Discussion paper:
Devolution of law enforcement to self-governing regions
Reflections for Dialogue in Mindanao

Eneko Sanz and Kristian Herbolzheimer, August 22, 2012

The challenge

One of the historic demands of the Bangsamoro has been to exert some sort of control over internal security matters. The 1996 Final Peace Agreement with the MNLF already mentioned the creation of “a PNP Regional Command for the new Autonomous Region, which shall be the Special Regional Security Forces”. A significant number of former MNLF combatants eventually joined the Armed Forces as well as the Philippine National Police.

The issue has come back on the agenda as the Government and the MILF discuss a Framework Agreement that will cover the remaining issues in the peace negotiations. MILF has expressed their wish for some sort of autonomous police force, citing the regional police force in Catalonia as a reference.

The devolution of police powers has a great symbolic meaning, and it is an opportunity to address the reform of the security sector after the signing of a new peace agreement. But the implementation of a new or reformed police force is an extremely complex and long procedure.

Post-conflict settings are notably fragile. A “security vacuum” often occurs when civilian police must take over issues that during conflict time had been handled by armed forces or armed groups. This puts a strain in the authorities in charge of policing.

Mindanao is very different from Europe and the discussions will need to consider the local social, cultural, economic and political circumstances when assessing a workable formula.

Questions for the Mindanao peace process

• What are the security challenges in a post-agreement Mindanao?
• What sort of security forces will be better suited to address these challenges?
• What police powers will be devolved? Which operational, administrative, regulatory powers will fall within Mindanao’s authorities scope and which will remain the GPH’s and/or local authorities’ jurisdiction?
• How can different security forces complement each other? What institutional arrangements will be needed to coordinate with the broader security sector (armed forces, national police, private security, justice) both during the transitional period and after consolidation?
• How will devolved law enforcement agency prevent patronage practices?

1 Conciliation Resources drafted this document as a contribution to discussions at the negotiating table between the Government of the Philippines and the Moro Islamic Liberation Front (MILF). After the signing of a Framework Agreement of the Bangsamoro (October 15 2012) CR decided to publish this and other related Discussion Papers, to trigger further dialogue on the implementation of the Agreement.
• How can a new security agency become a trusted agency for Moro, settlers as well as IPs?

• How will this security force respond to the specific needs of women and children?

• How will the transition proceed? How long will it take to have a new modern, well-trained, well-equipped and widely trusted security agency in place? What will be the right sequencing of transfer of powers and deployment? What external advise may be needed?

• How will be the new autonomous police system look like? A unitary, a decentralized or dual system? What will be the line of command, and which the political institution ultimately responsible?

• How it will be funded? What mechanisms for transparency and accountability will be created or strengthened?

Key concepts:

**Autonomous police force:** Any given law enforcement agency that is independent in terms of command and funding. A country can have as little of only one law enforcement agency (e.g. the current Philippine National Police) to several hundreds (the USA, where local police forces make the most of that figure).

**Community policing:** The US Department of Justice\(^2\) described community policing as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.” It is comprised of three key components. This entails a collaborative partnerships between the law enforcement agency and the individuals and organizations they serve to develop solutions to problems and increase trust in police: Other Government Agencies; Community Members/Groups; Nonprofits/Service Providers; Private Businesses; Media

**Police reform.** According to DCAF (2009), “the goal of police reform is humane, accountable, responsive and capable policing. Like Security Sector Reform (SSR) more generally, police reform assumes that effective and democratic security delivery is fundamental for reducing poverty and for sustainable economic, social and political development. While the balance between building technical skills and a newer emphasis on promoting liberal norms varies depending on the country, successful police reform is now largely focused on human security and is articulated in terms of such norms and values as human rights and equal protection under the law. Police reform is also about a fundamental change from police as “force” to police as “service”, whereby a key objective of police reform is the reorienting of policing goals towards service to the community and responsiveness to its needs. Reform requires short-term operational objectives to be combined with long-term goals of democratic governance, effective oversight and local ownership.”

**International trends and developments**

International experiences in the devolution of police powers to self-governing authorities have been pretty successful on the whole. However, this should not warrant undue optimism. The administrative organization of law enforcement agencies takes a widely different form in every country, regardless if it takes place in unitary, federal or asymmetrical federal systems. Also, international examples of devolution

of police powers as part of a peace settlement are scant: the Northern Ireland may be the most relevant case. Other examples of devolution as part of a political transition (Spain, Hong Kong and Macau), or in some federal systems (Canada, Germany) can have some interest for the case of Mindanao.

There are two current trends in policing theory and practice: integration and decentralisation. These trends need not to be contradictory.

On one hand, countries with a large number of commands, especially at the local level (e.g. US, Canada, UK), are merging some of them into larger units in order to rationalize human and financial resources. The police departments of very small towns, which can consist of merely one officer, are consolidated into police forces serving several municipalities. At the same time, a different sort of integration is being tried at the coordination level: central nodes for communications, databases, logistics, coordinated responses, etc., are increasingly put into place in countries with multiple law enforcement agencies.

On the other hand, decentralization is a major force in current thinking on police reform. It aims at granting more autonomy to local units in order to better implement community and democratic police models. In some countries decentralisation takes the form of delegation or de-concentration within a single command; while in others devolution creates a multiplicity of commands.

There are several instances of sub-national/regional police enforcement agencies, but not all of them have substantive responsibilities. For instance, in the US the role of the state police is minor as compared both with the local police (police departments and sheriffs’ offices) and federal (nationwide) agencies (FBI, DEA, etc.). Sub-national/regional police forces perform main or substantial enforcement duties in their respective regions in both federal as well as non-federal countries:

<table>
<thead>
<tr>
<th>Federal countries</th>
<th>Australia, Canada (First Nations, as well as Quèbec and Ontario), Switzerland, Germany, Brazil, Mexico, Bosnia and Herzegovina, Pakistan.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-federal countries</td>
<td>Spain (Catalonia, Basque Country and Navarre), UK (Northern Ireland), China (Honk Kong and Macau).</td>
</tr>
</tbody>
</table>

Other cases include South Korea’s Jeju Special Self-Governing Province which has an autonomous police force with limited powers: crime prevention, traffic, and some judicial police duties. In Sri Lanka there is currently a disputed debate on whether to devolve police power to Northern and Eastern provinces.

Core issues in a security devolution process

Jurisdiction
The discussion on power-sharing has a special dimension when it comes to agree on the jurisdiction of a regional police force. Some of the more complex issues include:

• Territorial waters. In Northern Ireland, the PSNI cover British territorial waters, but in Spain this is not under the authority of autonomous police forces.

• International cooperation (Interpol, regional security arrangements, etc.). Highly symbolic, but also with practical consequences.
• Smuggling, corruption, fiscal police.
• Law enforcement of federal provisions.
• Arms control.
• Licensing and monitoring of private security firms.
• Counter-terrorism.
• Emergency and disaster management. Usually all available police services cooperate, but coordination or leadership must be the responsibility of one single command.
• Environment, conservation, national parks. Restricted areas sometimes go beyond regional borders. Also, environmental law tend to be federal/national.
• Local police tasks where there is no local police (smallest municipalities, rural areas)

Transition period
There are two main strategies for a transition period:
1. To reform the existing police, then devolve control over it (the case of the Police Service of Northern Ireland, PSNI).
2. To create a new autonomous police force and gradually replace previous police forces as the new agency develops its capacities (Spanish autonomous police forces, notably Catalan).

Coordination and cooperation
Coordination is necessary to avoid overlapping, competition and unequal enforcement of law provisions across the territory. Standardisation and cooperation of different police forces are usually attained by three means:
• Nationwide legislation (defines the powers of each police force, but also establishes common standards and procedures, crucially in regards to the administration of justice, on top of which the role of judges and prosecutors can also be one of coordination).
• Political and administrative coordination (through joint commissions and councils).
• Shared logistical resources.

In federal systems, nationwide agencies dependant on the central government can perform these coordination tasks. In asymmetric federal systems, joint commissions are more common.

Structure
A devolved police system can take multiple forms, essentially:
• A unitary system, with a central command and hierarchy, like the Police System in Northern Ireland.
• A decentralised system with independent federal, state and local law-enforcing agencies, like in the USA.
• A dual system, combining both previous forms (like the autonomous police forces in Spain, with a centralised regional police and a number of decentralised local police forces).

3 In Spain, there is a permanent Commission on Security (Junta de Seguridad) for each of the autonomous regions with devolved police powers. The commissions are made up of 5 representatives each from the Spanish Ministry of Interior (and National Police) and the respective autonomous Department of Interior and police. It decides on matters of coordination between autonomous, national and local police forces, demarcation of responsibilities, and the autonomous police’s charter, budgetary allocations, dimensions, structure and recruitment. The Commissions do not meet often and many decisions are taken at the political level, though. For those matters where ultimate responsibility lies within the central government, such as organized crime or counter-terrorism, coordination between police forces remains in the hands of the Ministry of the Interior.
Police reform

Police reform is part of SSR and Rule of Law strengthening initiatives. Nowadays, it focuses largely on human security issues and it is conceptualized in terms of liberal norms. Its long-term objectives are democratic governance, effective oversight and local ownership. The following are the “Principles of Police Reform” according to DCAF (2009):

- Equal treatment: equal access to security and justice for all members of society.
- Inclusiveness: composition of police services should reflect the ethnic and cultural diversity of the communities they serve as well as the need to be able to address the different security issues facing women, men and minority groups across society.
- Professionalism.
- Well-Managed: coherent chain of command and management structure, effective use of resources.
- Transparency and Accountability: civilian authorities should oversee the policies, activities, expenditures and processes. A strong judicial framework should govern their actions. Independent oversight by civil society is recommended.

This generates a substantial amount of obligations for the political authorities in charge and, in regards to transparency and accountability, also for civil society. This is a summary distribution of responsibilities for police reform, adapted from DCAF (2009:4):

| Government authorities (autonomous Departments of Interior and Justice, and central government’s Ministries of Defense, Interior and Justice, working in coordination or independently depending on scope of devolution) | • Development of clear mission statements  
• De-politicization  
• Introduction of new recruitment policies  
• Improved training and working conditions  
• Promotion of human rights  
• Renovation of police stations  

| Civil society (media, NGOs, women, academic institutions) | • Oversight of reform processes  
• Provision of input into reform strategies  
• Identification of needs |

“Community-based policing” is consistently offered as the model to rely on for police reform, as in one way or another it addresses the aforementioned principles with its emphasis on cooperation with communities, governments and civil society, and streamlining.

Oversight mechanisms, accountability and transparency

The Police Service of Northern Ireland is supervised by a Policing Board made up of 19 members: 10 “political” members from the autonomous legislative Assembly, and 9 “independent” members appointed by the Secretary of State under the criterion of representativeness. In Québec, where policing is more decentralized, similar boards (Comités de sécurité publique) are set up at the municipal level. In Spain there are no comparable institutions, and policing plans, monitoring, etc., are within the autonomous government purview.
Several bodies may be competent to deal with complaints against the police: the Office of the Ombudsman, Anti-corruption agencies, Human Rights Commissions, and a Specialized Police complaints organization. In most of the cases, a devolved office of the Ombudsman and/or anti-corruption agency will deal with complaints against the regional police (Germany, Spain, UK, Hong Kong and Macau, India, Pakistan). But in some cases, the Ombudsman or alternative independent agency is at the federal level. Hong Kong’s police complaints organization (IPCC) and India and Korea’s Independent Human Rights Commissions have been flagged as worthwhile Asian models for oversight (PYO 2008).

**Representativeness/Inclusiveness**
A key understanding is that the police is part of the community it is policing. This entails that police staff should be representative of the community in terms of ethnic and gender composition, but also in terms of their behavior, living conditions, etc.

In Northern Ireland, Catholics represent around 40-45% of the population. There were temporary affirmative action provisions to recruit Catholic police officers (an 8% of the previous police force) until it reached a 30% (in 2011). There were complementary “lateral entry” and exchange provisions to facilitate the recruiting of members of other police forces such as Ireland’s National Police. In Québec there are affirmative action programs for women, aboriginals, “cultural communities” and “visible minorities”. Autonomous police forces in Spain have dissimilar language entry requirements. In Catalonia, Catalan is required (but not Spanish), while in the Basque Country and Navarre, knowledge of Basque is desirable, but not required.

Such recruiting procedures may be necessary, but they also pose the danger of politicization, allowing sectarian control of the process, and creating or aggravating social cleavages. Especially when it combines with the integration of ex-combatants, complaints about the fairness of the process are meant to come from all quarters. Information, sensitization and transparency are a must in order to avoid this.

**Funding, capacity**
In Northern Ireland, funding comes mainly from the devolved Department of Justice, but the agreement on devolution envisaged possible additional funding by the central government in order to meet “exceptional pressures”. Requests for additional funding have been agreed several times by the UK government, amounting to less than 5% of PSNI’s annual budget.

**International examples**
Three out of 17 autonomous communities in Spain have their own regional police forces: Catalonia (17,000), Basque Country (8,000) and Navarre (1,000). All three are formally police forces of the Spanish state placed under the authority of the regional Governments, in accordance with the principles of the Spanish constitution. They are commanded by the Ministries of Interior of the autonomous governments but still coordinate with Spanish Police forces (Policía Nacional and the Guardia Civil) and the local or municipal police. All three security agencies have their own Police Academy (which, in Catalonia, also trains local police officers).
The **Catalan police** has jurisdiction over general security; investigation, organised crime and terrorism; traffic control; administrative police; and proximity police and community relations. But as of now they are not allowed to become part of formal international networks such as Interpol and Europol. In a rather unique process, the Catalan police have gradually almost fully replaced the Spanish police forces, in a process that lasted 14 years (from 1994 to 2008).

### Police forces in Catalonia (2012)

<table>
<thead>
<tr>
<th>Police Force</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catalan Police (Mossos d’Esquadra)</td>
<td>17,000</td>
</tr>
<tr>
<td>Spanish National Police</td>
<td>3,000</td>
</tr>
<tr>
<td>Spanish Guardia Civil</td>
<td>3,000</td>
</tr>
<tr>
<td>Municipal Police</td>
<td>7,000</td>
</tr>
<tr>
<td>Private security</td>
<td>8,000</td>
</tr>
</tbody>
</table>

This process of replacement has been less developed in the Basque Country and Navarre due to protracted terrorist activity.

In addition to federal, provincial/territorial and municipal policing, there are also various types of **First Nations policing** agreements for Aboriginal communities in place across Canada. The First Nations Policing Policy (FNPP) announced in 1991 by the federal government, was introduced in order to provide First Nations across Canada with access to police services that are professional, effective, culturally appropriate, and accountable to the communities they serve.

The FNPP is implemented across Canada through tripartite agreements negotiated among the federal government, provincial or territorial governments and First Nations. The agreements are cost-shared 52% by the Government of Canada and 48% by the province involved. Depending on the resources available, the First Nation may develop and administer its own police service, as is the case in most of Québec and Ontario, or it may enter into a Community Tripartite Agreement (CTA). Like self-administered agreements, CTAs are negotiated between the Federal government, the province or territory in which the First Nation is located, and the governing body of the First Nation. Under such agreements, the First Nation has its own dedicated contingent of officers from an existing police service. Best efforts are made for these police services to be staffed by Aboriginal police officers.

Another special police force is the **Shari’a Police** in Aceh, the Wilayatul Hisbah. This agency is a development of the Special Autonomy act of 2001, which permitted Aceh to implement Shari’a as a formal legal system, establish a Shari’a court system, and articulate rules in the form of local regulations, known in Aceh as *qanuns*.

The initial reaction of the Free Aceh Movement (GAM) was actually rather hostile, as they considered it a counter-insurgency move by the Central Government. In 2004, one year before the peace agreement, Aceh’s governor formally created the WH force. The WH is therefore not the outcome of a peace negotiation and cannot be considered a devolved police agency. It remains a rather controversial police force as there is a lack of clarity of the legal status: the LoGA, Aceh’s *qanuns*, and the local regulation

---

creating the WH all describe the powers of the WH differently. On the other hand structural problems have been identified, such as recruiting qualified officers; coordination with other law enforcement agencies; providing fair and equal treatment to all; etc. According to the International Crisis Group “Women and the poor have become the primary targets of enforcement” of Shari’a Police. Human Rights Watch contends that penalties are “rarely, if ever, applied to wealthy or politically-connected individuals.”

The Hong Kong Police was established by the British colonial power in 1844. It has since adjusted to the changing political circumstances. After the return of Chinese sovereignty it has remained as an autonomous city police force. According to their website, they are is “one of the best-trained, most highly motivated and dedicated police forces in the world. International law enforcement bodies rank it among the most professional of its kind. It has also, to an almost unprecedented extent in Asia, won the trust and faith of the people it was created to serve.”

Including the Hong Kong Auxiliary Police Force and civil servants, the force consists of about 40,000 personnel; which gives Hong Kong the second largest citizen–police officer ratio in the world. In addition, the Marine Region with about 3,000 officers and a fleet of 143 vessels, is the largest of any civil police force.

The Police Service of Northern Ireland (PSNI) is the successor to the Royal Ulster Constabulary, which was renamed in 2001 as a result of a ten-year reform plan for policing set up under the Belfast Agreement. This agreement required the creation of an Independent Commission on Policing for Northern Ireland, which became known as the Patten Commission after its chairman, Chris Patten. All major political parties in Northern Ireland, nationalist and unionist support the PSNI. At first the political party Sinn Féin had refused to endorse the PSNI until Patten’s recommendations were implemented in full. However, as part of the St Andrews Agreement Sinn Féin announced its full acceptance in 2007.

In September 2005 the PSNI established the Historical Enquiries Team to investigate the 3,269 unsolved murders committed during the Troubles.

The PSNI has currently 7,200 officers to serve a population of approximately 1.7 million.

Police Officers of the PSNI have full police powers throughout Northern Ireland and the adjacent United Kingdom waters.

Lessons

Devolution. Maybe due to organizational and political costs, and with the exception of some matter jurisdictions, police powers (public order, security, prevention and investigation of crime) are rather fully transferred than shared.

Transition. Full devolution of police powers may take many years (over a decade in Northern Ireland and Spain). This may be the consequence of political rivalry, but also practical reasons: A "security vacuum" (due to lack of capabilities, slow recruitment, etc.) must be avoided, and coordination mechanisms must work in order to discourage competition among security agencies.
Coordination and cooperation. A clear demarcation of responsibilities and jurisdictions cannot completely prevent the overlapping of operational duties during deployment and even after full deployment. Whatever the institutional provisions, actual police work cannot always strictly follow demarcated matter jurisdiction lines (e.g. one police force can be better placed to intervene in one given moment than the theoretically leading police for that task). Coordination and cooperation arrangements are necessary not only to fix boundaries among agencies, but also to make the most of their combined resources. In a time of “non-traditional security threats” and international and multi-level cooperation, regional and international security arrangements must be taken into account.

Police reform. The OECD/DAC Handbook of Security Sector Reform (2007) is a major source of generic lessons learned:

- A start point for reform must be a thorough needs-assessment. This should include: “a baseline study of the state of policing; and focus on the public’s perception of the police; victimization issues; the human rights situation, level of corruption, the needs and demands of communities; and on social and administrative structures.”
- Recruitment processes are problematic: grievances can arise from “job-creation schemes” for ex-combatants, patronage, lack of representativeness, etc. They should be based on “clear recruitment procedures and transparent descriptions of basic qualifications”.
- The creation of a corporate identity in a professional multi-ethnic police service is facilitated if future police officers work and live together at a basic training academy.
- Multi-ethnic units can help rebuilding the trust of minorities. But professionalism is still the best recipe for it.
- Law enforcement is a politically expensive devolved power. Practical, logistical, budgetary issues may result in poor performance and turn into political grievances and erode legitimacy.
- A new organization of the police force could counteract police accommodation, unwillingness to change, patronage networks, etc. But it could create new ones if not properly accountable and transparent.
- Developing police accountability and transparency is a long-term process that requires the involvement of civil society in order to maintain political commitment.

Structure. Decentralization of police enforcement does not necessarily end with devolution. This is compatible with a stronger role for local authorities, community policing, etc. The international trend is towards decentralization, but this should be carefully considered if patronage of local strongmen that could exert personal control over the police through the mayor’s office is an issue.

Gender. Despite widespread recognition of the importance of integrating gender issues in SSR, there is a lack of resources on the topic. DCAF conducts and commissions research to identify needs, gather good practices and develop practical tools for practitioners, policymakers, civil society and security sector institutions, notably the Gender & Security Sector Reform Toolkit (2008). Designed for policymakers and practitioners, the Toolkit:

- Sets out why gender is important to SSR processes
- Presents practical strategies to integrate gender into SSR
- Includes examples of good practices from around the world
- Provides material from which to develop training on gender issues
Other considerations. At the visit of the MILF the Catalan police recommended paying attention to:
- Budget: it is expensive to run a modern and well-equipped police force.
- Allow trade unions inside the Police to prevent abuses.
- Include as many women as possible again to prevent abuses and to ensure a citizen-friendly police force.

Professor Christine Bell highlights that “the Belfast Agreement just laid out principles for reform and agreed to set up a Commission into policing to further lay out the blueprint for change. This was done by the Patten Commission. One of the most important things the report did was to change the approach from one about ‘the police’ to a question of ‘how do we get policing’.”

References


