

**BANGSAMORO TRANSITION AUTHORITY:
A TRANSITION BEYOND BRIDGING ARMM TO BARMM**

This policy report is a product of a series of round table discussions organized by:



INSTITUTE FOR
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GOVERNANCE



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Executive Summary

This policy report is a product of a roundtable discussion facilitated by the Institute for Autonomy and Governance (IAG) on 29 March 2019 in Cotabato City where participants from civil society and Bangsamoro Transition Authority (BTA) generated recommendations to ensure a smooth transition from the Autonomous Region in Muslim Mindanao (ARMM) to Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).

The ARMM transition portal OpenBangsamoro.com has released a trove of transition documents and data the new BARMM government can use in navigating this critical period. This roundtable yielded a number of insights and recommendations based on the information contained in the ARMM Transition Report. The most critical are the following:

- The ARMM government has already procured more than Php10-B worth of infrastructure programs for 2019 through the Department of Public and Highways (DPWH). These procured programs would have just to be awarded in due time. As of March 2019, however, no procurement has been made by the BARMM government. That means the allocated money could be forfeited and reverted back to the national government. The BARMM government has the option to prevent this from happening.
- While the block grant is a welcome development, it should be noted that in the Bangsamoro Organic Law (BOL), the powers granted to the BARMM are “subject to national laws”. Possible clashes of contention on laws may more often arise in national offices asserting application of national laws in BARMM governance and operations over the BOL (RA 11054). Hence, the Bangsamoro Parliament has to be more careful in legislating laws to ensure that these are in accordance with national laws to avoid stirring dispute with the national government. If the regional laws passed are not consistent with national laws, chances are they will become “dead laws”.
- There are fundamental questions that need answered to ensure a smooth implementation of the BOL. How does the BARMM evolve a relationship with the national government? Would it be through the intergovernmental relations (IGR)? Would it be better through devolution as was in the previous ARMM? Will an executive order of the President with his strong political capital suffice? What exactly is the relationship between the Chief Minister and the Speaker, the BTA and the Cabinet, the Speaker and the Parliament?

From a more general discussion of the issue of transition, the roundtable also produced the following recommendations:

1. Set up intergovernmental relations (IGR) as soon as possible. Setting up the IGR and activating the IGR body will help clarify the potentially contentious legal issues on the boundaries of autonomy granted to the BARMM and guide the BTA – Bangsamoro Parliament as to the drafting of legislative laws consistent with the national laws.

2. Capacitate the BTA. BTA Members appointed by the President come from diverse background. There are lawyers, engineers, politicians, former revolutionaries, and even a ground commander. They need to level off and build a strong team for BARMM to be up to a good start. Civil society organizations like IAG in tandem with government agencies like OPAPP can help facilitate efforts in this regard.

3. Track the gains of the transition against the very limited timeframe. The view that the three-year timeframe allotted to the transition to BARMM is too short resurfaced in the RTD. The BTA should revisit this issue, fast-track the process and formulate recommendations to the national government through the IGR body if needed while managing people's expectations to ensure a successful transition.

4. Establish BTA role in Marawi rehabilitation. The erstwhile ARMM Regional Legislative Assembly (RLA) had allocated funds for Marawi. Now it's up to BTA to continue ARMM's efforts for Marawi and put in place a concrete program to fully rebuild the war-torn city.

5. Clarify timeline and procedure in the reorganization of ARMM bureaucracy. Pursuant to BOL (RA) 11054, there will be gradual phase-out of offices and positions when BARMM shall have adopted its own Administrative Code. The BTA then should fast-track the crafting of its Administrative Code, Civil Service Code and Election Code. In the end, there should be a clear-cut policy on the status of those holding career positions to be covered by the Transition Plan.

6. Formulate clear framework on Trade, GOCC, Minerals, and Infrastructure. Moro negotiators aimed high enough in the policy bargaining on the wealth-sharing scheme, as well as the Bangsamoro Government's regulatory functions on conventional trading and the traditional barter trading, and its operational regulatory control over power utilities and Government Owned- and Controlled Corporations (GOCCs). But the BOL is not very forthcoming on wealth-sharing supervisory power over barter trading. Its regulatory powers over energy utilities, GOCCs, economic zones and fishery resources, unlike the ARMM, are all unclear.

7. BTA must continue protection of labor conditions and prevent unfair labor practices in the BARMM. Some ARMM line agencies are also members of the Regional Tripartite Wage Board, and there are no labor and wage issues arising from employers-workers relationship, thus far.

Wages from private corporations for the region's local farmers as workers and employers of plantations are nowhere within the realm of disputes. The BTA should ensure that good labor practices in the BARMM continue.

8. Develop catch-up program for underperforming LGUs, taking into account the challenges posed by violent extremism in some localities. If good governance is to be gauged by the

number of LGUs in the ARMM that received the Seal of Good Local Governance (SGLG), the BARMM has a lot of catching up to do. To be awarded the seal, an LGU must meet the standards set in the following indicators: (1) Financial Administration, (2) Disaster Preparedness, (3) Social Protection, (4) Peace and Order, (5) Business Friendliness and Competitiveness, (6) Environmental Management, and (7) Tourism, Culture and the Arts.

The defunct region had only 23 out of 123 LGUs SGLG awardees—a wide gap that could be interpreted as uneven local governance performance. Security issues and the presence of violent extremists have made the situation different for other LGUs that failed to get the SGLG.

9. Establish framework on indigenous peoples' rights and protection and management of IP ancestral domain within BARMM. Reports of harassment, even killings, due to land disputes in some IP communities make a case why the national government and Bangsamoro government commitment to uphold the Indigenous Peoples' Rights Act (IPRA) should be reiterated.

The Philippine National Police (PNP) and local officials' mandates on ensuring safe and secured communities should consider the parameters of conflict management through dialogue by pushing or helping activate traditional or tribal peacebuilding mechanisms and collaboration between grassroots communities and authorities. The issue of ancestral domain needs to be clarified as well.

Introduction

The first of a series of IAG's *Roundtable Discussions on Understanding the Bangsamoro Transition and the BTA* held in Cotabato City on March 20, 2019 came on the heels of the assumption to office of 76 Bangsamoro Transition Authority (BTA) members appointed by President Rodrigo Duterte.

Eleven members of the ARMM Regional Legislative Assembly (RLA) have also joined the BTA pursuant to RA 11054 (BOL), which makes them automatic members of the BTA until their elective term of office ends on June 30, 2019. The RLA is the 24-member ARMM legislature, but the rest of its members opted to focus on other undertakings, such as preparation for other elective positions in the 2019 midterm polls.

The three-year lifespan of the BTA begins with the appointment of 41 MILF nominees and 35 Government nominees to the BTA, including Settlers and Indigenous Peoples' Representatives—and their assumption to office on February 22, 2019. With 11 automatic members of BTA from the RLA, an 87-member Interim Parliament constitutes BTA. But the untimely demise of MILF First Vice-Chairman Ghazali Jaafar, who had been designated BTA Speaker, has reduced the number of current Members to 86.

The current BTA was represented in the RTD by nine appointed MPs (Members of Parliament), including a resource person while the erstwhile RLA was represented by one legislator and two members of the legislative staff.

At least 17 issues surfaced during the discussion. These are: time frame; BTA organization; ARMM experience; broader sense of transition; legal comments on BOL (RA 11054); labor; the Seal of Good Local Governance (SGLG); trade, Government Owned- and-Controlled Corporations (GOCC), minerals, infrastructure; career security; ancestral domain; security of IPs; other social concerns, such as people getting impatient, and the BOL implementation in more general terms. These issues, as discussed in view of a Transition, were examined in the light of certain realities in BTA, its strength in technical facts and in laws as well as policy frameworks.

Moves towards organizing the BTA have so far resulted in the holding of four caucuses. No house rules have yet been adopted—no staff, no budget, no program of expenditures as of the date of this RTD.

Options to Transition to the BARMM

The BARMM can build on the gains of the ARMM. In the ARMM Transition Report (ATR) presented by BTA Member Baintan Adil Ampatuan, the former chief planner of the now defunct region, options are available on whether for the BARMM to adopt current ARMM Programs and corresponding Budget Expenditures, or redraw the Expenditure Programs of the former on a prompt timeline. And all that the new government has to do is to try to scrutinize which mode or option is applicable based on the recommendations made in the ATR. The ATR is a very important tool the new government can use to ensure there would be no disruption in the delivery of services during the transition period.

At this point in time, Adil-Ampatuan points out, the BTA would just have to look at the progression projection laid down by the ARMM in each of the planning cycle through 2040. If the Philippines has “Ambisyon 2040”, the ARMM Regional Government had “ARMM Vision 2040”.

Guidance on the procurement is also very important for the BARMM, just as it is for the National Government. The administrative regions, for instance, have already procured their infrastructure programs for 2019 in the DPWH, and these procured programs would just have to be awarded in due time.

In the case of ARMM, or the BARMM right now, the P10-B plus worth of special programs – about P4-B to P5-B – is not yet procured. But if that is not spent until December 2019, those funds would have to be reverted back to the national government, because under the so-called cash-based budgeting, BARMM cannot make use anymore of the P15-B out of the P-32-B Infrastructure Program Funds. This is the reason why former ARMM executives now in the BTA are advocating for BARMM concurrence into the ARMM programs to be carried over into BARMM. Short of awarding the projects, BTA can decide to procure. Projects can already be procured this early, pending approval of the 2019 General Appropriations Act.

Policy Framework

The incoming BARMM seems to have lost some transitional mechanisms that were made available through the devolution of powers to the erstwhile ARMM. In the case of ARMM, it had the so-called Oversight Committee provided both in Republic Act 9054 (Expanded Autonomy Act) and in RA 6734 (Organic Act) for the purpose of supervising the transfer of powers and functions to the autonomous region in accordance with the organic acts mentioned.

In the case of the BOL, its framework is more a federal type in delineation of powers with the use of the terms exclusive and concurrent powers. These terms, however, were stricken off the House version on Senator Franklin Drilon’s contention that the BOL should conform to the unitary character of the state.

In that sense, asserting what was agreed upon in the BOL, thus implementing it, is the way for the BTA. Its members should buckle down to work and focus on policies on reshaping the bureaucracy, initially through diligent reorganizational reviews Civil Service Commission (CSC), Department of Budget Management (DBM) and Commission on Audit (COA) circulars.

Previously in the ARMM, the Oversight Committee came into play on “the appropriations of offices and agencies”, “including the transfer of properties assets, liabilities, and such personnel as may be necessary, and by identifying the other agencies involved and other GOCCs that may be absorbed by the regional government; and with respect to the latter, also the turnover and the terms and conditions of the turnover.”

An ARMM Transition Report offers technical options for BARMM through BTA to fund its bureaucracy and operationalize the Parliamentary Oversight functions. But it would seem that

the kindest expectation in terms of budget is for BTA (subject to technical requisites by DBM) to inherit the old RLA Budget programmed for 24 members and for administrative services, and for legislative oversight functions. Still, the available legal references are BOL (RA 11054) and FY 2019 GAA.

Generally, for the BTA to operate as a fledgling government organization it may adopt the upcoming Itemized ARMM Budget in FY 2019 General Appropriations Act (GAA)—at least to fund an initially skeletal bureaucracy (pending approval of organizational staffing pattern) administrative services and inherent legislative oversight functions. In that sense, the transition is guided by the policy frameworks of the Bangsamoro Basic Law (RA 11054) as well as the National Budget Law in FY 2019 GAA.

Adopting the itemized ARMM Expenditure Program in the 2019 National Budget would be a matter of policy framework decision that needs to be put in place and requires a necessary mechanism, mainly the Intergovernmental Relations (IGR) Body.

If it opts not to adopt the ARMM programs, the BTA should do (redo) things in a most practicable timeline. For BTA to adopt the current Programs and Budget of the defunct ARMM, it may do so by passing a resolution (with concurrence by Congress). A more elaborate topic on budget is reserved by IAG for discussion in the second roundtable discussion.

In RA 9054, the legal framework is clearly devolution. Powers that are granted the autonomous region are placed under the supervision of the Regional Government; the National Government does not come into the picture anymore, even with respect to that autonomy. It states “(powers) devolved to it (meaning ARMM) by the Constitution and by the National Government”. So in the hierarchy of laws, Organic Act prevails in that sense, since the national government and the Constitution have already devolved specific powers.

Building on ARMM Strength

Some programs of ARMM are most welcome, notes former Assemblyman and now BTA Member Khadafeh “Toy” G. Mangudadatu, and many of them have been well-received in the communities. The new regional government should be able to continue implementing these projects to finish everything that has been started.

Unless Congress changes or makes special provisions in the incoming GAA, the budgeted items cannot be altered. It is an act of Congress and the BARMM Government needs to implement that within 2019 wherein it has to operate on a cash-based budgeting system.

ARMM HELPS, ARMM BRIDGE under the Office of the Regional Governor also have their budget programs itemized in the 2019 GAA -- how much belongs to ARMM HELPS; how much is for ARMM BRIDGE; how much goes to Personal Services (Salaries); Maintenance and Other Operating Expenditures, and how much is for Capital Outlay.

In terms of economy: ARMM ended with a very high GRDP—which is even higher than the national GDP—at 7.3 percentage-points.

Broader Sense of Transition

Transition readiness has been examined in terms of technical preparation through a summary of the ARMM Transition Report (ATR) presented by Resource Person BTA Member Baintan Adil Ampatuan, and also in terms of the Legal Framework of the BTA/BARMM powers as provided in the BOL (RA 11054), as presented by Atty. Ishak V. Mastura.

We should look at transition in the broadest sense – a transition of a fundamental policy framework and one that is not confined merely to technical aspects of structural change from ARMM to BARMM. Everybody has to understand that the work of the BTA is leading to this policy framework, but it also seems that it has to contend with national laws, according to Atty. Mastura. Basically, the BOL says that all of this is subject to “national laws”. During the deliberations in Congress, there was a strong push to use “national law” instead of “national laws”. If it were the latter, one can interpret it to mean only the BOL, which is fine. The phrase “subject to BOL and the national Constitution” would have been fine also, but “national laws” could be a cause for alarm because all laws that are applicable nationwide can be raised by agencies to resist devolving powers and resources to the BARMM. This is an issue that the BTA should clarify before it starts writing its own regional laws.

With a solid policy framework, changes in the Regional Government structure may be completely in place within the next three years, the term of office of the appointed BTA. However, the three-year period will be hardly enough to capture the transformation of the MILF and its communities from political dissidence to political governance—and Normalization, as a matter of policy framework, is a bilateral requisite under the Comprehensive Agreement on the Bangsamoro.

Fr. Eliseo Mercado Jr. OMI says he would go for a “dignified settlement” in a broader understanding of Transition. BOL provides substantial compliance and “when you speak of transition, it should be broader in perspective” to cover the Normalization Process—the preparation towards transformation of the MILF as an organization from rebel force to governance actor” as an initial realization of the political struggle for the right to self-determination (RSD).

Lawyer Anwar A. Malang, former ARMM Trade and Industry Secretary, concurs that the transition is not merely a change in structure from ARMM to BARMM but a change in the former situation of the Moro people to a new system under the government. The Moro people have asserted for their RSD “so the bottom line now is, what is the picture of the RSD that the people could expect from the limited autonomy granted by the law?”

“The real issue here is what, in the light of the present set-up (BARMM) can the BTA do best, because the transition is not only about change in structure of government to a new one but it should be on a change from the living condition of the people from one system to new one,” says Malang.

Legal Issues on BOL

The block grant provision is a welcome development, but what would happen if, for instance, the national government says it could not release funds because doing so would violate national laws and it can exercise its veto power? This could pose a major problem to BTA-passed legislations as well if, for instance, the national government objects to the implementation of a regional law citing the same principle.

Atty. Mastura also pointed out that the BARMM or in its current term, the BTA, has taxing powers but even these taxing powers are “subject to national government’s consent.”

In the BOL, the powers granted to the BARMM are “subject to national laws.” In the hierarchy of laws, possible clashes of contention on laws may more often arise in national offices asserting application of national laws in BARMM governance and operations over the BOL (RA 11054).

In a comparative experience, ARMM had the so-called Oversight Committee on Devolution of Powers both in Republic Act 9054 (Expanded Autonomy Act) and in RA 6734 (Organic Act) for the purpose of supervising the transfer to the autonomous region the powers and functions vested in these Organic Acts.

All other powers that are not given are reserved with the national government and we see that also in the BOL. The BOL reserves that constitutional provision—anything not given in terms of powers remains with the national government. This is supported by jurisprudence, says Atty. Mastura, citing the Supreme Court Decision in *Abas-Kida vs. Senate*. The wide latitude of National Laws to which any legal issue involving BTA powers may be subjected now becomes more restraining to self-governance.

Article V, Section 2 of BOL is the very heart of autonomy in RA 11054. But one may notice the phrase “subject to Section 20, Article X of the Constitution, and this Organic Law.” Section 20, Article X of the Constitution refers to the grant of powers to the autonomous region which says “subject to national laws.” In RA 9054, the framework is clearly devolution and the powers granted the autonomous region rest under the power of supervision of the regional government. With respect to that autonomous “(powers) devolved to it (ARMM) by the Constitution and the national government, in the hierarchy of laws, Organic Act prevails. (Mastura).

In the case of the BOL, the Bangsamoro Parliament would have to be careful in legislating laws to ensure they are in accordance with national laws to avoid stirring dispute with the national government. This is only a legal theory but if past instances are any indication, the national government would only follow national laws—and so national procedures, rules, circulars, issuances and regulations. Hence, if the regional laws passed are not consistent with national laws, chances are they will become dead laws, as has been the experience of the ARMM. The ARMM has crafted regional laws, but because the national government holds the key to the budget, their implementation left much to be desired.

Fundamental questions

How does the BARMM evolve a relationship with the national government? Would it be through intergovernmental relations? Would it be better through devolution as was in the previous ARMM, or just by executive order of President Duterte, banking on his strong political capital? These are some of the fundamental questions that need answered to make BARMM work for the Bangsamoro.

With respect to the BTA as a body, Atty. Mastura flagged the issue whether the BTA functions as a parliamentary government. This is a grey area because executive powers rest with the Chief Minister while legislative powers are vested on the BTA, since it would seem that it is still a unitary setup. What exactly is the relationship between the Chief Minister and the Speaker, the BTA and the Cabinet, the Speaker and the Parliament?