Agreement-December-23-1976.pdf> (last accessed Jan. 2, 2015) [hereinafter 1976 Tripoli Agreement].

40. Ferrer & Cabangbang, *supra* note 3, at 268.

41. PHIL. CONST. art. X, § 15.

42. 1976 Tripoli Agreement, *supra* note 39, ¶ 1. This Paragraph provides that one of the agreements would be “[t]he establishment of Autonomy in the [s]outhern Philippines within the realm of the sovereignty and territorial integrity of the Republic of the Philippines.” *Id.*

Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.<sup>43</sup>

In 1989, Republic Act (R.A.) No. 6734<sup>44</sup> created the Autonomous Region of Muslim Mindanao (ARMM).<sup>45</sup> Still, this development did not convince the MNLF to lay down its arms against the government.<sup>46</sup>

In 1996, the MNLF signed the 1996 Final Peace Agreement with the national government.<sup>47</sup> Misuari became ARMM's governor that year.<sup>48</sup> Misuari's term, however, was marred with issues of corruption and mismanagement.<sup>49</sup> The three-year socio-economic and political reform plan<sup>50</sup> for the region did not come into fruition. Misuari left the ARMM as "impoverished and strife-torn" as it was in 1996.<sup>51</sup>

Meanwhile, the Moro Islamic Liberation Front (MILF), which broke away from the MNLF in 1984, pursued the secessionist movement.<sup>52</sup> In 2001, the MILF was implicated in various acts of terrorism — the bombing of a passenger ferry in Ozamiz City, occupying the Kauswagan town hall, and implementing road blockages in major thoroughfares in Mindanao.<sup>53</sup>

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43. PHIL. CONST. art. X, § 15.

44. An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734, art. II, § 1 (1989).

45. *Id.*

46. Russell, et al., *supra* note 13, at 4.

47. Government of the Republic of the Philippines & the MNLF, 1996 Peace Agreement with the Moro National Liberation Front (A Peace Agreement Between the GPH and the MNLF), *available at* <http://pcdsपो.gov.ph/downloads/2012/10/Final-Peace-Agreement-MNLF-September-2-1996.pdf> (last accessed Jan. 2, 2015) [hereinafter 1996 Final Peace Agreement].

48. Barbara Mae Dacanay, The rise and fall of Nur Misuari, *available at* <http://gulfnnews.com/news/world/philippines/the-rise-and-fall-of-nur-misuari-1.1231406> (last accessed Jan. 2, 2015).

49. John Unson, *Nur Misuari as leader of the ARMM and MNLF*, PHIL. STAR, Sep. 11, 2013, *available at* <http://www.philstar.com/headlines/2013/09/11/1198131/nur-misuari-leader-armm-and-mnlf> (last accessed Jan. 2, 2015) [hereinafter Unson, *Nur Misuari as leader*].

50. 1996 Final Peace Agreement, *supra* note 47, ¶ 1 (1).

51. Kamlian, *supra* note 1.

52. Ferrer & Cabangbang, *supra* note 3, at 268.

53. Joseph E. Estrada, Former President of the Philippines, Estrada's All Out War: A Quest for Peace, Address at University of the Philippines-Human Development Network Forum on the GRP-Moro Conflict at the University of the Philippines School of Economics (Sep. 18, 2008) (transcript *available at* <http://hdn.org.ph/speech-of-former-president-estrada-on-the-grp-moro-conflict/> (last accessed Jan. 2, 2015)).

This prompted the government to abandon peace negotiations and to proclaim an “all[-]out war.”<sup>54</sup>

Meanwhile, R.A. No. 9054,<sup>55</sup> which amended R.A. No. 6734, was enacted pursuant to the 1996 Final Peace Agreement. Among the significant features of R.A. No. 9054 were directing the conduct of a plebiscite seeking the electorate’s vote on whether to expand the territory of the ARMM,<sup>56</sup> the creation of a regional human rights commission,<sup>57</sup> and a provision expressly excluding the general auditing and the conduct of national elections as powers exercised by the Regional Assembly, among others.<sup>58</sup>

Shortly thereafter, as war continued to rage on in Maguindanao, a change in administration led to the revival of peace negotiations with the MILF.<sup>59</sup> In 2008, the Memorandum of Agreement on Ancestral Domain (MOA-AD),<sup>60</sup> providing for the creation of the Bangsamoro Juridical Entity (BJE) in lieu of the ARMM,<sup>61</sup> and prescribing an associative relationship between the BJE and the national government, was disclosed to the public.<sup>62</sup> Various sectors assailed the constitutionality of the provisions of the MOA-AD for violating the sovereignty and territorial integrity of the Philippines.<sup>63</sup>

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54. *Id.*

55. An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled “An Act Providing for the Autonomous Region in Muslim Mindanao,” as Amended, Republic Act No. 9054 (2001).

56. *Id.* art. II, § 1.

57. *Id.* art. III, § 16.

58. *Id.* art. IV, § 3.

59. Russell, et al., *supra* note 13, at 5.

60. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace 2001 (An Agreement Between the GPH and the MILF Respecting Their Ancestral Domain, Among Others), *available at* <http://pcdspo.gov.ph/downloads/2012/10/MOA-%E2%80%93Ancestral-Domain-August-5-2008.pdf> (last accessed Jan. 2, 2015) [hereinafter MOA-AD].

61. *See* Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), 568 SCRA 402, 445 (2008).

62. *Id.* at 449.

63. *Id.* at 468.

The MOA-AD was never signed because the national government broke off negotiations with the MILF.<sup>64</sup>

Nonetheless, the MOA-AD was nullified in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*.<sup>65</sup> According to the Supreme Court, the “associative relationship” prescribed by the MOA-AD was bereft of constitutional basis and was inconsistent with the principles of national sovereignty and territorial integrity.<sup>66</sup> It held that a “[c]ompact of [f]ree [a]ssociation is a treaty[,] which is subordinate to the associated nation’s national constitution, and each party may terminate the association consistent with the right of independence.”<sup>67</sup> In other words, the Supreme Court intimated that the BJE would be granted independence in due time.<sup>68</sup> The Supreme Court likewise rejected the idea of a Bangsamoro nation holding that the Constitution “does not contemplate any state in this jurisdiction other than the Philippine state, much less does it provide for a transitory status that aims to prepare any part of the Philippine territory for independence.”<sup>69</sup> Consequently, the MOA-AD was declared “fatally defective.”<sup>70</sup>

While the Supreme Court recognized that the United Nations Declaration on the Rights of Indigenous Peoples<sup>71</sup> guarantees that the “[i]ndigenous peoples have the right to *self-determination*,”<sup>72</sup> it reconciled it with Article 46 of the same, which states that, as a general rule, “[n]othing in this Declaration may be interpreted as ... *authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent [s]tates.*”<sup>73</sup> The Supreme Court was very critical of the proposed BJE.<sup>74</sup> The Supreme Court asserted that the BJE possessed all

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64. *Id.* at 460.

65. *Id.* at 521.

66. *Id.*

67. *Province of North Cotabato*, 568 SCRA at 480 (citing H. Hills, *Free Association for Micronesia and the Marshall Islands: A Political Status Model*, 27 U. HAW. L. REV. (2004)).

68. *Id.* at 481. The Supreme Court held that the text of the MOA-AD “*implies the recognition of the associated entity as a state.*” *Id.* (emphasis supplied).

69. *Id.* at 481.

70. *Id.* at 522.

71. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sep. 12, 2007) [hereinafter UNDRIP].

72. *Province of North Cotabato*, 568 SCRA at 494 (citing UNDRIP, *supra* note 71, art. 3) (emphasis supplied).

73. *Id.* at 498 (citing UNDRIP, *supra* note 71, art. 46) (emphasis supplied).

the attributes of a state enumerated by the 1933 Montevideo Convention on the Rights and Duties of States.<sup>75</sup> This reflects the fundamental fear of states that the recognition of minority rights would encourage “fragmentation or separatism[,] and undermine national unity and the requirements of national development.”<sup>76</sup>

As a result, the *Province of North Cotabato* ignored the constitutionally-prescribed composition of autonomous regions namely, “provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of the Constitution.”<sup>77</sup> This provision impliedly recognizes the existence of other nations or minority groups<sup>78</sup> within the framework of the Philippine state.

The Supreme Court also failed to consider, in *Province of North Cotabato*, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities<sup>79</sup> (UNDMR) and the International Covenant on Civil and Political Rights<sup>80</sup> (ICCPR). The UNDMR guarantees the rights of ethnic, religious, and linguistic minorities to existence and identity.<sup>81</sup> Although the Philippines is not a signatory to the

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74. *Id.* at 499. The Supreme Court went on to declare that “[e]stablishing an associative relationship between the BJE and the [national] [g]overnment is, for the reasons already discussed, a preparation for independence, or worse, an implicit acknowledgement of an independent status already prevailing.” *Id.*

75. *Id.* at 482 (citing Convention on the Rights and Duties of States, *adopted* Dec. 26, 1933, 165 L.N.T.S. 19 (entered into force Dec. 26, 1934)). The Supreme Court held that the “BJE is a state in all but name as it meets the criteria of a state laid down in the Montevideo Convention, namely, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states.” *Id.*

76. HANNUM, *supra* note 26, at 71.

77. PHIL. CONST. art. X, § 15.

78. See Mark Mazower, *The Strange Triumph of Human Rights 1933-1950*, 47 HIST. J. 379, 382 (2004).

79. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992) [hereinafter UNDMR].

80. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 1771, (entered into force Mar. 23, 1976) [hereinafter ICCPR].

81. UNDMR, *supra* note 79, art. I, ¶ 1.

UNDMR, this provision is deemed incorporated in Article X, Section 15 of the Constitution.<sup>82</sup> The Supreme Court also overlooked General Comment No. 23,<sup>83</sup> which distinguishes the protection accorded by Article 27 of the ICCPR<sup>84</sup> to minorities from the right to self-determination.<sup>85</sup> General Comment No. 23 clearly states that in no way shall the protection of minorities prejudice the sovereignty and territorial integrity of a state but goes on to say that

[a]t the same time, one or other aspect of the rights of individuals protected under that [A]rticle [—] for example, to enjoy a particular culture [—] may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.<sup>86</sup>

Despite the Supreme Court's decision in *Province of North Cotabato*, support for the Bangsamoro nation is gaining ground. The Framework Agreement on the Bangsamoro (FAB)<sup>87</sup> signed by the MILF and the national government, under President Benigno S. Aquino III, mandates the creation of the new autonomous political entity (NPE) in lieu of the ARMM.<sup>88</sup> The FAB also presupposes the existence of an autonomous entity,<sup>89</sup> which shall enjoy an asymmetric relationship with the national government.<sup>90</sup> This stipulation sets the FAB apart from the MOA-AD, and will hopefully allow it to survive any constitutional challenge.

82. PHIL. CONST. art. X, § 15.

83. Office of the High Commissioner for Human Rights, *General Comment No. 23*, 50th Session, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994) [hereinafter General Comment No. 23].

84. ICCPR, *supra* note 80, art. 27. This Article provides that “[i]n those [s]tates in which ethnic, religious[,] or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practi[c]e their own religion, or to use their own language.” *Id.*

85. General Comment No. 23, *supra* note 83, ¶ 3 (1).

86. *Id.* ¶ 3.2.

87. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Framework Agreement on the Bangsamoro (A Framework Agreement Between the GPH and the MILF as Regards the Establishment of the Bangsamoro, Among Others), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_121015\\_FrameworkAgreementBangsamoro.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf) (last accessed Jan. 2, 2015) [hereinafter Framework Agreement on the Bangsamoro].

88. *Id.* ¶ 1 (1).

89. *Id.*

90. *Id.* ¶ 1 (4).

## II. THE DEMAND FOR SELF-DETERMINATION AND TERRITORIAL AUTONOMY

The concept of self-determination is firmly entrenched in international law.<sup>91</sup> The Charter of the United Nations,<sup>92</sup> the ICCPR,<sup>93</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>94</sup> all recognize the right of all people to “freely determine their political status and freely pursue their economic, social[,] and cultural development.”<sup>95</sup> The institutional design of government must, therefore, guarantee the individual and the collective rights of persons to “control [ ] their own destinies.”<sup>96</sup>

Because minorities comprise a small percentage of a state’s population, they are often neglected or even abused by society.<sup>97</sup> Ethnic and religious discrimination, as well as broader political and economic goals, incite violence and terrorism,<sup>98</sup> and manifest territorial insecurity.<sup>99</sup> These often

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91. See Dr. Michael C. van Walt van Praag and Onno Seroo eds., *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention* (A Paginated File that Contains Excerpts of the Report of the International Conference of Experts on The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention, Barcelona, Spain, Nov. 21-27, 1998) 9, available at <http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf> (last accessed Jan. 2, 2015) [hereinafter Report of the International Conference of Experts].
92. U.N. Charter art. 1. ¶ 2.
93. ICCPR, *supra* note 80, art. 27.
94. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].
95. Christopher J. Fromherz, *Indigenous People’s Courts: Egalitarian Juridical Pluralism, Self-Determination, and the United Nations Declaration on the Rights of Indigenous People*, 156 U. PA. L. REV. 1341, 1353 (citing ICCPR, *supra* note 80, art. 1 (1) & ICESCR, *supra* note 94, art. 27 (1-2)).
96. Report of the International Conference of Experts, *supra* note 91, at 13.
97. Lingga, *Philippines*, *supra* note 29.
98. HANNUM, *supra* note 26, at 72 (citing U.N. Secretary-General, *Report of the Secretary-General on Social Policy in the Context of Changing Needs and Conditions*, 31, Interregional Consultation on Developmental Social Welfare Policies and Programmes, U.N. Doc. E/CONF./80/2 (July 2, 1987)).
99. Renat Shaykhutdinov, *Give peace a chance: Nonviolent protests and the creation of the territorial autonomy arrangements*, 47 J. PEACE RES. 179, 180 (2010).

lead minorities to clamor for the right to preserve their cultural identity.<sup>100</sup> The majority, however, view these demands as a challenge to the fundamental principle of the modern territorial state.<sup>101</sup> Indeed, as demands for the right to preserve their culture and identity are refused, minorities tend to seek independence usually by non-peaceful means, such as armed struggle.<sup>102</sup> As a compromise, territorial autonomy is often used to maintain peace within ethnically-divided states to allow minorities to exercise the right of self-determination.<sup>103</sup>

Autonomy enables minorities to act independently within their domain.<sup>104</sup> Territorial political autonomy implies self-identification to a group, which stands apart from the majority of the state's population, yet dominates a particular region.<sup>105</sup> Federacy, conversely, creates a political-administrative unit exercising exclusive powers in a particular area within the context of an independent state pursuant to a constitutional or quasi-constitutional mandate,<sup>106</sup> which likewise grants minorities full citizenship rights.<sup>107</sup> Notably, both autonomy and federation involve the transfer of certain powers from the Central Government to a self-governing entity that exercises such powers in a relatively independent manner.<sup>108</sup>

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100. Report of the International Conference of Experts, *supra* note 91, at 14.

101. See Stefan Wolff, Approaches to Conflict Resolution in Divided Societies (An Unpublished Paper Submitted to the Exeter Centre for Ethno-Political Studies 2010) 4, available at [http://centres.exeter.ac.uk/exceps/downloads/Ethnopolitics\\_Papers\\_No5\\_Wolff.pdf](http://centres.exeter.ac.uk/exceps/downloads/Ethnopolitics_Papers_No5_Wolff.pdf) (last accessed Jan. 2, 2015) [hereinafter Wolff, Approaches to Conflict Resolution].

102. Shaykhutdinov, *supra* note 99, at 180. The article explains that “[t]he willingness of the activists to sacrifice their lives for their cause puts a country’s leadership on notice that the desire for autonomy or independence is genuine and that it is an issue requiring immediate attention.” *Id.*

103. *Id.* The article goes on further to say that territorial autonomy “provide[s] a means for ethnic groups, distinct from the dominant community, to express their identity and are thus consistent with established definitions of autonomy.” *Id.*

104. *Id.*

105. *Id.*

106. Alfred Stepan, et al., *The Rise of “State-Nations,”* 21 J. DEMOCRACY 50, 66 (2010).

107. *Id.*

108. See Stefan Wolff, *Power-Sharing and Vertical Layering of Authority: A Review of Current Practices*, in SETTLING SELF-DETERMINATION DISPUTES: COMPLEX POWER-SHARING IN THEORY AND PRACTICE 415-16 [hereinafter Wolff, *Power-Sharing*].

The Constitution<sup>109</sup> and the 1976 Tripoli Agreement<sup>110</sup> grant the people of Muslim Mindanao autonomy. Yet, the FAB prescribes an asymmetric relationship between the national government and its regional counterpart.<sup>111</sup> Asymmetry involves the devolution of more powers and functions by the Central Government to a particular regional government so that it may enjoy autonomy in a wide scope of policy areas.<sup>112</sup> Stefan Wolff had previously described the ARMM as having a “multi-layered structure”<sup>113</sup> with single asymmetry<sup>114</sup> involving an additional layer of government to which powers were devolved to address the conflict.<sup>115</sup>

#### A. *The Current Structure of the ARMM*

The following paragraphs will discuss the structure of the ARMM, provide criticism, and analyze whether the innovations introduced by the FAB address its current problems.

The ARMM is an autonomous corporate entity enjoying regional autonomy<sup>116</sup> and exercising basic internal government powers over its territorial jurisdiction with minimal intervention from the national government.<sup>117</sup> The President can only exercise the power of general supervision,<sup>118</sup> or the responsibility of ensuring the faithful execution of all laws<sup>119</sup> over the ARMM.<sup>120</sup>

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109. See PHIL. CONST. art. X, § 15.

110. 1976 Tripoli Agreement, *supra* note 39, ¶ 1.

111. Framework Agreement on the Bangsamoro, *supra* note 87, ¶ I (4).

112. Elizabeth Linda Yuliani, Decentralization, deconcentration, and devolution: what do they mean? (A Compilation of Concepts Presented at the Interlaken Workshop on Decentralization 2004), available at [http://www.cifor.org/publications/pdf\\_files/interlaken/compilation.pdf](http://www.cifor.org/publications/pdf_files/interlaken/compilation.pdf) (last accessed Jan. 2, 2015).

113. Wolff, *Power-Sharing*, *supra* note 108, at 430.

114. *Id.* at 431.

115. *Id.* at 431-33.

116. See *Disomangcop v. Datumanong*, 444 SCRA 203, 235 (2004).

117. *Id.* at 231.

118. PHIL. CONST. art. X, § 4.

119. *Disomangcop*, 444 SCRA at 234 (citing *Limbona v. Mangelin*, 170 SCRA 786, 794-95 (1989)). The case explains that

[a]utonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the Central Government delegates administrative powers to

The chief executive of the ARMM, to whom executive power is vested, is the Regional Governor.<sup>121</sup> The qualified voters of the region elect him.<sup>122</sup> He exercises express powers<sup>123</sup> as well as powers “necessary for or incidental to the proper governance and development of all the constituent units within the autonomous region consistent with the policy on regional and local autonomy and decentralization.”<sup>124</sup>

The region has its own legislature — the Regional Assembly — which can enact laws “for the benefit of the people and for the development of the region.”<sup>125</sup>

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political subdivisions in order to broaden the base of government power and in the process to make local governments [“]more responsive and accountable,[]” [“]and ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.[]”

...

The President exercises [“]general supervision[]” over them, but only to [“]ensure that local affairs are administered according to law.[]” He has no control over their acts in the sense that he can substitute their judgments with his own.

*Id.*

120. PHIL. CONST. art. X, § 16. This Section provides that “[t]he President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.” PHIL. CONST. art. X, § 16.

121. R.A. No. 9054, art. VII, §§ 1-2.

122. *Id.* art. VII, § 1.

123. *Id.* art. IV, § 1.

124. *Id.*

125. *Id.* art. IV, § 3. This Section provides —

Section 3. Scope of Regional Assembly Legislative Power; Exceptions. The Regional Assembly may exercise legislative power in the autonomous region for the benefit of the people and for the development of the region except on the following matters:

- (a) Foreign affairs;
- (b) National defense and security;
- (c) Postal service;
- (d) Coinage and fiscal and monetary policies;
- (e) Administration of justice. It may, however, legislate on matters covered by the [Shari’ah.] The [Shari’ah] shall apply only to Muslims. Its application shall be limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent

The Regional Assembly may also exercise general welfare powers similar to the national government.<sup>126</sup>

Judicial power is vested in the Supreme Court and in lower courts established by law.<sup>127</sup> Shari'ah Courts may also be established by law.<sup>128</sup> The Shari'ah Courts exercise jurisdiction over "cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims."<sup>129</sup> R.A. No. 9054 also directs the creation of a Regional Human Rights Commission,<sup>130</sup> which is distinct from the Commission on Human Rights created by the Constitution.<sup>131</sup>

Consistent with the UNDMR,<sup>132</sup> R.A. No. 9054 mandates the inclusion of Filipino and Islamic values in school curricula with due respect

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national legislation that promotes human rights and the universally accepted legal principles and precepts;

- (f) Quarantine;
- (g) Customs and tariff;
- (h) Citizenship;
- (i) Naturalization, immigration[,] and deportation;
- (j) General auditing;
- (k) National elections;
- (l) Maritime, land[,] and air transportation, and communications. The autonomous government shall, however, have the power to grant franchises, licenses[,] and permits to land, sea[,] and air transportation plying routes in the provinces or cities within the region, and communications facilities whose frequencies are confined to and whose main offices are located within the autonomous region;
- (m) Patents, trademarks, trade names, and copyrights; and
- (n) Foreign trade.

*Id.*

126. R.A. No. 9054, art. IV, § 4.

127. *Id.* art. VIII, § 1.

128. *Id.*

129. *Id.* art. III, § 5, ¶ 3.

130. *Id.* § 16.

131. PHIL. CONST. art. XIII, § 17, ¶ 1.

132. UNDMR, *supra* note 79, art. 2 (2).

to customs and traditions of other ethnic groups.<sup>133</sup> Notably, among the more than 50 minority and indigenous groups in the Philippines, only the *Moros* have been given specific statutory guarantee of the free exercise and preservation of their culture, language, and religion.<sup>134</sup> All these indicate the presence of an asymmetric relationship between the national government and the ARMM.

Clearly, R.A. No. 9054 establishes the right of *Moros* to their own system of government and to fully develop their culture and way of life with minimal interference. However, not all the territories enumerated in the 1976 Tripoli Agreement are part of the ARMM<sup>135</sup> since only provinces, cities, and municipalities where majority of the voters elected to become part of the region formed part thereof.<sup>136</sup>

However, if asymmetry is already in place, why is the ARMM considered a “failed experiment?”<sup>137</sup>

Wolff criticizes the power-sharing between the ARMM and the national government as “somewhat limited.”<sup>138</sup> The current legal framework directs the inclusion of members of the regional government into the national government,<sup>139</sup> but fails to bestow upon them sufficient power to protect their regional interests.<sup>140</sup> While officials of the ARMM participate in the national executive process, “they do not have veto powers nor are there qualified or concurrent majority voting procedures in place that would increase the influence of the regional representatives at the [center].”<sup>141</sup> In other words, R.A. No. 9054 fails to provide a mechanism that fosters or advances the interest of the autonomous region at the national level.

To illustrate, there is presently no high-ranking *Moro* in the Cabinet or the Supreme Court — proving that the mandate is observed infrequently, if

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133. PHIL. CONST. art. X, § 6.

134. R.A. No. 9054, pmb1.

135. See 1976 Tripoli Agreement, *supra* note 39, ¶ 2.

136. R.A. No. 9054, art. II, § 1, ¶ 2.

137. Benigno S. Aquino III, President of the Philippines, Speech on the Framework Agreement with the MILF at Malacañang Palace, Manila (Oct. 7, 2012) (transcript available at <http://opapp.gov.ph/resources/speech-president-aquino-framework-agreement-milf-malaca%C3%B1an-palace-manila> (last accessed Jan. 2, 2015)).

138. Wolff, *Approaches to Conflict Resolution*, *supra* note 101, at 27.

139. *Id.*

140. *Id.*

141. *Id.*

at all.<sup>142</sup> This is despite the specific mandate of R.A. No. 9054 that prescribes the inclusion of at least one representative from the ARMM in the Executive Department, in the constitutional bodies,<sup>143</sup> in the National Security Council,<sup>144</sup> and in “government-owned or -controlled corporations.”<sup>145</sup> This is despite the provision contained in the FAB that requires the creation of an inter-governmental relations mechanism, ensuring the participation and representation of the Bangsamoro in the national agencies and instrumentalities.<sup>146</sup> Hopefully, the enabling act of the FAB would have such a mechanism that will address the imbalance of power.

Professor Abhoud Syed M. Lingga offers another perspective. He criticizes the government for negotiating with secessionist groups, who do not represent the *Moro* majority.<sup>147</sup> Just as the MILF broke away from the MNLF, MILF members who insist on independence formed the Bangsamoro Islamic Freedom Fighters (BIFF) to pursue the secessionist movement.<sup>148</sup> Clearly, there is no entity that represents the collective *Moro*

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142. See Supreme Court of the Philippines, Justices of the Supreme Court, *available at* <http://sc.judiciary.gov.ph/aboutsc/justices/> (last accessed Jan. 2, 2015) & Central Intelligence Agency, Chiefs of State and Cabinet Members of Foreign Governments, *available at* <https://www.cia.gov/library/publications/world-leaders-1/RP.html> (last accessed Jan. 2, 2015).

143. R.A. No. 9054, art. V, § 5.

144. *Id.* § 6.

145. *Id.* § 7.

146. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Power Sharing (An Annex of the Framework Agreement on the Bangsamoro) 2, *available at* [http://www.opapp.gov.ph/sites/default/files/annex\\_on\\_power\\_sharing.pdf](http://www.opapp.gov.ph/sites/default/files/annex_on_power_sharing.pdf) (last accessed Jan. 2, 2015) [hereinafter Annex on Power Sharing].

147. Abhoud Syed Lingga, The Mindanao Peace Process: Needing a New Formula, *available at* <http://library.upmin.edu.ph/philmin/bangsamoro/NeedingNewFormula.pdf> (last accessed Jan. 2, 2015) [hereinafter Lingga, The Mindanao Peace Process].

148. John Unson, *Military, local execs hopeful BIFF ‘silence’ to continue*, PHIL. STAR, Apr. 6, 2014, *available at* <http://www.philstar.com/headlines/2014/04/06/1309343/military-local-exec-hopeful-biff-silence-continue> (last accessed Jan. 2, 2015) [hereinafter Unson, *Military, local execs*].

majority.<sup>149</sup> This point must be seriously considered, as these phenomena of breakaway factions constitute a serious hindrance to peace.

Significant changes that were introduced by the FAB include a shift from a presidential form of government, led by a governor, to a ministerial one headed by a Chief Minister.<sup>150</sup> The Regional Assembly will also be renamed as the Bangsamoro Assembly, from whose ranks will come the Chief Minister,<sup>151</sup> and will have four classes of representatives: district, sectoral representatives, party-list, and reserved seats.<sup>152</sup> It also expanded the legislative power of the Bangsamoro Assembly, vis-à-vis the Regional Assembly of the ARMM.<sup>153</sup> The national government and the Bangsamoro Assembly will have concurrent legislative powers with respect to quarantine,<sup>154</sup> auditing,<sup>155</sup> imposition of customs and tariff,<sup>156</sup> administration of justice,<sup>157</sup> and maintenance of national roads, bridges, and irrigation systems.<sup>158</sup> The devolution of additional powers is consistent with the concept that self-determination is a continuous process.<sup>159</sup>

The ARMM is not a “failed experiment”<sup>160</sup> but a work-in-progress.<sup>161</sup> While the majority hesitates to recognize minority rights fully, the national government has nevertheless given the *Moros* means to exercise self-determination. Self-determination involves adjusting and readjusting the dynamics between the Central Government and the regional body.<sup>162</sup> Moreover, the national government must be commended for its continuous peace efforts in Mindanao despite the lack of a legitimate *Moro* representative. This problem of representation may be attributed to an

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149. See Lisa Huan, et al., *The State-Moro Conflict in the Philippines* (An Unpublished Paper Submitted to the Carleton University in Canada) 2, available at <http://www4.carleton.ca/cifp/app/serve.php/1392.pdf> (last accessed Jan. 2, 2015).

150. Framework Agreement on the Bangsamoro, *supra* note 87, part I, ¶ 2.

151. Annex on Power Sharing, *supra* note 146, pt. two, ¶ 5.

152. *Id.* part II, ¶ 3.

153. Compare R.A. No. 9054, art. IV, § 3 with Framework Agreement on the Bangsamoro, *supra* note 87, part III, ¶ 3.

154. Annex on Power Sharing, *supra* note 146, part III, ¶ 2 (2).

155. *Id.* part III, ¶ 2 (7).

156. *Id.* part III, ¶ 1 (7).

157. *Id.* part III, ¶ 2 (11).

158. *Id.* part III, ¶ 2 (12).

159. Report of the International Conference of Experts, *supra* note 91, at 7.

160. Aquino, *supra* note 137.

161. Report of the International Conference of Experts, *supra* note 91, at 18.

162. *Id.* at 14.

internal power struggle among them. If a faction breaks away from the group negotiating with the national government whenever a peace agreement is signed, self-determination will never be fully realized. The national government, especially the military, must keep its presence in the region to protect civil interest because the power of national defense and security is exclusively exercised by the national government.<sup>163</sup>

Peace may be elusive but it can be realized through continuous and inclusive dialogue in the appropriate forum, discussing programs, policies, and methods of cooperation and assistance.<sup>164</sup>

*B. Tibetan Autonomy and Indian Federalism*

The Philippines largely remains a “nation-state”<sup>165</sup> with the majority equating political boundaries with cultural ones.<sup>166</sup> Both Mindanao<sup>167</sup> and Tibet<sup>168</sup> were not fully subjugated by the countries they presently form part of. For this reason, the situation of the ARMM is comparable with that of Tibet.

The constitution of the People’s Republic of China allows the state to “establish special administrative regions when necessary.”<sup>169</sup> The systems that will govern these regions “shall be prescribed by law enacted by the National People’s Congress in the light of specific conditions.”<sup>170</sup> The Chinese Constitution grants the ethnic groups “the freedom to use and develop their own spoken and written languages and to preserve or retain their own folkways and customs.”<sup>171</sup> While the National People’s Congress has enacted

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163. R.A. No. 9054, art. III, § 3 (b).

164. UNDMR, *supra* note 79, art.2 (2-3) & art. 5.

165. Stepan, et al., *supra* note 106, at 52. The article describes a “nation-state” as having a “political-administrative approach that tries to make the political boundaries of the state and the presumed cultural boundaries of the nation match.” *Id.*

166. *Id.*

167. Russell, et al., *supra* note 13, at 2-3.

168. Michael C. Davis, *The Quest for Self-Rule in Tibet*, 18 J. DEMOCRACY 157, 164-65 (2007).

169. CHINA CONST. art. 31.

170. CHINA CONST. art. 31.

171. CHINA CONST. art. 4, ¶ 4.

policies in accordance with the foregoing provisions,<sup>172</sup> the Tibetan Government is still subservient to the State Council.<sup>173</sup> The current political situation in the area is characterized by mutual distrust<sup>174</sup> and by the government-sponsored Han migration into Tibet.<sup>175</sup>

Michael C. Davis argues that the creation of a special administrative region is more apt for the Tibetan situation than the present “national-minority approach.”<sup>176</sup> Davis further notes that Beijing’s policies towards minorities ensure the Central Government’s control over the territory rather than the well-being of the minority groups.<sup>177</sup> Manila and Beijing both have a centralized approach to governance.<sup>178</sup> Despite creating the ARMM, Manila has been reluctant to recognize the collective identity of the *Moros* as demonstrated by *Province of North Cotabato*. Even without a bill filed in Congress, Senator Miriam P. Defensor-Santiago opined that the FAB is unconstitutional insofar as it creates “the Bangsamoro as a sub-state instead of a mere autonomous region, and diminishes Philippine sovereignty by listing what powers the Central Government can retain.”<sup>179</sup> Thus, while both Manila and Beijing have arguably granted autonomy to the ARMM and Tibet respectively, both minimize the recognition of minority rights and calibrate the exercise of self-determination by these minority groups.<sup>180</sup>

A good model for the Philippines to emulate is India which created a “democratic state-nation, supported by all religions, all socio[-]economic

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172. The National People’s Congress of the People’s Republic of China, About Congress: China’s Legal System, available at [http://www.npc.gov.cn/englishnpc/about/2007-11/20/content\\_1373258.htm](http://www.npc.gov.cn/englishnpc/about/2007-11/20/content_1373258.htm) (last accessed Jan. 2, 2015).

173. Davis, *supra* note 168, at 160 (citing Law of the People’s Republic of China on Regional Autonomy (promulgated by the President of the People’s Republic of China, May 31, 1984, effective Oct. 1, 1984), art. 15 (China)). The article explains that despite the enactment of the law on regional autonomy, the Tibetans still do not have “ultimate control over their own affairs, leaving the Tibetan community beleaguered and repressed.” *Id.*

174. *Id.* at 158.

175. *Id.* at 161.

176. *Id.* at 157.

177. *Id.* at 160. The article explains that the aim of the policies is to secure territorial control rather than “[to secure] autonomy for indigenous peoples who live in such places.” Davis, *supra* note 168, at 160.

178. Compare Davis, *supra* note 168, at 160-61 with Wolff, *Power-Sharing*, *supra* note 108, at 37.

179. Ayee Macaraig, Miriam: I’m not out to scuttle Bangsamoro deal, available at <http://www.rappler.com/nation/54677-miriam-not-scuttling-bangsamoro-deal> (last accessed Jan. 2, 2015).

180. See Davis, *supra* note 168, at 160-63. See also Wolff, *Power-Sharing*, *supra* note 108, at 38.

groups, and many states that once experienced secessionist movements.”<sup>181</sup> Both the Philippines and India are democracies with multi-cultural societies.<sup>182</sup> Religion plays a big part in both societies and has given rise to internal conflicts.<sup>183</sup> The Philippines ought to take pointers from India’s formulating and implementing policies in order to reconcile deep diversity and democracy, to resolve self-governance problems using asymmetric federalism, and to promote a new model of secularism accommodating religious heterogeneity and diversity.<sup>184</sup>

### III. PREDICTING THE FUTURE: NECESSITY OF INCLUSIVE MORO REPRESENTATION AT THE CENTER

Donald L. Horowitz posits that “[d]emocracy is about inclusion and exclusion, ... about the privileges that go with inclusion and the penalties that accompany exclusion.”<sup>185</sup> In severely divided societies, ethnic identity demarcates who will be included in and excluded from the community and, ultimately, the government.<sup>186</sup> The Philippine situation on inclusion and exclusion is received with “popular discontent.”<sup>187</sup> This is best exemplified by the fact that the power is held by political dynasties who have descended from the old land-owning elite.<sup>188</sup>

The problem with Philippine-style autonomy is with the implementation of laws, not with the legal framework. R.A. No. 9054 complies with the tenets of the UNDMR and ICCPR on the protection of minority rights and self-determination.<sup>189</sup> This problem is also aggravated not only because the majority remains hesitant to recognize minority rights, but also due to the failure of *Moros* to obtain a consensus on who legitimately represents the Bangsamoro.

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181. Stepan, et al., *supra* note 106, at 59.

182. *Id.* at 63–64.

183. Radics, *supra* note 6, at 121.

184. Stepan, et al., *supra* note 106, at 59.

185. Donald L. Horowitz, *Democracy in Divided Societies*, 4 J. DEMOCRACY 18, 18 (1993).

186. *Id.*

187. *Id.* at 21.

188. Ted Regancia, Family affair: Philippine political dynasties, *available at* <http://www.aljazeera.com/indepth/features/2013/05/2013511104835690790.html> (last accessed Jan. 2, 2015).

189. See R.A. No. 9054, art. III, § 15.

Many express skepticism towards the FAB because it excluded important stakeholders.<sup>190</sup> The Annex on Transitional Arrangements and Modalities<sup>191</sup> directs the creation of an MILF-led<sup>192</sup> Bangsamoro Transitional Commission<sup>193</sup> (BTC), which shall govern the autonomous region until the enactment of the Bangsamoro Basic Law.<sup>194</sup> This provision may face serious constitutional challenge, as it requires the incumbent officials to step down from elected office.<sup>195</sup> It therefore overrules the mandate of the people in a valid regional election.<sup>196</sup>

Moreover, the foregoing is a politically dangerous undertaking for the national government. First, it is likely to further antagonize the Misuari faction of the MNLF<sup>197</sup> and the BIFF,<sup>198</sup> thus, further frustrating the peace process. Second, both the *Moros* and the national government have ignored the fact that mastery of warfare does not automatically translate to effective governance. It must be remembered that Misuari ruled ARMM as his “fiefdom,”<sup>199</sup> and was accused of graft and corruption — allegedly spending public funds as if it were his own.<sup>200</sup> In an effort to hold on to power, he declared war against the national government and proclaimed the

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190. Integrated Regional Information Networks, Prospects for peace in Mindanao, *available at* <http://www.irinnews.org/report/99806/prospects-for-peace-in-mindanao> (last accessed Jan. 2, 2015).

191. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Transitional Agreements and Modalities (An Annex of the Framework Agreement on the Bangsamoro), *available at* <http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Transitional%20Arrangements%20and%20Modalities.pdf> (last accessed Jan. 2, 2015).

192. *Id.* pt. II, ¶ A (1).

193. *Id.* pt. I, ¶ A.

194. *Id.* pt. II, ¶ A (5).

195. *See* Estrada v. Desierto, 353 SCRA 452, 560 (2001) (J. Kapunan, separate opinion).

196. *Id.*

197. Julie Alipala, *MNLF threatens to sue PH gov't at ICJ over peace deal with MILF*, PHIL. DAILY INQ., Oct. 9, 2012, *available at* <http://newsinfo.inquirer.net/286078/mnlf-threatens-to-sue-ph-govt-at-icj-over-peace-deal-with-milf> (last accessed Jan. 2, 2015).

198. Unson, *Military, local execs*, *supra* note 148.

199. Menandro Wenceslao, A lesson from MNLF peace treaty, *available at* <http://www.sunstar.com.ph/cagayan-de-oro/opinion/2011/07/05/wenceslao-lesson-mnlf-peace-treaty-165019> (last accessed Jan. 2, 2015).

200. Unson, *Nur Misuari as leader*, *supra* note 49 & Wenceslao, *supra* note 199.

Bangsamoro independence during the last days of his term as ARMM's governor.<sup>201</sup>

Misuari's 2001 declaration of war<sup>202</sup> invites inquiry into the Annex on Normalization (Annex).<sup>203</sup> The Annex directs the decommissioning of the MILF's forces<sup>204</sup> and disbanding of private armed groups.<sup>205</sup> However, the national government was still unable to neutralize the MNLF for unexplained reasons. It is therefore imperative that the national government and the MILF cooperate closely in undertaking the foregoing tasks. It has been said that as long as "arms and ammunitions will remain in the armory of the separatist elements and leaders of the tribal clans in Mindanao,"<sup>206</sup> armed conflicts will persist.

What is crucial at this point, therefore, is working for a more inclusive solution<sup>207</sup> that would appease all stakeholders. Charlie Campbell points out that while support for the MNLF has waned, Misuari will remain a formidable force in Mindanao as long as the *Moros* are dissatisfied with the national government.<sup>208</sup> The BIFF also promised to continue fighting the national government.<sup>209</sup> As a short-term measure, Congress can broker peace among these factions and promote wider participation by inviting their

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201. Roel Pareno, *Misuari declares war; 52 killed, 83 wounded*, PHIL. STAR, Nov. 20, 2001, available at <http://www.philstar.com/headlines/140742/misuari-declares-war-52-killed-83-wounded> (last accessed Jan. 2, 2015).

202. *Id.*

203. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Normalization (An Annex Which Outlines the Details on Normalization — a Process Whereby the Communities Can Achieve Their Desired Quality of Life, Among Others), available at [http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Normalization\\_o.pdf](http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Normalization_o.pdf) (last accessed Jan. 2, 2015 [hereinafter Annex on Normalization]).

204. *Id.* ¶ C.

205. *Id.* ¶ F.

206. Wenceslao, *supra* note 199.

207. Lingga, *The Mindanao Peace Process*, *supra* note 147.

208. Charlie Campbell, *Why the Conflict in the Southern Philippines is Far From Over*, available at <http://world.time.com/2013/09/27/hostages-the-homeless-and-gunmen-at-large-the-zamboanga-crisis-is-far-from-over> (last accessed Jan. 2, 2015).

209. Unson, *Military, local execs*, *supra* note 148.

representatives to consultations and committee hearings for the proposed bill on the FAB.<sup>210</sup>

R.A. No. 9054 mandated the creation of an independent oversight committee with a limited mandate to supervise the transition of functions.<sup>211</sup> As a long term proposition, the proposed BTC should be a mechanism for a regular and continuing dialogue between the national government and the various sectors of the *Moro* society to discuss solutions for problems besetting the region and what institutional support the national government may provide to the region. The civil society, the political opposition in the region, the regional human rights body, as well as the foreign funding and humanitarian agencies involved in the region's development, must be represented in the committee in order to be inclusive and to promote transparency and accountability. These public consultations must be conducted regularly to enable the BTC to solicit the public's views on various projects. This would make the NPE more responsive and would enable stakeholders to draft a more holistic socio-economic plan for the region<sup>212</sup> and a more effective transitional justice program.<sup>213</sup>

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210. Horowitz, *supra* note 185, at 34-37.

211. R.A. No. 9054, art. XVIII, § 3.

212. Annex on Normalization, *supra* note 203, ¶ G (4).

213. *Id.* ¶ H.