



**From Words to Deeds: A Study of Armed  
Non-State Actors' Practice and  
Interpretation of International  
Humanitarian and Human Rights Norms**

**Moro Islamic Liberation  
Front/Bangsamoro  
Islamic Armed Forces**

**The Philippines**

**Aug 2022**

## PARTNERS AND STAKEHOLDERS



Launched in April 2018, UK Research and Innovation (ukri.org) brings together seven disciplinary research councils, notably the Art and Humanity Research Council and is responsible for supporting research and knowledge exchange at higher education institutions in England. UKRI AHRC is the main funder of the project.



The CCDP is the Graduate Institute's focal point for research in the areas of conflict analysis, peacebuilding and the complex relationships between security and development (<https://www.graduateinstitute.ch/ccdp>). It hosts the principal investigator of the project, Dr Annyssa Bellal as well as the project's Co-investigator, Pascal Bongard.



Founded in 1919, AUC ([aucegypt.edu](http://aucegypt.edu)) is a leading English-language, American-accredited institution of higher education and center of intellectual, social and cultural life of the Arab world. It is the main academic partner of the project in charge of the research on Al Qaeda and the Islamic State.



Established in 2007 by the Faculty of Law of the University of Geneva and the Graduate Institute, the Geneva Academy of IHL and Human Rights ([geneva-academy.ch](http://geneva-academy.ch)) is a research and teaching center which focuses on clarifying IHL, strengthening human rights protection, and developing the areas of complementarity between IHL and international human rights law. It hosted the principal investigator until December 2021.



Geneva Call is an NGO partner of the project. Geneva Call has a leading position in the field of humanitarian engagement with armed non-state actors (ANSAs). A neutral, impartial and independent humanitarian organization dedicated at promoting respect for IHL, Geneva Call has engaged more than 150 ANSAs worldwide since its establishment in 2000. It hosts the Co-investigator Dr Ezequiel Heffes.



The Norwegian Refugee Council ([nrc.org](http://nrc.org)) is an independent humanitarian organization working to protect the rights of displaced and vulnerable people during crises. It is widely recognised as a leading field-based displacement agency within the international humanitarian community and it also plays a leading role in protection coordination. Since 2018, NRC is committed to working in hard-to-reach contexts, a strategic ambition which in part requires engagement with ANSAs. NRC is an NGO partner of the project.

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## LIST OF ACRONYMS AND ABBREVIATIONS

AFP	Armed Forces of the Philippines
ANSA	Armed Non-State Actor
AP	Anti-personnel
AV	Anti-vehicle
BIAF	Bangsamoro Islamic Armed Forces
BIFF	Bangsamoro Islamic Freedom Fighters
BIWAB	Bangsamoro Islamic Women Auxiliary Brigade
CAB	Comprehensive Agreement on the Bangsamoro
CPP	Communist Party of the Philippines
GPH	Government of the Philippines
ICRC	International Committee of the Red Cross
IMT	International Monitoring Team
MILF	Moro Islamic Liberation Front
NDFP	National Democratic Front of the Philippines
NPA	New People's Army

## EXECUTIVE SUMMARY

This case study has been conducted as part of the research project as part of the research project 'From Words to Deeds: A research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms', which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection.

From a legal perspective, while armed non-state actors (ANSAs) are bound by international humanitarian law (IHL), how they perceive, understand and act upon their obligations has remained insufficiently explored. Through a comparative analysis of selected norms, the research project aims to advance understanding of ANSAs' perspectives and behaviour, enhance strategies to promote their compliance with IHL as well as inform future international law-making processes.

By assessing the Moro Islamic Liberation Front's (MILF's) practice and interpretation in relation to a selection of IHL rules, this case study aims to fill this gap. Compiling and analysing the MILF's views enables an understanding of how this ANSA perceived international law, the norms that enjoyed greater acceptance and those that were disputed. This case study responds to several inquiries, notably why the MILF chose to express its views through specific commitments and the references contained therein, and how its internal dynamics and policies evolved throughout the conflict.

### Key findings include:

- Up until the turn of the century the MILF considered the behaviour of its forces to be governed by Islamic law and did not clearly expound its position on IHL obligations contained within the (interim) Tripoli Agreement and committed to in the Geneva Call Deed of Commitment prohibiting anti-personnel landmines. However, the initial iteration of the Code of Conduct for its fighters that came into force several years later contained some provisions governing their conduct in hostilities.
- There followed a process whereby MILF-aligned Islamic scholars analysed IHL to consider whether, and to what extent, it was consistent with Islamic law and amended the Code of Conduct to incorporate a range of IHL-compliant provisions about conduct of hostilities and the protection of children.
- The MILF's motivation for making these changes was in part driven by a quest to demonstrate the legitimacy of its struggle. It is readily apparent that external actors played a part in encouraging and facilitating change, though it is important to emphasize the central role was played by those within, or associated with, the movement.

# INTRODUCTION

This case study has been conducted as part of the research project ‘From Words to Deeds: A research Study of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms’,<sup>1</sup> which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection. During the life of the project, funds were received from UK Research and Innovation, the UK Foreign, Commonwealth and Development Office, the Swiss Department of Foreign Affairs and the Humanitarian Aid Department of the European Commission.<sup>2</sup>

The research builds on three interrelated trends. First, as most armed conflicts today are non-international,<sup>3</sup> ANSAs tend to play prominent roles, exerting a growing influence over the lives of individuals worldwide. Because of the humanitarian consequences their actions entail, especially for the civilian population, the international community has called for a more sustained engagement with ANSAs toward IHL compliance.<sup>4</sup> Second, from a legal perspective, though it is undisputed that ANSAs are bound by IHL, how they view, interpret or implement their international obligations has remained insufficiently explored.<sup>5</sup> While a

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1 The issue of human rights obligations of armed non-state actors (ANSAs) under international law remains controversial both at the theoretical and policy levels. Therefore, the present research project focuses on collecting and analysing ANSAs’ practice and interpretation of international humanitarian law (IHL) rules. Nevertheless, norms related to human rights, such as gender equality or the 18-year age limit for recruitment and participation of children in hostilities have been included in the interviews. Indeed, even if the issue of human rights obligations of ANSAs is controversial, ANSAs themselves often refer to human rights in their policies and regulations. This is a good indication of what some ANSAs feel bound by and thus deserves to be considered in the analysis, notably because it can be indicative of what could be included in future law-making processes.

2 For further information on the project, see A. Bellal, P. Bongard and E. Heffes, *From Words to Deeds: A Research of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms*, Research Brief, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), December 2019, <https://www.geneva-academy.ch/joomlatools-files/docman-files/From%20Words%20to%20Deeds%20A%20Research%20of%20Armed%20Non-State%20Actors%E2%80%99Practice%20and%20Inter.pdf> (last accessed 9 August 2022).

3 Despite widespread recognition that the majority of armed conflicts today are non-international in nature, there are divergent views on the precise number. See A. Bellal (ed), *The War Report: Armed Conflicts in 2018*, Geneva Academy, 2019, p 19, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf> (last accessed 9 August 2022), p 19; International Committee of the Red Cross (ICRC), *The Roots of Restraint in War*, 2018, pp 13–14.

4 United Nations Security Council, *Protection of Civilians in Armed Conflict: Report of the Secretary General*, UN doc S/2019/373, 7 May 2019, §66 (affirming that ‘enhancing respect for the law requires changing the behaviour and improving the practices of non-State armed groups. Key to this is principled and sustained engagement by humanitarian and other relevant actors that is, moreover, strategic and based on a thorough analysis of the group(s) concerned’).

5 Several authors have referred to this knowledge gap. See, among others, M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, 2019; H. Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics*,

number of studies have analysed states' practice, notably the 2005 study by the International Committee of the Red Cross (ICRC) on customary IHL,<sup>6</sup> A comprehensive analysis of existing humanitarian norms from the perspective of ANSAs has yet to be made. Only then will one 'know how the existing rules and possible future development of IHL ... would change if they were taking the perspective of non-State armed groups into account'.<sup>7</sup> Finally, the state-centric approach to ANSAs' international obligations may explain to some extent the lack of ownership of, and compliance with, international law by these actors. Indeed, there is an increasing sense that ANSAs' compliance with international law is likely to improve if they are consulted about the development and implementation of the rules that are binding upon them.<sup>8</sup>

This research project aims to increase our knowledge of ANSAs' practice and interpretation of selected international norms, notably in IHL.<sup>9</sup> It focuses on the following main questions:

- Are ANSAs familiar with these norms and how do they understand them?
- Do they agree with their content?
- What factors influence their policy and practice?

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Cambridge University Press, 2015; D. Petrasek, *Ends & Means: Human Rights Approaches to Armed Groups*, International Council on Human Rights Policy, 2000, <https://reliefweb.int/attachments/2d260b8d-64fa-32ce-97ad-3d639c95f777/3DCC2D9C95FC0BCFC1256C14004E55A1-EndsandMeans.pdf> (last accessed 9 August 2022).

6 J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Cambridge University Press, 2005. See also the ICRC Customary IHL Database (ICRC CIHL Database), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (last accessed 9 August 2022). It should be noted that the 2005 ICRC study on customary IHL does not focus entirely on issues of compliance with IHL, but on the identification of customary norms within this realm. Of course, an argument can be made that the practice and *opinio juris* needed for the latter serves as an indicator to measure the level of acceptance of, and respect for, the applicable legal framework. A study on the correlation between both is beyond the scope of this case study.

7 M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', 1 *Journal of International Humanitarian Legal Studies* 1 (2010) 19.

8 Ibid; S. Sivakumaran, 'Implementing Humanitarian Norms Through Non-State Armed Groups', in H. Krieger (ed), *Inducing Compliance with International Humanitarian Law: Lessons From the African Great Lakes Region*, Cambridge University Press, 2015; S. Sivakumaran, *The Law of Non International Armed Conflict*, Oxford University Press, 2012.

9 The research examines ANSAs' perspectives on the following core norms: i) protection of civilians from attacks; ii) the prohibition of sexual violence and gender discrimination; iii) the prohibition of using and recruiting children in hostilities; iv) the protection of education; v) humanitarian access; vi) protection of health care; vii) the prohibition of forced displacement; viii) use of landmines and other explosive devices; ix) detention, fair trial and administration of justice; x) the special protection of certain objects, such as cultural property and the environment. The choice of these norms has been dictated by three factors: First, the violation of these norms represents a current challenge identified by various humanitarian actors when dealing with ANSAs. The second factor is related to ANSAs' perceptions of these norms, as some of them represent the most contentious and challenging humanitarian provisions from their perspective. Finally, some of the selected norms may be part of future legal developments.

- Are there new issues that ANSAs would be willing to regulate in the future?

By compiling and analysing ANSAs' views and interpretation on a comparative basis, the research provides a better sense of how ANSAs perceive IHL, which norms are more accepted or disputed and why (the sources include unilateral declarations, public statements, codes of conduct, command orders, penal codes, 'legislations', decrees, memoranda of understanding, special agreements, as well as peace and ceasefire agreements. For more information). It also sheds light on the causes of violations or, *a contrario*, the actors that are conducive to compliance or restraint. Altogether, the results of the research advance our understanding of ANSAs' behaviours during armed conflicts and inform strategies to promote their compliance with IHL as well as future international law-making processes.

The present study focuses on the case of the Moro Islamic Liberation Front (MILF), which was involved in an armed conflict with the Government of the Philippines (GPH). It is organized as follows: Section 2 explains the methodology used for this research. Section 3 includes information about this group, notably its origins, goals and ideology, as well as its organizational structure and support base. The international obligations of the MILF before the conclusion of the Comprehensive Agreement on the Bangsamoro are addressed in Section 4. Based on the applicable international legal framework, Section 5 deals with the MILF's practice and interpretation of selected IHL norms. This also includes reports by relevant stakeholders, such as international organizations and human rights NGOs and interviews with a range of people familiar with the conflict context. Section 6 offers some conclusions and recommendations. This case study does not aim to provide a full account of the MILF's behaviour during the conflict nor of its humanitarian consequences. Rather, it seeks to provide an insight into its policy on, and interpretation of, certain IHL rules from a legal perspective. Little substantive research has been conducted on this aspect and it is hoped that this study will make a valuable contribution.

## METHODOLOGY

The methodology employed for this case study has entailed the review of the different policy documents reflecting the MILF's position on various legal issues, such as the Code of Conduct of its armed forces and general orders as well as agreements concluded with other parties, including various peace agreements concluded with the GPH and humanitarian commitments concluded with the United Nations and the NGO Geneva Call. This study is also informed by semi-structured interviews with MILF leaders, fighters and members and other informed individuals that were conducted by the researchers. Finally, an extensive desk review of relevant literature was undertaken, primarily reports of human rights NGOs, such as Amnesty International and national organizations and of different UN bodies and institutions, including the UN Secretary-General's reports on children and armed conflict.

## MILF PROFILE

The MILF can be characterized as an armed opposition movement<sup>10</sup> – more precisely, an ethno-nationalist armed movement with an Islamic agenda, which fought for the independence, and latterly autonomy, of the people of several Islamized ethno-linguistic groups, collectively known as the Moro people, who live primarily in Mindanao in the southern Philippines. The MILF originated from a division within the ethno-nationalist Moro National Liberation Front (MNLF) in 1977. One of the MNLF co-founders, Hashim Salamat, had ideological and political differences and, after unsuccessfully seeking to take control of the MNLF, created a new movement initially named the New MNLF of which he became Chairman.<sup>11</sup> In 1984, the New MNLF changed its name to the Moro Islamic Liberation Front (MILF) in order to distinguish itself completely from the MNLF and highlight its Islamic focus.<sup>12</sup>

The MILF focused on building its organization and its armed wing, the Bangsamoro Islamic Armed Forces (BIAF), which operated under its authority. By the 1990s, the MILF began to gain strong support in some areas of Mindanao. Its dedication to Islam alongside its effective community engagement and provision of services seemed to have won it the broad support it sought to take areas out of the control of the government and establish its own administration.<sup>13</sup>

Although it does have prominent individual leaders, the MILF is primarily based on a collective leadership structure. It includes a Central Committee, comprised of religious and secular leaders. The Central Committee contains vice chairmen of different sections, such as Islamic Affairs and Military Affairs. Additionally, the MILF includes a Supreme Islamic Revolutionary Tribunal and a Consultative Council, the latter of which is also called the Majlis

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10 For the purpose of this research, ‘armed opposition movements’ typically aim at destroying the power and legitimacy of a ruling government of a state. They can also fight for the secession of a region or for the end of an occupational or colonial regime. In this sense, they pursue a political, mostly social-revolutionary or ethno-nationalistic agenda. See U. Schneckener, ‘Armed Non-State Actors and the Monopoly of Force’, in A. Bailes, U. Schneckener and H. Wulf (eds), *Revisiting the State Monopoly on the Legitimate Use of Force*, Policy Paper no 24, Geneva Centre for the Democratic Control of Armed Forces, 2006, <http://www.wulf-herbert.de/DCAFPP24Wulf.pdf> (last accessed 9 June 2022).

11 ‘Moro Islamic Liberation Front’, Mapping Militants, Center for International Security and Cooperation (CISAC), Stanford University, <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/moro-islamic-liberation-front> (last accessed 9 June 2022); J. Franco, ‘The Philippines: The Moro Islamic Liberation Front – A Pragmatic Power Structure?’, in M. Hughes and M. Miklaucic (eds), *Impunity: Countering Illicit Power in War and Transition*, Center for Complex Operations and Peacekeeping and Stability Operations Institute, 2016, <https://cco.ndu.edu/news/article/780183/chapter-7-the-philippines-the-moro-islamic-liberation-front-a-pragmatic-power-s/> (last accessed 9 June 2022); C. Malan and H. Solomon, ‘Between Conflict and Compromise in the Philippines’, 25 *Indian Journal of Asian Affairs* 1/2 (June–December 2012); N. G. Quimpo, ‘Mindanao: Nationalism, Jihadism and Frustrated Peace’, 3 *Journal of Asian Security and International Affairs* 1 (April 2016).

12 ‘Moro Islamic Liberation Front’, *supra* fn 11.

13 *Ibid.*

al-Shura. These three major bodies – the Central Committee, Supreme Islamic Revolutionary Tribunal and Consultative Council – served as the executive, judicial and legislative branches of the MILF, respectively.<sup>14</sup>

The MILF's forces were concentrated almost entirely in western parts of Mindanao, the Philippines' southernmost region. Besides its bases on the island of Mindanao itself, the MILF also operates in the Sulu, and parts of the Palawan, archipelagos.<sup>15</sup>

The BIAF was organized into 32 base commands<sup>16</sup> while the number of brigades in each base command varied. Each base command had an armed strength of up to 3,000.<sup>17</sup> According to the MILF, the size of its armed organization rose to up to 30,000– 40,000 fighters at its peak but, according to the military, its maximum size was much lower at 11,000 fighters.<sup>18</sup> Some observers have questioned the level of command and control exercised by the leadership over these forces, noting a high level of autonomy at the field level with members of the BIAF being primarily loyal to their local commanders.<sup>19</sup> It had been observed that some commanders used force not only in the armed conflict but in local level disputes, including with forces led by other MILF commanders.<sup>20</sup> This has led to one observe questioning the extent to which it is meaningful to consider the MILF as a unified organisation.<sup>21</sup>

The MILF and the GPH signed a ceasefire in 1997. As a response to increasing violence, the government shifted its strategy in 2000 and declared an all-out war on the MILF, leading to a large spike in violence. However, the government and the MILF resumed peace talks after the election of Gloria Arroyo as President the following year, which led to the signing of an interim peace agreement.<sup>22</sup>

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14 Ibid.

15 'Philippines/Moro Islamic Liberation Front (1977-present)', University of Central Arkansas Dynamic Analysis of Dispute Management (DADM) Project, 55. <https://uca.edu/politicalscience/dadm-project/asiapacific-region/philippinesmoro-islamic-liberation-front-1978-present/> (last accessed 9 June 2022).

16 'MILF Base Commanders Gather; Propose Dev't Plans, Programs', Philippine News Agency, 10 December 2019, <https://www.pna.gov.ph/articles/1088441>.

17 Z. Abuza, 'The Moro Islamic Liberation Front at 20: State of the Revolution', 28 *Journal of Studies on Conflict & Terrorism* 6 (2006) 464; E. V. Hernandez, 'Assessing the Parameters for Determining Mission Accomplishment of the Philippine Marine Corps in Internal Security Operations', Masters of Military Studies thesis, Marine Corps University, 2009, fn 22.

18 'MILF to Disarm 30,000 Fighters', Philippine Daily Inquirer, 26 July 2018, <https://www.pressreader.com/philippines/philippine-daily-inquirer/20180726/281560881588595>.

19 Ibid, p 6.

20 J. Adam, 'Bringing Grievances Back In: Towards an Alternative Understanding of the Rise of the Moro Islamic Liberation Front in the Philippines.' *Bijdragen Tot de Taal-, Land- En Volkenkunde* 174, no. 1 (2018) p12

21 Ibid p10

22 Agreement on Peace Between the Government of the Republic of the Philippines and the

Hashim Salamat died in 2003 and Al Haj Murad Ebrahim became the MILF Chairman. Under his leadership, the peace process progressed significantly. In 2008, the GPH and the MILF signed the Memorandum of Agreement for Ancestral Domain. However, this agreement was declared unconstitutional, which made it ineffective.<sup>23</sup>

The GPH and the MILF signed another peace agreement – the Framework Agreement on the Bangsamoro – in 2012 and, in 2014, the parties signed the Comprehensive Agreement on the Bangsamoro (CAB).<sup>24</sup> Under these agreements, a new autonomous region called the Bangsamoro was created, with new wealth- and power-sharing arrangements between the Bangsamoro government and the GPH. The Bangsamoro Basic Law to enact the changes within the peace agreement was approved by the Philippine House of Representatives in May 2018 and, in July 2018, the Bangsamoro Organic Law was passed. The Bangsamoro Autonomous Region came into being in February 2019 under the control of the Bangsamoro Transition Authority, a majority of whose members were nominated by the MILF.<sup>25</sup> The CAB also included provisions on the phased decommissioning of BIAF forces,<sup>26</sup> a process which was ongoing when this report was written.<sup>27</sup>

#### **BOX 1: IHL APPLICABLE TO THE MILF**

Throughout its existence, the MILF was a party to a conflict with the GPH and latterly engaged in combat with the Bangsamoro Islamic Freedom Fighters (BIFF), which had split away from it. The Philippines is a party to the four 1949 Geneva Conventions and to the 1977 Additional

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Moro Islamic Liberation Front, 22 June 2001, [https://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_010622\\_Agreement%20on%20Peace%20between%20the%20GRP%20and%20MILF.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_010622_Agreement%20on%20Peace%20between%20the%20GRP%20and%20MILF.pdf) (last accessed 9 June 2022).

23 International Crisis Group, *The Philippines: The Collapse of Peace in Mindanao*, 23 October 2008, <https://www.crisisgroup.org/asia/south-east-asia/philippines/philippines-collapse-peace-mindanao> (last accessed 9 June 2022).

24 The Comprehensive Agreement on the Bangsamoro (CAB), 27 March 2014, [https://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_140327\\_ComprehensiveAgreementBangsamoro.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf) (last accessed 9 June 2022).

25 C. Arguillas, 'Duterte to BTA: Bangsamoro's Future "Is Now In Your Hands;" Region Awaits Release of Budget', *MindaNews*, 30 March 2019, <https://www.mindanews.com/peace-process/2019/03/duterte-to-bta-bangsamoros-future-is-now-in-your-handsregion-awaits-release-of-budget/>; C. Arguillas 'Women in the Bangsamoro Transition Authority: Only 16 of 98 But a Powerhouse Cast', *MindaNews*, 8 April 2019, <https://www.mindanews.com/peace-process/2019/04/women-in-the-bangsamoro-transition-authority-only-16-of-98-but-a-powerhouse-cast/>.

26 Section C, 'Decommissioning', Annex on Normalization, CAB, 25 January 2014, <https://www.officialgazette.gov.ph/downloads/2014/01jan/20140125-Annex-on-Normalization.pdf> (last accessed 9 June 2022).

27 F. Gallardo, 'MILF Mujahideen Frown on Extending Bangsamoro Transition Authority', *Rappler*, 6 September 2021, <https://www.rappler.com/nation/milf-mujahideen-frown-on-extending-bangsamoro-transition-authority/>; J. Jannaral, '3rd phase of MILF-BIAF decommissioning Begins,' *The Manila Times*, 11 November 2021, <https://www.manilatimes.net/2021/11/11/news/regions/3rd-phase-of-milf-biaf-decommissioning-begins/1821677>.

Protocol II (AP II). As such, both the government and the MILF were bound by Common Article 3 of the GCs. AP II was also applicable as the MILF had an established command structure and controlled a considerable amount of territory, thus falling within the scope of this treaty. Finally, the parties were also bound by the rules of customary IHL applicable to non-international armed conflict (NIACs) and other applicable treaties. With the successful implementation of the provisions of the CAB it could be argued that the MILF's existence as an ANSA has come to an end, or will do so when the ongoing decommissioning of its forces is completed.

## MILF/BIAF IHL POLICY

When it was first formed, the MILF considered its conduct in conflict primarily in terms of its Islamic identity. An MILF commander familiar with this early context noted that 'when they split with the MNLF, the MILF established rules which followed the rules of Islam'.<sup>28</sup> Salamat Hashim, the MILF's first Chairman, set out guidance for the new movement in a book entitled *The Bangsamoro Mujahid: His Objectives and Responsibilities*. However, beyond imploring fighters to study the Prophet's wartime experience, and obey their commanders, the book did not expressly address issues around their expected behaviour in conflict.<sup>29</sup>

According to a commander, the MILF in its early years relied on general, but unwritten, rules such as a prohibition on harassing civilians. Fighters received orientations on their expected behaviour.<sup>30</sup> A religious leader familiar with this early context noted that MILF commanders and murshids (Muslim chaplains) had key roles in interpreting Sharia law for BIAF members and the communities living around the camps. For the fighters, this extended to conduct in hostilities.<sup>31</sup>

In its early years the MILF did not take a public position about the applicability of IHL to the conflict. According to a civil society organization leader, the MILF was aware of the existence of the body of law but did not consider it the most useful framework for governing its conflict behaviour: 'MILF [leaders] believed the rules provided by religion were better than IHL, although there are similarities. They were not against [IHL], but felt their own laws were more relevant to them.'<sup>32</sup>

By the turn of the millennium the MILF was beginning to engage with relevant international legal standards. For instance, the organization signed a Deed of Commitment prohibiting

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<sup>28</sup> Interview with senior MILF commander, 28 January 2020.

<sup>29</sup> D. Earnshaw and D. Magon, 'Engaging Ulama in the Promotion of International Humanitarian Law: A Case Study from Mindanao', paper presented at Generating Respect Project Conference, 8–10 December 2021, p2

<sup>30</sup> Interview with MILF commander, 31 January 2020.

<sup>31</sup> Earnshaw and Magon, 'Engaging Ulama in the Promotion of International Humanitarian Law', supra fn 29, p2

<sup>32</sup> Interview with civil society organization leader, 15 July 2019.

anti-personnel (AP) landmines with Geneva Call in 2000,<sup>33</sup> in what Earnshaw and Magon call ‘an early mark of the MILF’s intent to work on bringing its operations in line with international standards on the use of force’.<sup>34</sup>

The MILF’s change of approach seems to have been driven by political imperatives. According to one observer from an international NGO (INGO), whilst it was apparent that the MILF sought to maintain its focus on the ‘Quranic references of its struggle’, its governance aspirations meant that it needed to demonstrate a willingness and ability to comply with its IHL obligations.<sup>35</sup> This was echoed by an academic who was interviewed for this project: ‘The [MILF’s] goal was that by observing IHL, it showed to the international community that [its] behaviour was in accordance with civilized ways.’<sup>36</sup>



The MILF’s change of approach in the lead up to, and early years of, the so-called War on Terror should also be highlighted. According to one observer, the MILF was at pains to avoid being labelled a terrorist organization.<sup>37</sup> In 2003, denying the MILF’s involvement in an attack on an airport, Chairman Hashim sought to distance the MILF from accusations of terrorism,

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33 See Section 5H below on landmines and other explosive devices.

34 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, *supra* fn 29, p3

35 Interview with international NGO (INGO) staff member, 26 July 2019.

36 Interview with academic, 15 July 2009.

37 Quimpo, ‘Mindanao’, *supra* fn 12.

asserting that ‘jihad never allows terrorism or attacks on helpless, defenceless civilians. The MILF is very strictly guided by this’.<sup>38</sup>

Developments at the peace table contributed to the MILF’s engagement with IHL. In 2001 it entered into an interim peace agreement (known as the Tripoli Agreement) with the GPH, which, amongst other things, committed both parties to ‘the observance of international humanitarian law’.<sup>39</sup> The implementing guidelines on the security aspect of this agreement contained provisions relevant to the MILF’s conduct of hostilities, such as including in its definition of ‘prohibited hostile acts’ ‘[t]erroristic acts such as kidnapping, hijacking, piracy, sabotage, arson, bombings, grenade throwing, robberies, liquidations/assassinations, unjustified arrest, torture, unreasonable search and seizure, summary execution, as well as burning of houses, places of worship and educational institutions, destruction of properties, and abuse of civilians’.<sup>40</sup>

The implementing guidelines on the humanitarian, rehabilitation and development aspects of the agreement include (in Article IV, ‘Respect for Human Rights and Observance of International Humanitarian Laws’):

1. This Agreement will safeguard the observance of the international humanitarian laws, respect for internationally recognized human rights and fundamental freedoms for all persons within Mindanao ...
2. In case of violation of human rights or humanitarian laws, the Joint Coordinating Committees on the Cessation of Hostilities (CCCH) of the GRP [Government of the Republic of the Philippines] and the MILF shall act in accordance with the provisions of Article IV of this Agreement.
3. The Parties will cooperate fully with the International Committee of the Red Cross (ICRC) to facilitate its work in accordance with its mandate, ensuring full access to such persons, irrespective of their status, wherever they might held [sic], for visits in accordance with ICRC’s standard operating procedures.
4. In conformity with international humanitarian law, each Party shall provide information, through the tracing mechanism of the ICRC, to families of all persons who unaccounted [sic] for. The GRP and MILF will cooperate fully in determining the identity, whereabouts, and fate of those missing persons.

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38 S. Hashim, ‘Message to All Peace-Loving People, From the MILF Leadership’, 7 March 2003, cited in S. M. Santos Jr., ‘Jihad and International Humanitarian Law: Three Moro Rebel Groups in the Philippines’, in S. Linton, T. McCormack and S. Sivakumaran (eds) *Asia-Pacific Perspectives on International Humanitarian Law*, Cambridge University Press, 2019, p 384.

39 Section B(1), Agreement on Peace Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, *supra* fn 21.

40 Art 2(3.1.1) Implementing Guidelines on the Security Aspect of the GRP-MILF Tripoli Agreement of Peace of 2001, [https://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_010807\\_Implementing%20Guidelines%20on%20the%20Security%20Aspect%20of%20the%20Tripoli%20Agreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_010807_Implementing%20Guidelines%20on%20the%20Security%20Aspect%20of%20the%20Tripoli%20Agreement.pdf) (last accessed 9 June 2022).

5. The Parties shall cooperate in the investigation and prosecution of serious violations of international humanitarian laws and human rights as well as violations of this Agreement.<sup>41</sup>

The MILF's founding Chairman, Salamat Hashim, died in 2003 and was succeeded by Al Haj Murad Ebrahim who had previously been Vice Chairman for Military Affairs.<sup>42</sup> According to S. Santos, under its new chairman the MILF took a position that jihad was 'roughly in harmony' with IHL and looked to develop 'what may be described as a fusion in orientation with international law, including IHL in matters of combat conduct'.<sup>43</sup>

According to D. Earnshaw and D. Magon, '[t]he MILF leaders were faced with finding a way to incorporate bodies of secular international law while maintaining its Islamic character and ensuring Islamic law remained paramount.'<sup>44</sup>

The MILF introduced a written Code of Conduct – by issuing what it called General Order No. 1 – in 2005,<sup>45</sup> which, according to a BIAF Senior Commander, took three years to develop.<sup>46</sup> Although it set out rules on the expected 'day to day' behaviour of MILF members and fighters<sup>47</sup> and general disciplinary provisions, most of which were for offences that did not take place on the battlefield,<sup>48</sup> the initial version did not contain rules explicitly governing the conduct of hostilities.

The following year the MILF leadership issued General Order No. 2,<sup>49</sup> which amended and expanded the scope of this recently introduced Code of Conduct. Significantly, it introduced

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41 Art IV, Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001, 7 May 2002, [http://theirwords.org/media/transfer/doc/1\\_ph\\_milf\\_biaf\\_2002\\_29-782323d5a0d91aboaf6d39617e4111b8.pdf](http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2002_29-782323d5a0d91aboaf6d39617e4111b8.pdf) (last accessed 9 June 2022).

42 It is perhaps noteworthy that Ebrahim was one of the signatories of a revised Geneva Call Deed of Commitment prohibiting ant-personnel mines the previous year, Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action, 7 April 2002, [http://theirwords.org/media/transfer/doc/sc\\_ph\\_milf\\_biaf\\_2002\\_03-2482606dfbcdebb19a72ff5361787916.pdf](http://theirwords.org/media/transfer/doc/sc_ph_milf_biaf_2002_03-2482606dfbcdebb19a72ff5361787916.pdf) (last accessed 9 June 2022).

43 Santos, 'Jihad and International Humanitarian Law' supra fn 37, p 382.

44 Earnshaw and Magon, 'Engaging Ulama in the Promotion of International Humanitarian Law', supra fn 29, p3

45 General Order No. 1: An Order Promulgating a Code of Conduct Regulating the Affairs of the Bangsamoro Islamic Armed Forces, Prescribing its Powers, Duties and Functions and Other Related Purposes, December 2005, [http://theirwords.org/media/transfer/doc/sc\\_ph\\_milf\\_biaf\\_2006\\_09-9dbc781bd3fc677c268ce003582f4f58.pdf](http://theirwords.org/media/transfer/doc/sc_ph_milf_biaf_2006_09-9dbc781bd3fc677c268ce003582f4f58.pdf) (last accessed 9 June 2022).

46 Interview with senior MILF commander, 28 January 2020.

47 E.g., Art 38 prohibits drug trafficking, drug pushing, drug addiction, drinking liquor, gambling and smoking.

48 Arts 43–63 cover issues such as desertion, mutiny and sedition.

49 General Order No. 2: An Order Amending Article 34 and 36 of the Code of Conduct of the Bangsamoro Islamic Armed Forces and for other Purposes, 14 June 2006, [http://theirwords.org/media/transfer/doc/1\\_ph\\_milf\\_biaf\\_2006\\_10-dab1e2f6coa66ae79efc1ba1f39f6077.pdf](http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2006_10-dab1e2f6coa66ae79efc1ba1f39f6077.pdf) (last accessed 9 June 2022).

what it termed ‘rules of engagement in Islam’ (*Nidhamul harb fil Islam*). Whilst the specific provisions will be cited and discussed in the relevant later sections of this report, the general provisions are as follows:

Article 34 (shall read):

1. Troop behaviour – worship does not cease in times of war, and whatever is prohibited during peace is also prohibited during war (Al-Hadith).

...

8. Treaties and international conventions – Abide and respect covenants, conventions, treaties and agreements including laws of international and local application (Al-Maaidah: 1).<sup>50</sup>

As noted by Santos, reference to international treaties in the latter provision would certainly include IHL.<sup>51</sup> It should be noted that General Order No. 2 also amended Article 36 of the MILF’s Code of Conduct, prohibiting the recruitment of children, which will be discussed in section 5C below.

As to why the MILF significantly amended its Code of Conduct so soon after it came into force, it is apparent that engagement, advocacy and capacity building by a number of organizations may have played a part. For instance, in response to a request from the MILF leadership, Geneva Call organized training for the MILF on the AP landmine ban, IHL and human rights in 2005 and 2006.<sup>52</sup> Partner agencies in this endeavour were the ICRC, the Philippine Coalition to Stop the Use of Child Soldiers and the Institute of Bangsamoro Studies. The ICRC undertook the training on IHL. According to one observer, it highlighted commonalities between IHL and Islam.<sup>53</sup>

The Islamic Call and Guidance Council of the MILF undertook a process of considering ‘whether IHL was compliant with the law of armed conflict in Islam’.<sup>54</sup> To this end the MILF established a committee of Islamic scholars to study relevant IHL provisions and decide whether they were compliant with the Sharia.<sup>55</sup> According to a religious leader involved with the process the scholars found that it was straightforward to accept most of the core precepts

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50 Ibid.

51 Santos, ‘Jihad and International Humanitarian Law’, supra fn 37, p 386.

52 International Campaign to Ban Landmines, ‘Geneva Call Organises Humanitarian Training for Members of an Armed Opposition Group in Southern Philippines’, 7 December 2005, <https://reliefweb.int/report/philippines/geneva-call-organises-humanitarian-training-members-armed-opposition-group> (last accessed 9 June 2022); Geneva Call and the Program for Study of International Organization(s), Armed Non-State Actors and Landmines, Volume II: A Global Report of NSA Mine Action, 2006, p 66, [https://www.files.ethz.ch/isn/29258/2006\\_November.pdf](https://www.files.ethz.ch/isn/29258/2006_November.pdf) (last accessed 9 June 2022).

53 Interview with MILF general staff member, 16 July 2019.

54 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29, p3

55 Ibid, p3

of IHL. One exception was that it was felt that the ‘Qu’ran left open the possibility of ransoming prisoners. Notwithstanding this, the committee reached a consensus ‘that IHL provisions on prisoners were not contrary to Islamic law so could be adopted’.<sup>56</sup>

Following this consideration, the drafting process began. According to Earnshaw and Magon, ‘[h]aving assessed that the key articles of IHL were not against the Sharia and in most cases could be actively supported by Islamic law, the Islamic Call and Guidance Council worked on producing a document of rules of engagement almost exclusively referencing Islamic sources.’<sup>57</sup> The Council ‘decided to use only direct references from the Qu’ran and established Hadith [sayings of Prophet Muhammad] rather than referencing other sources of Islamic jurisprudence to ensure the rules of engagement were easily accessible to BIAF members and to avoid excessive debate on appropriate sources’.<sup>58</sup>

There was scepticism from some observers as to whether the intended audience for the Code of Conduct was actually BIAF fighters – in this view, the new rules were – at least initially – primarily aimed at the international community to highlight the MILF’s desire to demonstrate its commitment to international standards.<sup>59</sup> However, significant efforts were made to disseminate General Order No. 2 to the MILF’s forces, including its translation into a number of community languages.<sup>60</sup> The MILF reportedly received support from the ICRC to print its provisions onto cards that would fit into the pockets of its fighters.<sup>61</sup> Similarly, the UN also reportedly supported the translation and distribution of the Order.<sup>62</sup>

The MILF’s murshids were specifically tasked to teach the new rules. Most sessions took place immediately after congregational prayers.<sup>63</sup> According to a leader from the MILF Committee on Da’wah (Islamic Call), the murshids were tasked with emphasizing ‘that violation(s) of the code of conduct could affect the religious performance of each mujahed since this code of conduct is derived from the holy Qur’an’.<sup>64</sup> The ICRC funded, and together with the MILF Ulama participated in training sessions covering both IHL and the law of armed conflict in Islam in BIAF camps.<sup>65</sup>

In 2008 the MILF signed The Rebel Group Declaration of Adherence to International Humanitarian Law on Landmines. This unilateral declaration went beyond the ban on AP

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56 Ibid, p3

57 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29, p4

58 Ibid, p4

59 Interview with civil society organization leader, 28 January 2020.

60 Interview with MILF administrators, 30 January 2020.

61 Santos, ‘Jihad and International Humanitarian Law’, supra fn 37, p 387.

62 Interview with senior member of the Department of Islamic Call and Guidance, 31 January 2020.

63 Ibid.

64 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29, p5

65 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29.

mines that it had already committed to by signing the Geneva Call Deed of Commitment and included restrictions on other types of devices.<sup>66</sup> This will be discussed in section 5H below.

The next major development took place in 2009 when the GPH and the MILF agreed to the formation of a Civilian Protection Component to the already functioning International Monitoring Team (IMT) that was tasked with monitoring the ceasefire. Article 1 of the agreement<sup>67</sup> holds: ‘The parties reconfirm their obligations under humanitarian law and human rights law to take constant care to protect the civilian population and civilian properties against the dangers arising in armed conflict situations.’

Article I(3) of the Terms of Reference of the Civilian Protection Component specifically cites ‘International Humanitarian Law, including all relevant protocols and instruments’ as one of its ‘References’.

The Objective of the Civilian Protection Component is set out in Article IV, which ‘is to establish a functional system and effective mechanisms for monitoring, verifying and reporting of the compliance and non-compliance of the Parties to their commitments under international and national humanitarian laws and human rights laws to take constant care to protect the civilian population and civilian properties against the dangers arising in armed conflict areas’.<sup>68</sup>

Also in 2009 the MILF entered into an Action Plan with the UN with the stated aim of ending the use and recruitment of children.<sup>69</sup> This is discussed in section 5C below.

The last public IHL-relevant policy decision by the MILF was taken in 2010 when it amended its Code of Conduct to also incorporate its pre-existing ban on AP mines. This is discussed in section 5H below.<sup>70</sup>

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66 Santos, ‘Jihad and International Humanitarian Law’, supra fn 37, p 387.

67 Agreement on the Civilian Protection Component of the International Monitoring Team (IMT), 27 October 2009, [http://theirwords.org/media/transfer/doc/1\\_ph\\_milf\\_biaf\\_2009\\_12-c25ac11f5a5bdbe6bf8b86c644edbad6.pdf](http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2009_12-c25ac11f5a5bdbe6bf8b86c644edbad6.pdf) (last accessed 9 June 2022).

68 Terms of Reference of the Civilian Protection Component (CPC) of the International Monitoring Team (IMT), 5 May 2010, [https://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_100505\\_TOR%20of%20IMT%20CPC.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_100505_TOR%20of%20IMT%20CPC.pdf) (last accessed 9 June 2022).

69 Action Plan Between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines Regarding the Issue of Recruitment and Use of Child Soldiers in the Armed Conflict in Mindanao, 1 August 2009, [http://theirwords.org/media/transfer/doc/1\\_ph\\_milf\\_biaf\\_2009\\_14-ccc4b2a59bb14cc91824e4ffb35f6591.pdf](http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2009_14-ccc4b2a59bb14cc91824e4ffb35f6591.pdf) (last accessed 9 June 2022).

70 General Order No. 3: An Order Integrating into the Code of Conduct of the Bangsamoro Islamic Armed Forces (BIAF) the Commitment Made by the Moro Islamic Liberation Front (MILF) with the Geneva Call, and for Other Purposes, 30 June 2010, [http://theirwords.org/media/transfer/doc/sc\\_ph\\_milf\\_biaf\\_2010\\_05-d3ea518b880b7cd7ab57aba4df258291.pdf](http://theirwords.org/media/transfer/doc/sc_ph_milf_biaf_2010_05-d3ea518b880b7cd7ab57aba4df258291.pdf) (last accessed 9 June 2022).

## **BOX 2: KEY MILF POLICY DOCUMENTS RELATED TO IHL AND HUMAN RIGHTS NORMS**

2001 – Agreement on Peace between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front (Tripoli Agreement)

2001 – Implementing Guidelines on the Security Aspect of the GRP–MILF Tripoli Agreement of Peace of 2001

2000 – Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action – MILF/BIAF

2005/6 – General Order No. 1: An Order Promulgating a Code of Conduct Regulating the Affairs of the Bangsamoro Islamic Armed Forces, Prescribing its Powers, Duties and Functions and Other Related Purposes

2006 – General Order No. 2: An Order Amending Article 34 and 36 of the Code of Conduct of the Bangsamoro Islamic Armed Forces and for other Purposes

2008 – The Rebel Group Declaration of Adherence to International Humanitarian Law on Landmines

2009 – Agreement on the Civilian Protection Component of the International Monitoring Team

2009 – Action Plan Between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines Regarding the Issue of Recruitment and Use of Child Soldiers in the Armed Conflict in Mindanao

2010 – General Order No. 3: An Order Integrating into the Code of Conduct of the Bangsamoro Islamic Armed Forces the Commitment Made with the Geneva Call and for other Purposes

## **BOX 3: THE IHL POLICY OF THE COMMUNIST PARTY OF THE PHILIPPINES/NEW PEOPLE’S ARMY**

Another insurgent ANSA operating in the Philippines is the leftist New People’s Army (NPA). It was formed in 1969 a year after the formation of the Communist Party of the Philippines (CPP). The CPP provides the NPA with political direction and leadership. The National Democratic Front of the Philippines (NDFP), which acts as an umbrella body for the CPP, NPA and other revolutionary organizations and negotiates on their behalf, was formed in 1973. The aim of the organizations is to overthrow the GPH and replace it with a revolutionary government.<sup>71</sup> Adopting the approach taken by Chairman Mao’s People’s Liberation Army,<sup>72</sup>

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71 ‘Communist Party of the Philippines–New People’s Army’, Mapping Militants, CISAC, Stanford University, <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/communist-party-philippines-new-peoples-army> (last accessed 9 June 2022).

72 The approach included adherence to the Three Main Rules of Discipline and the Eight Points for Attention of Mao Zedong, [http://theirwords.org/media/transfer/doc/cn\\_pla\\_1947\\_02-6ac1881f2e7e2e8e6fc37081d985f809.pdf](http://theirwords.org/media/transfer/doc/cn_pla_1947_02-6ac1881f2e7e2e8e6fc37081d985f809.pdf) (last accessed 9 June 2022).

the NPA has mainly operated militarily in rural areas. In 1991 the NDFP issued a declaration that the movement would adhere to international humanitarian law and, specifically, Common Article 3 of the Geneva Conventions as well as AP II, both of which apply exclusively to NIACs.<sup>73</sup> However, five years later, in 1996, the NDFP made a further declaration that it would apply the Geneva Conventions and their Additional Protocol I (AP I). It is noteworthy that AP I, as well as most of the provisions in the Conventions themselves, only apply in international armed conflicts.<sup>74</sup> Asserting that there was ‘persistent foreign colonial domination and national oppression’, the NDFP characterized the GPH as a ‘puppet government in the service of the United States government’<sup>75</sup> and argued that Article 1, Paragraph 4 of AP I applied,<sup>76</sup> which meant that the conflict was international. The NDFP declared that it undertook to apply the Geneva Conventions and Protocol<sup>77</sup> and lodged a declaration with the Swiss Federal Council.<sup>78</sup>

At the time of the declaration the GPH was not a party to AP I but acceded to it in 2012.<sup>79</sup> It is noteworthy that at that time the government made a declaration of its understandings,

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73 NDFP Declaration of Adherence to International Humanitarian Law, 15 August 1991,

[http://theirwords.org/media/transfer/doc/ph\\_ndfp\\_1991\\_19-f33015876ed5c0c837380aa1fffo83b7.pdf](http://theirwords.org/media/transfer/doc/ph_ndfp_1991_19-f33015876ed5c0c837380aa1fffo83b7.pdf) (last accessed 9 June 2022).

74 NDFP, Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977

[http://theirwords.org/media/transfer/doc/1\\_ph\\_ndfp\\_2005\\_20-11d48a9675a2eaeaba19db0162c8ab09.pdf](http://theirwords.org/media/transfer/doc/1_ph_ndfp_2005_20-11d48a9675a2eaeaba19db0162c8ab09.pdf) (last accessed 9 June 2022).

75 Ibid, p 9.

76 The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations.

77 Art 96(3), AP I:

The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

(a) The Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;

(b) The said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and

(c) The Conventions and this Protocol are equally binding upon all Parties to the conflict.

78 NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, supra fn 73, p 7.

79 See ‘Philippines’, ICRC Treaties, States Parties and Commentaries Database, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=PH](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=PH) (last accessed 9 June 2022).

which, amongst other things, stated that ‘the application of Protocol I may in no case be invoked in internal armed conflicts within sovereign States’.<sup>80</sup>

The Swiss Federal Council has not made public its views as to the applicability of the provisions cited by the NDFP in its declaration but some observers have taken the view that the conflict is international in character.<sup>81</sup>

Also of note in relation to the NDFP is that in 1998 it entered into a ‘Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL)’ with the government.<sup>82</sup> The agreement contains provisions relating to the principle of distinction,<sup>83</sup> the prohibition of sexual violence,<sup>84</sup> the prohibition of the use of children in hostilities,<sup>85</sup> the protection of education,<sup>86</sup> humanitarian access,<sup>87</sup> the protection of health care,<sup>88</sup> the right of return for the displaced,<sup>89</sup> the right not to be victimized by landmines,<sup>90</sup>

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80 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Philippines, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=0D57FC180608B232C1256402003FB5A6> (last accessed 9 June 2022).

81 See ‘Non-International Armed Conflicts in the Philippines’, Rule of Law in Armed Conflicts (RULAC), Geneva Academy, <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-the-philippines> (last accessed 9 June 2022).

82 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law Between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines

(CARHRIHL)

[https://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_980316\\_Comprehensive%20Agreement%20on%20Respect%20for%20Human%20Rights.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_980316_Comprehensive%20Agreement%20on%20Respect%20for%20Human%20Rights.pdf) (last accessed 9 June 2022). For more information on the CARHRIHL, see J. C. N. Arroyo, *Achieving Peace with Human Rights and International Humanitarian Law at the Forefront: A Look at the Philippines’ Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law*, Human Rights in Southeast Asia Series 1, 7 March 2018,

<http://shapesea.com/wp-content/uploads/2018/03/07-Achieving-Peace-with-Human-Rights-and-International-Humanitarian-Law.pdf> (last accessed 9 June 2022).

83 Part IV, Arts 2, 3, 4(4), CARHRIHL.

84 Part III, Art 2(7), *ibid.*

85 Part IV, Art 10, *ibid.*

86 Part IV, Art 4(8), *ibid.*

87 Part IV, Art 4(3), *ibid.*

88 Part IV, Art 4(3), *ibid.*

89 Part IV, Art 9, *ibid.*

90 Part III, Art 2(15), *ibid.*

the right to know where and why a relative/client is detained,<sup>91</sup> and the protection of historic monuments, cultural objects and places of worship.<sup>92</sup>

This agreement obliges the parties to respect and uphold human rights and international humanitarian law. It includes a joint monitoring mechanism.<sup>93</sup> Significantly, whilst it makes reference to the peace process it is not conditional on, or even linked to, a ceasefire or progress at the peace table. Although each side set up their respective monitoring mechanisms the joint committee has never been fully functional.<sup>94</sup>

Whilst both the NDFP and the MILF have undertaken to respect a range of international rules in the conduct of their respective armed conflicts, there are divergences in their approach to some issues. For instance, and in contrast to the MILF, the NDFP has not committed to a total ban on AP mines but claims to use command-detonated devices against military targets only.<sup>95</sup>

On the use and recruitment of children, the NDFP has a policy that whilst the minimum age of recruitment for combatant roles is 18 years, it allows children above 15 to enter the NPA as trainees and play a non-combatant role within the movement, and stresses that such children retain to the right to self-defence.<sup>96</sup> Whilst this policy does not go against IHL rules and customary practice,<sup>97</sup> it goes against the standards within the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict to which the Philippines has been a party since 2003.<sup>98</sup> The NDFP states that it considers the Optional Protocol as not legally binding and therefore not imposing legal obligations on the movement.<sup>99</sup> The reasons for this include the fact that it considers the instrument ‘vague’ and biased against liberation movements in that it sets different standards for states parties and

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91 Part III, Art 3(6), *ibid.*

92 Part IV, Art 4(3), *ibid.*

93 Part V, *ibid.*

94 Office of the Presidential Adviser on Peace, Reconciliation and Unity, ‘GRP, NDF Seal Guidelines for Joint Monitoring Committee, Score Victory’, 21 January 2017, <https://peace.gov.ph/2017/01/grp-ndf-seal-guidelines-joint-monitoring-committee-score-victor/> (last accessed 9 June 2022).

95 Landmine and Cluster Munition Monitor, ‘Philippines’, <http://archives.the-monitor.org/index.php/publications/display?url=lm/2006/philippines.html> (last accessed 9 June 2022).

96 Art III, Section 4, Point 1, NDFP Declaration and Program of Action for the Rights, Protection and Welfare of Children [http://theirwords.org/media/transfer/doc/ph\\_ndfp\\_2012\\_15-cc2952f028aca9932d32fa72c83c6997.pdf](http://theirwords.org/media/transfer/doc/ph_ndfp_2012_15-cc2952f028aca9932d32fa72c83c6997.pdf) (last accessed 9 June 2022).

97 Rule 136, ICRC Customary IHL Database (ICRC CIHL Database), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul) (last accessed 9 June 2022).

98 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en) (last accessed 9 June 2022).

99 Article III, Section 5, NDFP Declaration and Program of Action for the Rights, Protection and Welfare of Children, *supra* fn 95.

‘armed groups that are distinct from the armed forces of a State’.<sup>100</sup> The NPA is on the list of grave violators against children.<sup>101</sup> Although engagement by the UN in this respect was initially encouraging,<sup>102</sup> in contrast to the MILF it has not signed an action plan.

During its conflict the NPA also has been accused of a number of violations, including the killing and detention of civilians<sup>103</sup> and the use of AP mines.<sup>104</sup> It has also been accused of the recruitment and use of children.<sup>105</sup>

In 2017, following reversals in the peace process, the president signed a proclamation designating the CPP and NPA as terrorist organizations,<sup>106</sup> and in 2021 the NDFP was similarly designated by the government’s Anti-Terrorism Council.<sup>107</sup>

## MILF/BIAF POLICY AND PRACTICE WITH REGARD TO SELECTED IHL NORMS

### 1. PROTECTION OF CIVILIANS FROM ATTACKS

#### A. PRINCIPLE OF DISTINCTION

Under customary IHL,<sup>108</sup> the parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants; they must not be

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100 Article IV, *ibid*.

101 Children and Armed Conflict: Report of the Secretary-General, UN doc A/75/873-S/2021/437, 6 May 2021, Annex 2, p 42.

102 Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘National Democratic Front of the Philippines Agrees to an Action Plan With the UN to Ensure No Children Are Among Their Ranks’, 8 April 2011, <https://childrenandarmedconflict.un.org/2011/04/8apr11/> (last accessed 9 June 2022).

103 Human Rights Watch, ‘Philippines: Communist Rebels Target Civilians’, 5 October 2011, <https://www.hrw.org/news/2011/10/05/philippines-communist-rebels-target-civilians> (last accessed 9 June 2022).

104 R. A. Gita-Carlos, ‘Use of Landmine “Int’l Crime,” NPA must be punished: Palace’, Philippine News Agency, 8 June 2021, <https://www.pna.gov.ph/articles/1142979>.

105 Children and Armed Conflict: Report of the Secretary-General, *supra* fn 100, §265.

106 J. Ballaran, ‘Duterte Declares CPP, NPA as Terrorist Organizations’, INQUIRER.net, 5 December 2017, <https://web.archive.org/web/20171206074517/https://newsinfo.inquirer.net/950017/duterte-declares-cpp-npa-as-terrorist-organizations>.

107 ‘Government Designates NDFP as “Terrorist” Organization’, CNN Philippines, 19 July 2021, <https://cnnphilippines.com/news/2021/7/19/NDFP-designation-Anti-Terrorism-Council.html>.

108 See Rule 1, ICRC CIHL Database, *supra* fn 96.

directed against civilians. Civilian objects are also protected against attack.<sup>109</sup> Indiscriminate attacks are prohibited.<sup>110</sup> In addition, Article 13 of AP II – applicable to conflicts in the Philippines since its ratification in 1986 – provides that:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Civilians are persons who are not members of the armed forces;<sup>111</sup> they are protected against attack, unless and for such time as they take a direct part in hostilities.<sup>112</sup> Civilian objects are all objects that are not military objectives;<sup>113</sup> they are protected against attack, unless and for such time as they are military objectives.<sup>114</sup>

The MILF's position on the principle of distinction is informed by Islamic principles. This was clear in its 2002 Statement against Kidnap for Ransom, which highlighted that its policy was to distinguish between combatants and non-combatants, as well as identifying certain civilian objects that should not be destroyed: 'WHEREAS, more than 1,400 years ago before the Fourth Geneva Conventions were adopted by the community of nations on August 12, 1949, Islam had already prescribed that non-combatants such as children, women, old people, monks or priests and the like are not the objects of war; and also it prohibited the destruction of properties, orchards'.<sup>115</sup>

The following year the MILF's founding chairman categorically asserted that the organization would not target civilians, even in the face of provocation or as reciprocation for violations by the enemy: '[The MILF] does not and will not, hit civilian targets, not even in cases of what

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109 Rule 7, *ibid.*

110 Rule 11, *ibid.*

111 Rule 5, *ibid.*

112 Rule 6, *ibid.*

113 Rule 9, *ibid.*

114 Rule 10, *ibid.* In so far as objects are concerned, 'military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage' (Rule 8, *ibid.*).

115 Moro Islamic Liberation Front Central Committee, Resolution to reiterate MILF policy of strongly and continuously condemning all kidnap for ransom activities in Mindanao and everywhere, and to take drastic action against the perpetrators of this heinous crime in all MILF areas, 26 February 2002, [http://theirwords.org/media/transfer/doc/ph\\_milf\\_biaf\\_2002\\_06-6bd99b91fd576e25a44bcd18e43af9d.pdf](http://theirwords.org/media/transfer/doc/ph_milf_biaf_2002_06-6bd99b91fd576e25a44bcd18e43af9d.pdf).

observers call “revenge attacks” – it makes absolutely no sense to do so’.<sup>116</sup> It is notable that the brief comment asserted that there was no utility in targeting civilians, which presumably alludes to the fact that doing so would undermine the MILF’s broader political struggle.

As noted above, the initial version of the MILF Code of Conduct (General Order No. 1) has little to say on the conduct of hostilities and the principle of distinction is no exception. Perhaps the most relevant provisions are Article 58, Relieving, Corresponding with, or Aiding the Enemy, and Article 59, Spies, which sets out sanctions for these transgressions.<sup>117</sup> Although the Code of Conduct was drawn up to regulate the behaviour of fighters, it is noteworthy that, unlike many other provisions within it which specifically limit their application to ‘any person subject to military law’,<sup>118</sup> there is no such limitation specified in relation to either Articles 58 or 59.

As noted in section 4 above, General Order No. 2 introduced rules governing the conduct of hostilities into the MILF’s Code of Conduct. Of particular relevance to the principle of distinction are the following provisions (or elements thereof):

2. Object of the fight – It is directed only against fighting troops and not to non-fighting personnel (Al-Baqarah: 190).
3. Civilian people – Old people, children and women shall not be harmed or killed, and those people in convents (Al-Hadith).
4. ...Don’t cut or burn palm trees or fruitful trees or ruin dwellings. Don’t slay sheep, a cow, camel or other animals except for food (Al-Hadith).<sup>119</sup>

If the category of civilian cited in point 3 is an exhaustive list (rather than examples), it is noteworthy that this definition of civilian is narrower than under IHL;<sup>120</sup> for instance, it does not include male civilians beyond those who are children or elderly.

The 2009 Agreement on the Civilian Protection Component of the International Monitoring Team contains provisions which promote distinction between those taking part in conflict and others. In Article 1, Basic Undertakings,<sup>121</sup> the MILF and the GPH made the commitment to:

- a) Refrain from intentionally targeting or attacking non-combatants, prevent suffering of the civilian population and avoid acts that would cause collateral damage to civilians;
- b) Refrain from targeting or intentionally attacking civilian properties or facilities such as schools, hospitals, religious premises, health and food distribution centres, or relief

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116 S. Hashim, ‘Message to All Peace-Loving People, From the MILF Leadership’, supra fn 37, p 384.

117 General Order No. 1, supra fn 44.

118 E.g., Art 57, regulating what should be done with captured property.

119 General Order No. 2, supra fn 48.

120 Customary Rule 5 defines civilians as ‘persons who are not members of the armed forces’, ICRC CIHL Database, supra fn 96.

121 Agreement on the Civilian Protection Component of the International Monitoring Team, supra fn 66.

operations, or objects or facilities indispensable to the survival of the civilian population and of a civilian nature;

Although the agreement does not explicitly define civilians, it uses the term ‘non-combatants’ synonymously. This usage mirrors that of an MILF leader in one of our interviews who utilized the terms civilian and non-combatant interchangeably.<sup>122</sup>

MILF commanders asserted that fighters were instructed not to target public buildings,<sup>123</sup> churches, hospitals and schools.<sup>124</sup> They also asserted that if an enemy engaged MILF forces near to areas where civilians were located, MILF fighters would be instructed to use light weapons only.<sup>125</sup>



It was considered by some observers that, in general, the MILF had an incentive for limiting harm to civilians given that much of the fighting took place in ‘their’ areas. According to an NGO leader, ‘[t]he MILF is living in these areas. The houses are their own. Their children are going to the schools. The mosques are where they are going to pray. It is almost impossible for them to attack these.’<sup>126</sup> Similarly, kinship ties in the community were seen as a key factor: ‘The MILF for the most part, respected civilians. This is because the majority of civilians are

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122 Interview with senior MILF leader, 29 January 2020.

123 Interview with Bangsamoro Islamic Women Auxiliary Brigade (BIWAB) members, 19 July 2019.

124 Interview with community leader, 26 July 2019.

125 Interview with MILF commanders, 17 July 2019.

126 Interview with NGO leader, 27 January 2020.

family members or relatives.’<sup>127</sup> According to an academic, ‘[t]he BIAF is part of the Bangsamoro community. They have to protect the communities. If the BIAF uses bombs, the victims would be their relatives/friends. For this reason, all action is undertaken keeping this in mind.’<sup>128</sup> One observer considered that a protective approach is facilitated by the dual role played by the MILF commanders: ‘What influences policy is that the commander is also a community leader. He is not only accountable to MILF hierarchy, but also to communities.’<sup>129</sup>

However, it was also noted by an interviewee that proximity to communities could compromise the application of the principle of distinction. For instance, many MILF camps resemble villages and in other instances MILF fighters lived in communities away from their military installations. If there were armed incursions into these areas they would often engage in combat to defend the communities in their civilian clothes because they did not have time to change into their uniforms.<sup>130</sup>

Another challenge was posed by the fact that there is a significant level of (non-armed conflict related) armed violence in Mindanao involving a wide range of actors operating in or near the conflict areas. It was asserted that MILF fighters would sometimes fire at these actors without considering whether they were participating in hostilities or not.<sup>131</sup>

A particular challenge was posed by *ridos* (blood feuds). These could take place between different clans, and there were instances where one of the protagonists was from the MILF and, in some instances, *ridos* took place between MILF members. Although not governed by IHL, *ridos* clearly complicated its application<sup>132</sup> and also risked triggering instances of other forms of conflict.<sup>133</sup> It was suggested by one observer that whilst in *ridos* ‘women, children, the sick, are not specifically targeted, they can become collateral damage when attacking the rival’s family house’.<sup>134</sup>

As well as the challenges to the principle of distinction mentioned above there were instances where there was no apparent effort to apply the principle and egregious violations took place. According to a community leader, ‘there were instances where some were violated. The burning of houses happened. Civilians were killed through indiscriminate attacks, some looting occurred.’<sup>135</sup> He also spoke of instances where churches were burned and civilians inside were killed: ‘It is difficult to control what to do in battle and to stick to principles of engagement. This is especially the case when civilians or churches are in the periphery of the

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127 Interview with staff member of international organization, 29 January 2020.

128 Interview with academic, 15 July 2009.

129 Ibid.

130 Interview with BIWAB members, 19 July 2019.

131 Interview with analyst, 16 July 2019.

132 Interview with senior member of MILF Department of Islamic Call and Guidance, 31 January 2020.

133 Interview with analyst, 16 July 2019.

134 Interview with NGO leader, 27 January 2020.

135 Interview with community leader, 26 July 2019.

battlefield, or when people are considered to be part of the combat. Sometimes you can't control things – like emotions of members.'<sup>136</sup>

The MILF's record in relation to the principle of distinction has both varied across locations and changed with time. Some observers accept the MILF's assertion that it has looked to target the security forces and that specific targeting of civilians or civilian objects has been minimal.<sup>137</sup> In this view, harm to civilians or damage to civilian objects has mainly been collateral.<sup>138</sup> However, there are reports which highlight – clear or potential – violations against civilians, particularly in the earlier part of the conflict. For instance, in March 2000 an MILF commander, Abdullah Macapaar, also known as Commander Bravo, led an assault on Kauswagan Municipal Hall, reportedly taking hundreds of civilians hostage and leaving several dead or wounded.<sup>139</sup> In a newspaper report in the wake of the attack an MILF leader said that it was launched to ease military pressure on one of the MILF's own camps but no comment was made about the impact on civilians.<sup>140</sup>

In March 2003 the GPH accused the MILF of detonating a bomb at Davao City International Airport that killed 22 people and injured 148. The GPH subsequently ordered the arrest of various MILF leaders, although the organization strongly denied involvement in the attack.<sup>141</sup>

In April 2003 the forces of the aforementioned Commander Bravo launched attacks, including on a passenger bus, that were said to kill 16 civilians in Kulambugan, near Pagadian City. It was reported that hostages were also taken in the attack. A spokesman for the MILF acknowledged that a local politician killed in the attack had been targeted for supporting the military but denied that there had been an attack on civilians.<sup>142</sup>

In 2008 fighters of the 105th Base Command under Umbra Kato attacked Christian communities bordering Maguindanao and North Cotabato.<sup>143</sup> There were allegations of the

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136 Ibid.

137 Interview with staff of international organization, 29 January 2020; interview with staff member of NGO, 26 July 2019.

138 Interview with staff of international organization, 29 January 2020.

139 'Moro Islamic Liberation Front', supra fn 12.

140 'Gov't Troops Retake Lanao Town Hall', Philstar Global, 19 March 2000 <https://www.philstar.com/headlines/2000/03/19/87152/govt-troops-retake-lanao-town-hall>.

141 'Moro Islamic Liberation Front', supra fn 12.

142 R. Pareño and J. Unson, '16 Killed, 20 Hurt in New MILF Rampage in Cotabato, Lanao', Philstar Global, 25 April 2003, <https://www.philstar.com/headlines/2003/04/25/203664/16-killed-20-hurt-new-milf-rampage-cotabato-lanao>.

143 L. U. Navarro, 'Rogue Group Chief Kato Already Dead – MILF, CNN Philippines, 14 April 2015, <https://cnnphilippines.com/news/2015/04/14/BIFF-founder-Umbra-Kato-dead.html>.

direct targeting of civilians.<sup>144</sup> Kato faced disciplinary action for these incidents and went on to split from the MILF and form the BIFF.<sup>145</sup>

Also in 2008 Commander Bravo was accused of attacks on communities in Lanao province. An unspecified number of civilians were killed in the attack, with allegations that they were killed under his orders. He denied involvement in the attacks attributing them in different reports to unaffiliated mujahideen<sup>146</sup> and to a group of probationary MILF fighters that had subsequently surrendered to the military.<sup>147</sup> The MILF condemned the attacks and committed to investigate them.

Amnesty International reported on the 2008 fighting and its aftermath and concluded that there was a lack of clarity as to who were the actual combatants: ‘On the MILF side ...there is no clear distinction between members of the 18 base commands of the Bangsamoro Islamic Armed Forces, which is under the MILF Central Command, and MILF fighters that “act on their own if deemed necessary” or splinter groups which also act independently. Although they could all be considered combatants, they may also live among the civilian population as farmers or fishermen some of the time.’<sup>148</sup>

Amnesty International concluded that ‘MILF fighters, who may also be farmers during peace time, live amongst the civilian population – armed – thereby several of them present in a village puts the community at risk of an attack.’<sup>149</sup>

In his report on children and armed conflict covering 2011 the UN Secretary-General attributed six attacks on schools and hospitals to the MILF.<sup>150</sup>

In April 2017 an explosive device was detonated near a gas station in Tacurong, Sultan Kudarat, Philippines. At least 14 people, including 5 police officers and 9 civilians, were injured in the blast. Two members of the 106th Base Command of the MILF were arrested in

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144 Interview with analyst, 16 July 2019.

145 R. Ramos, ‘Muslim Rebel Group Head Dies in Philippines: Report, Anadolu Agency, 14 April 2015, <https://www.aa.com.tr/en/archive/muslim-rebel-group-head-dies-in-philippines-report/57599>.

146 “‘Mujahideens’ Behind Lanao Attacks – Commander Bravo’, GMA News Online, 20 August 2008, <https://www.gmanetwork.com/news/topstories/nation/114882/mujahideens-behind-lanao-attacks-commander-bravo/story/>.

147 ‘Commander Bravo Denies Hand in Lanao Norte Atrocities’, ABS-CBN News, 22 August 2008, <https://news.abs-cbn.com/nation/08/22/08/commander-bravo-denies-hand-lanao-norte-atrocities>.

148 Amnesty International, *Shattered Lives: Beyond the 2008–2009 Mindanao Armed Conflict*, 2009, p 13, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa350032009en.pdf> (last accessed 9 June 2022).

149 Ibid, p 14.

150 *Children and Armed Conflict: Report of the Secretary-General*, Un doc A/66/782–S/2012/261, 26 April 2012, §151.

the vicinity of the incident. At the time of the report the MILF was not in a position to confirm whether the two accused were actually members of the movement.<sup>151</sup>

## **B. PRINCIPLES OF PROPORTIONALITY AND PRECAUTIONS**

Under customary IHL, it is prohibited to carry out an attack that may be expected to cause excessive harm to civilians and civilian property compared to the anticipated military advantage (principle of proportionality).<sup>152</sup> In addition, in the planning and conduct of military operations, the parties to the conflict must do everything feasible to avoid or minimize collateral damage (principle of precautions). Constant care must be taken to spare civilians and civilian objects.<sup>153</sup>

In the 2009 Agreement on the Civilian Protection Component of the International Monitoring Team one of the Basic Undertakings, in Article 1(d), is to '[t]ake all precautions feasible to avoid incidental loss of civilian life, injury to civilians, and danger to civilian objects'.<sup>154</sup>

There is little documentary information as to how the MILF looked to apply these rules, but interviewees associated with the movement asserted that it took steps to reduce or mitigate the risks to civilians in conflict areas. For instance, it was contended that there were instructions from the leadership that MILF military detachments should be located 50 metres from areas where civilians were.<sup>155</sup> Sources within the MILF also contended that if an attack was planned, MILF fighters were obliged to wear uniforms to distinguish them from civilians. It was said that, to reduce risk to civilians and their homes, MILF fighters were instructed not to engage the enemy within or near villages.<sup>156</sup>

MILF Interviewees asserted that the organization sought to put these principles into practice throughout the preparation, planning, actualization and review of military operations. One aspect that was emphasized by a fighter was that training in the use of heavy weapons included a specific focus on seeking to ensure that the impact was on the target and its immediate surroundings, not a wider area.<sup>157</sup>

In the planning of operations the intelligence section was responsible for identifying the target and ascertaining, amongst other things, whether and where civilians would likely be in the vicinity.<sup>158</sup> Consideration was also given to the suitable time for the attack both from the

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151 'Twin Blasts Wound 15 in Tacurong City', *Interaksyon*, 18 April 2017, <https://interaksyon.philstar.com/breaking-news/2017/04/18/66670/twin-blasts-wound-15-in-tacurong-city/>.

152 Rule 14, ICRC CIHL Database, *supra* fn 96.

153 Rule 15, *ibid*.

154 Agreement on the Civilian Protection Component of the International Monitoring Team, *supra* fn 66.

155 Interview with BIWAB members, 19 July 2019; interview with NGO leader, 27 January 2020.

156 Interview with BIWAB members, 19 July 2019.

157 Interview with MILF leader, 16 July 2019.

158 Interview with BIWAB members, 19 July 2019.

point of view of maximizing military advantage and limiting risk to civilians.<sup>159</sup> Based on the information gathered, the operations department decided on such matters as what weapons to use to minimize impact on civilians,<sup>160</sup> heavy weapons not being permitted in attacks where civilians were likely to be in the vicinity.<sup>161</sup> At the planning session guidance was provided on limiting risks to civilians and civilian objects.<sup>162</sup> This included consideration of how events might unfold and how they should respond to these scenarios both from a military and ‘principled’ point of view – the latter including limiting harm to civilians.<sup>163</sup> Once this process was undertaken, the plan was sent to the chief of staff for his approval.<sup>164</sup>

An MILF leader asserted that, in many instances, the MILF would send an advanced patrol immediately prior to an operation. If consideration was being given to the use of heavy weapons, one of their tasks would be to confirm the coordinates of the target.<sup>165</sup>

Civilians would sometimes be warned of an impending attack,<sup>166</sup> though it was acknowledged that this was not systematically applied.<sup>167</sup> Warnings would usually be given by informing one family who would then be expected to pass the information to others within the community.<sup>168</sup> If, as often was the case, military camps were placed in the vicinity of Christian communities, it might be decided not to warn them directly but start firing in another direction to get them to flee.<sup>169</sup> In instances where the military were occupying a civilian building, the MILF might encourage village leaders to go to their commanding officer to urge him to withdraw or face attack.<sup>170</sup>

Sometimes, there were more civilians in the vicinity of a planned operation than had been anticipated in the planning and a decision would be made as to whether the risk that civilians might be collaterally harmed was acceptable;<sup>171</sup> to abort the operation;<sup>172</sup> to delay in the hope

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159 Interview with a former MILF commander, 17 July 2019.

160 Interview with BIWAB members, 19 July 2019.

161 Interview with a former MILF commander, 17 July 2019.

162 Interview with BIWAB members, 19 July 2019.

163 Interview with senior member of the MILF Department of Islamic Call and Guidance, 31 January 2020; interview with a former MILF commander, 17 July 2019.

164 Interview with BIWAB members, 19 July 2019.

165 Interview with MILF leader, 16 July 2019.

166 Interview with a former MILF commander, 17 July 2019.

167 Interview with a Bangsamoro Autonomous Region in Muslim Mindanao minister, 28 January 2019.

168 Interview with a former MILF commander, 17 July 2019.

169 Ibid.

170 Ibid.

171 Ibid.

172 Interview with MILF leader, 16 July 2019.

that the civilians might leave<sup>173</sup> or to wait for the military formation to move to another location.<sup>174</sup>

In some instances they would find civilians in the vicinity once fighting had commenced and it was said that in such cases an order might be given to command fighters to hold their fire to allow civilians to move away from the area of combat.<sup>175</sup> In other instances the military would move to areas where civilians were located when under attack and a decision would be made as to whether to continue the operation or withdraw.<sup>176</sup>

After operations it was said that a review was undertaken by the commander.<sup>177</sup> He would consider whether the plan was implemented properly and whether and what mistakes may have been made. This was undertaken with a view to ensuring they would not be repeated in the next operation.<sup>178</sup> There was also consideration of whether there were any violations committed during the operation. If this was the case, the area commander might interview the members concerned and relay all information to a senior commander at the central level. That commander might initiate an investigation to ascertain whether the individual(s) committed a violation or not. If they were found to have done so, a punishment would be imposed.<sup>179</sup>

The application (or otherwise) of the norms proportionality and precautions have not been closely analysed in the Mindanao conflict. In a report on the events of 2008–2009 Amnesty International did find that ‘research and reports from local humanitarian organizations indicate that displaced persons and other civilians have become victims in military operations’, and consequently recommended that ‘both parties to the conflict must ensure that civilians are not disproportionately harmed during fighting’.<sup>180</sup>

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173 Interview with a former MILF commander, 17 July 2019.

174 Interview with MILF leader, 16 July 2019.

175 Ibid.

176 Ibid.

177 Interview with BIWAB members, 19 July 2019.

178 Interview with a former MILF commander, 17 July 2019.

179 Ibid.

180 Amnesty International, *Shattered Lives*, supra fn 147, p 14.

## 2. THE PROHIBITION OF SEXUAL VIOLENCE AND GENDER DISCRIMINATION<sup>181</sup>

Under customary IHL,<sup>182</sup> rape and other forms of sexual violence are prohibited. While Common Article 3 of the 1949 Geneva Conventions does not explicitly refer to this terminology, it prohibits ‘outrages upon personal dignity, in particular humiliating and degrading treatment’. Article 4(1)(c) of AP II specifically adds ‘rape’, ‘enforced prostitution’ and ‘any form of indecent assault’ to this list.

There are no clear rules set out within the MILF’s Code of Conduct about sexual violence and little information available from other written sources. In the absence of clear rules, most information as to how the MILF considers and addresses the issue comes from interviews conducted with MILF members and informed observers.

Sexual violence is not dealt with as a discrete violation by the MILF<sup>183</sup> but as part of a wider category of transgressions of Islamic law governing relations between the sexes.<sup>184</sup> Other transgressions considered under these rules include adultery and disrespectful treatment of women.<sup>185</sup> Because of the religious foundation of the rules on these issues ‘sexual violence is considered in much the same way as sex outside of marriage’ according to one interviewee.<sup>186</sup> However, it was emphasized by another interviewee that sexual violence is seen as particularly ‘taboo’.<sup>187</sup>

Rules governing day-to-day relations between MILF members of each sex were clearly defined and demarcated to reflect societal norms. Amongst other things, the requirement for male combatants to be respectful to women was contained in these rules.<sup>188</sup> There was a

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181 In its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, UN doc CEDAW/C/GC/30, 18 October 2013, §§16 and 18, the Committee on the Elimination of all Forms of Discrimination against Women states: ‘Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights.’ The Committee goes on to urge ‘non-State actors such as armed groups:

- (a) to respect women’s rights in conflict and post-conflict situations, in line with the Convention;
- (b) to commit themselves to abide by codes of conduct on human rights and the prohibition of all forms of gender-based violence’.

182 Rule 93, ICRC CIHL Database, *supra* fn 96.

183 Interview with member of the International Monitoring Team (IMT), 16 July 2019.

184 Interview with MILF leader, 16 July 2019; interview with community leader, 28 January 2020; interview with NGO leader, 20 July 2019.

185 Interview with MILF leader, 16 July 2019; interview with community leader, 28 January 2020.

186 Interview with BIWAB members, 19 July 2019.

187 Interview with INGO staff member, 26 July 2019.

188 Interview with BIWAB members, 19 July 2019.

prohibition on a man talking to a woman without another woman being present.<sup>189</sup> There were separate living areas for men and women with a prohibition on these areas being visited by members of the opposite sex.<sup>190</sup> Other rules included women not being allowed to take part in combat at the frontline despite receiving training in weapons use.<sup>191</sup> Courtship within the ranks of the MILF was prohibited. A male fighter wanting to court a woman in the community would need to seek permission from his commander who, if in agreement, would then approach the woman's parents.<sup>192</sup> The rules were included in training modules for new recruits.<sup>193</sup> Punishments for transgressions of these rules depended on their nature and scale but included suspension from the organization.<sup>194</sup>

There was very limited source information about sexual violence in the MILF-conflict context. It is mostly discussed in relation to instances involving the military in the early phase of the conflict, and is often cited as a reason why women joined the movement.<sup>195</sup> An interviewee involved in the MILF justice system could not recall any cases in the 15 years he had been working there.<sup>196</sup> It should be emphasized that, given the sensitive nature of sexual violence, the marked absence of source information does not rule out its occurrence. A research study which considered the issue of gender-based violence in conflicts in Mindanao suggested that while the context 'may be an exception to a global trend of using rape as a weapon of warfare, it is just as likely that a real understanding of the prevalence of gender-based violence in ...conflict zones can only be gained through longer-term research that is rooted in established relationships of trust necessary for such stories to emerge'.<sup>197</sup>

Given the lack of written materials, interviews with informed observers are the main source of information. One observer considered that if ever an MILF member was implicated in an instance of sexual violence the organization would take action: 'If a person committed sexual violence or rape in the camp, the penalty would be high – expulsion or other penalty.'<sup>198</sup> It

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189 Ibid.

190 Ibid.

191 Ibid.

192 Ibid.

193 Interview with MILF leader, 16 July 2019.

194 Interview with BIWAB members, 19 July 2019.

195 C. van Hoof, S. Lundström, V. Dudouet (eds), *Asking My Sisters: Intergenerational Voices of Women from the Moro Islamic Liberation Front in Mindanao*, Berghof Foundation, November 2021 pp18-19 <https://berghof-foundation.org/library/asking-my-sisters-intergenerational-voices-of-women-from-the-moro-islamic-liberation-front-in-mindanao> (last accessed 23 August 2022).

196 Interview with Sharia judge, 31 January 2020.

197 L. Dwyer and R. Cagoco-Guiam, *Gender and Conflict in Mindanao*, The Asia Foundation, 19 October 2011, p 30, <https://www.ndi.org/sites/default/files/Gender%20and%20Conflict%20in%20Mindanao.pdf> (last accessed 9 June 2022).

198 Interview with INGO staff member, 26 July 2019.

was considered by one observer that in such an instance the perpetrator would be dealt with under the MILF's general disciplinary system rather than in a Sharia court.<sup>199</sup>



Interviewees said that although MILF members had not been identified as perpetrators or victims,<sup>200</sup> sexual violence did take place within communities in areas under the control or influence of the MILF.<sup>201</sup> Research has found that women in internally displaced people (IDP) settings were particularly vulnerable.<sup>202</sup> These issues and other transgressions considered to be in the same category (such as adultery) were dealt with by MILF commanders and leaders<sup>203</sup> or MILF-associated<sup>204</sup> Sharia courts,<sup>205</sup> though in some instances victims would be directed to take the case through the official court system.<sup>206</sup> There would be efforts to ensure that allegations of violations involving sexual matters were dealt with discreetly,<sup>207</sup> though confidentiality could not be assured.<sup>208</sup> In cases involving sexual violence within a marriage,

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199 Interview with staff member of international organization, 17 July 2020.

200 Interview with NGO leader, 20 July 2019.

201 Interview with staff member of international organization, 29 January 2020.

202 Dwyer and Cagoco-Guiam, *Gender and Conflict in Mindanao*, supra fn 195, p 12.

203 Interview with INGO staff member, 26 July 2019.

204 Interview with BIWAB member, 19 July 2019.

205 Interview with member of the IMT, 16 July 2019; interview with INGO staff member, 26 July 2019.

206 Interview with member of the IMT, 16 July 2019; Interview with NGO leader, 20 July 2019.

207 Interview with MILF leader, 16 July 2019.

208 Interview with BIWAB members, 19 July 2019.

unless there were other factors involved, it was unlikely that a case would be taken forward as it would be considered to be ‘a family affair’.<sup>209</sup> In other cases involving allegations of rape, there would usually be a trial in a Sharia court.<sup>210</sup> Only a few cases reached these courts.<sup>211</sup> As the cases did not involve its personnel as either alleged perpetrators or victims, the MILF would not get involved beyond ensuring that the accused was detained.<sup>212</sup>

There was a risk that overlapping transgressions might lead to instances of sexual violence not being addressed. For instance, if a woman got pregnant outside of marriage she might be pressured into marrying the man who got her pregnant<sup>213</sup> and he might be forced to pay a fine to the woman and pay for the child’s education if he could or would not marry her.<sup>214</sup> In such cases whether there had been initial consent on her part might not be the primary consideration.<sup>215</sup>

In instances involving the broader category of transgressions mentioned above there would sometimes be efforts to ‘resolve’ them.<sup>216</sup> As identified in field research, the priority of such resolutions might be to avoid fuelling conflicts between families rather than meeting the needs or rights of victims. This led, at least in one instance, to a victim being sent to live with her abuser.<sup>217</sup>

In terms of punishments, the Sharia courts could impose a fine on perpetrator(s), most of which would be passed to the victim’s family.<sup>218</sup> Other punishments included jail<sup>219</sup> or corporal punishment of up to 100 lashes<sup>220</sup> – interviewees confirmed that there had been instances where these rules had been enforced for adultery but could not confirm that they had been enforced on perpetrators of sexual violence.<sup>221</sup>

Different rules applied to male and female members when it came to participating in combat. Women in the MILF mainly served in the Bangsamoro Islamic Women Auxiliary Brigade (BIWAB) or the Social Welfare Committee.<sup>222</sup> In the BIWAB they undertook functions such as

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209 Interview with community leader, 15 July 2019.

210 Interview with NGO leader, 20 July 2019.

211 Interview with Sharia judge, 31 January 2020.

212 Interview with MILF commander, 31 January 2020.

213 Interview with NGO leader, 20 July 2019.

214 Interview with BIWAB members, 19 July 2019.

215 Interview with NGO leader, 20 July 2019.

216 Interview with member of the IMT, 16 July 2019; interview with NGO leader, 20 July 2019.

217 Dwyer and Cagoco-Guiam, *Gender and Conflict in Mindanao*, supra fn 195, p 18.

218 Interview with BIWAB members, 19 July 2019.

219 Interview with MILF leader, 16 July 2019.

220 Interview with MILF leader, 16 July 2019; interview with community leader, 28 January 2020.

221 Interview with community leader, 28 January 2020.

222 Interview with BIWAB members, 19 July 2019.

being medics and cooks.<sup>223</sup> Research has recently highlighted that women in the BIWAB continued with the burden of domestic responsibilities whilst they served these functions.<sup>224</sup>

Women were not well represented in senior positions within the MILF. In 2019 it was reported that there was only one women on the MILF Central Committee.<sup>225</sup> The MILF did not have women on their panel in peace talks with the GPH, though two women served as advisers.<sup>226</sup> In 2019 the MILF only had 5 women nominees (out of 40 places) on the Bangsamoro Transitional Authority.<sup>227</sup>

### 3. THE PROHIBITION OF USING AND RECRUITING CHILDREN IN HOSTILITIES

IHL and IHRL prohibit the recruitment of children into armed forces or armed groups and their participation in hostilities.<sup>228</sup> While AP II sets the minimum age for recruitment and participation in hostilities at 15 years, Article 4(1) of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that '[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years'.<sup>229</sup>

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223 Conciliation Resources, 'Women Behind the Frontlines and Their Continued Struggle for Liberation', October 2015, <https://www.c-r.org/news-and-views/comment/women-behind-frontlines-and-their-continued-struggle-liberation> (last accessed 9 June 2022).

224 B. S. Sarmiento, MILF Women Brigade Cry for Gender Equality in Post-Conflict Mindanao – Study', MindaNews, 27 October 2021, <https://www.mindanews.com/top-stories/2021/10/milf-women-brigade-cry-for-gender-equality-in-post-conflict-mindanao-study/>.

225 Arguillas 'Women in the Bangsamoro Transition Authority', supra fn 24.

226 Ibid.

227 'Who's who in the Bangsamoro Transition Authority', Rappler, 29 March 2019, <https://www.rappler.com/newsbreak/iq/226874-composition-bangsamoro-transition-authority/>.

228 Rules 136 and 137, ICRC CIHL Database, supra fn 96; Art 4, Para 3(c)(d)(e), Additional Protocol II to the Geneva Conventions (AP II); Art 4(1) of Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. In the Commentary on Rule 137, the ICRC notes: In the framework of the war crime of 'using children to participate actively in hostilities' contained in the Statute of the International Criminal Court, the words 'using' and 'participate' have been adopted in order to: cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology. (Rule 137. Participation of Child Soldiers in Hostilities, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule137#Fn\\_71F8634\\_00017](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule137#Fn_71F8634_00017) (last accessed 9 June 2022)).

229 Art 8(b)(xxvi) of the Rome Statute lists as a war crime 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'. Although there is a growing trend towards a prohibition of any form of military recruitment or use in

In its early years the MILF did not publicly specify a minimum age for use and recruitment within its ranks. The movement was initially guided by its Islamic understanding that maturity is reached at puberty.<sup>230</sup> It is apparent that this was the position expressed in discussions with those seeking to end the practice of child use and recruitment.<sup>231</sup> In these discussions the MILF also asserted that it had an obligation to care for orphans whose parents had been killed in the war and that they would be provided with military training ‘on a voluntary basis’. The MILF asserted that children were not generally used for combat purposes and their tasks ‘were auxiliary in nature and limited to such roles as being mail couriers or bringing food, supplies and other provisions to the MILF troops in times of fighting’. However, the MILF emphasized that children would be allowed to defend the communities if they came under attack.<sup>232</sup>

Given the stated policy, it is not surprising that there were credible allegations of widespread use and recruitment of children by the MILF during this period. A 2001 study by the International Labour Organization on child soldiers in central and western Mindanao estimated that 10 to 30 percent of the population in rebel-influenced areas were children participating in activities directly related to the armed conflict. Children were most commonly used in carrying out patrols, performing sentry duty, preparing food and providing medical support.<sup>233</sup> The use and recruitment of children in the MILF was acknowledged by members we interviewed who informed us that they were children when they became involved in the movement.<sup>234</sup>

It should be emphasized that, unlike in some other contexts, children were not generally taken away from their communities and there was generally acquiescence on their part. According to a study commissioned by UNICEF, ‘[t]he MILF did not forcibly recruit and use children. Children’s association with the armed group is generally accepted as a consequence of their social milieu, where children are born into an armed struggle in which their parents and neighbours are already involved. Family ties, interpretations of religious duty and political allegiance all conspire to mould Bangsamoro children around the separatist

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hostilities of persons under the age of 18 years, for the purpose of this research, we consider ANSAs to be bound by the 15-years standard and that any commitment to the 18-years limit for recruitment of children in their armed forces goes beyond their strict obligations under international law.

230 Submission of the MILF to the Geneva Call publication *In Their Words: Perspectives of Armed Non-State Actors on the Protection of Children From the Effects of Armed Conflict*, 2010, p 2, [http://theirwords.org/media/transfer/doc/ph\\_milf\\_biaf\\_2010\\_41-21614fafo6ff4089542df71c579ea759.pdf](http://theirwords.org/media/transfer/doc/ph_milf_biaf_2010_41-21614fafo6ff4089542df71c579ea759.pdf) (last accessed 9 June 2022).

231 Report of the Secretary-General on Children and Armed Conflict in the Philippines, UN doc S/2008/272, 24 April 2008, §17.

232 United Nations and the Moro Islamic Liberation Front, *Children in Armed Conflict: Philippines, Processes and Lessons Learned 2009–2017, Action Plan on the Recruitment and Use of Children in Armed Conflict*, UNICEF, p 6, <https://www.unicef.org/philippines/media/881/file/Children%20in%20Armed%20Conflict:%20Philippines.pdf> (last accessed 9 June 2022).

233 Report of the Secretary-General on Children and Armed Conflict in the Philippines, *supra* fn 229, §17.

234 Interview with MILF members, 19 July 2019.

agenda.<sup>235</sup> Another study found that parents often actively encouraged their children to become involved with the movement.<sup>236</sup>

In his report covering 2002 the UN Secretary-General asserted that children were being recruited by the MILF and several other organizations.<sup>237</sup> In his report covering 2003, he repeated this assertion and added that children were also being trained,<sup>238</sup> and for the first time, listed the MILF (and 3 other ANSAs operating in the Philippines) in Annex II of the report as ‘parties to armed conflict that recruit or use children in armed conflict’.<sup>239</sup> The following year’s report noted that ‘as of September 2004, no measures for the disarmament, demobilization and reintegration of child soldiers had been taken by ...MILF’.<sup>240</sup>

Subsequently, a UN Secretary-General’s report estimated that 13 percent of the 10,000 ‘elements’ of the MILF were children,<sup>241</sup> and noted that there had been an increase of children joining the organization in Maguindanao province ‘based on the assumption by MILF that the children would benefit from the socio-economic package offered in the event of the conclusion of (a) peace agreement’.<sup>242</sup>

In 2006 the MILF made a brief statement on children in war, which included the following provisions:

1. The general policy of the MILF is not to involve children in its war efforts;
2. They should be better cared off by their natural parents rather than by others or organization even by the MILF;<sup>243</sup>

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235 United Nations and the Moro Islamic Liberation Front, *Children and Armed Conflict*, supra fn 230, p xiii.

236 A. Özerdem and S. Podder, ‘The Role of Community in Youth Participation in Muslim Mindanao’ in A. Özerdem and S. Podder (eds), *Child Soldiers: From Recruitment to Reintegration How Voluntary?* Palgrave Macmillan, 2011, p131

237 Report of the Secretary-General on Children and Armed Conflict, UN doc S/2002/1299, 26 November 2002, §44.

238 *Children and Armed Conflict: Report of the Secretary-General*, UN doc A/58/546- S/2003/1053\*, 10 November 2003, §60.

239 Ibid, p 22.

240 *Children and Armed Conflict: Report of the Secretary General*, UN doc A/59/695- S/2005/72, 9 February 2004, §46.

241 *Children and Armed Conflict: Report of the Secretary-General*, UN doc A/61/529-S/2006/826, 26 October 2006, §94.

242 Ibid.

243 J. Mantawil, *Children in War: The MILF Perspective*. Statement made during the Mindanao Interfaith Forum on Children, ‘In the Pursuit of Peace for and With the Children of Mindanao’, n.d., [http://theirwords.org/media/transfer/doc/ph\\_milf\\_biaf\\_2006\\_07-1928502f7e35d97e33d2509b2f22cedc.pdf](http://theirwords.org/media/transfer/doc/ph_milf_biaf_2006_07-1928502f7e35d97e33d2509b2f22cedc.pdf) (last accessed 9 June 2022).

It is not clear whether this statement indicates a change in policy on the part of the MILF. In relation to the first point, ‘war efforts’ are not defined. In relation to the second point, the situation of orphans is not discussed.

As noted in section 4 above, also in 2006 the MILF issued General Order No. 2, which amended Article 36 of its Code of Conduct covering recruitment into its forces. As noted by Earnshaw and Magon, this amendment took place in the context of engagement by child protection actors such as UNICEF.<sup>244</sup> Relevant provisions are as follows:

3. Recruitment for regular membership in the BIAF preference shall be given to those ...above eighteen (18) years of age at the time of his admission.
4. No child shall be admitted into the BIAF.
5. The general staff of the BIAF shall take feasible measures to ensure protection and care of children who are affected by the armed conflict.<sup>245</sup>

It is noteworthy that, unlike the amendments to the rules of engagement that were also introduced under General Order No. 2, the new rules were expressed without Islamic references.<sup>246</sup> According to someone familiar with the introduction of these rules, they came about after a lengthy debate within the movement about the minimum age for recruitment: ‘While this new age limit of 18 could not be derived from the law of war in Islam, the ulama council found that it was not against IHL and could be justified as there had been changes in society since the time of the Sahaba (companions of the Prophet).’<sup>247</sup>

According to an academic who analysed the MILF’s evolving approach to the use and recruitment of children as a case study, the major change of policy that occurred at the time could be attributed to ‘legitimacy-seeking’ on the part of the movement.<sup>248</sup>

In August 2009 the MILF entered into an Action Plan with the UN with the stated aim of ending the use and recruitment of children. The key provision (2.1) was: ‘The Moro Islamic Liberation Front (MILF) commits specifically to implement effectively the following provisions: a) To prevent the recruitment of children, male and/or female, under the age of 18 and to ensure the release and reintegration of those who may be found in the BIAF in accordance with the action plan laid out herein, to be finalized by 1st August 2009.’<sup>249</sup>

The plan was valid for a 12-month period from its signature. The MILF leadership issued a Supplemental General Order to operationalize its undertakings within the ranks of the

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244 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29, p 3.

245 General Order No. 2, supra fn 48.

246 Earnshaw and Magon, ‘Engaging Ulama in the Promotion of International Humanitarian Law’, supra fn 29, p 3.

247 Sheikh Loderson ‘Mahir’ Gustaham, quoted in *ibid*, p.3

248 H. Jo, *Compliant Rebels*, supra fn 5.

249 Art 2.1, Action Plan Between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines, supra fn 68.

organization. Reference was made to Article 36 of the Code of Conduct – as introduced by General Order No. 1 and amended by General Order No. 2 – which the Supplemental General Order was described as ‘clarifying’. The main provisions read as follows:

No child shall be admitted into the BIAF.

The BIAF shall not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

The BIAF shall ensure that persons under the age of 18 years who were recruited or used in hostilities are officially released from service. The BIAF shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities. Internally displaced persons shall be protected against discriminatory practices of recruitment into the BIAF or other groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.<sup>250</sup>

The order also specifies sanctions for non-compliance including one or a combination of ‘dismissal from the service, a fine of Php 3,000, and imprisonment of 3 months’ for recruiting, using or permitting children to be used in hostilities. The order also provides for the establishment of Child Protection Units within the MILF-BIAF.<sup>251</sup>

In 2011 it was reported that a rapid registration of children in or associated with the MILF had taken place in 18 MILF base commands, and that preliminary unverified results indicated that 432 children (366 boys and 66 girls) might have been associated with the MILF and that the process of registration would continue in the remaining camps. It was also reported that the UN and MILF agreed to extend the Action Plan agreement for an additional 12 months.<sup>252</sup> However, according to a later UNICEF report, this did not happen and there was a temporary cessation of activities.<sup>253</sup> UN reports in this period continued to find evidence of continuing

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250 Supplemental General Order for General Order Nos. 1 & 2; and in Support of the Action Plan Between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines Regarding the Issue of Recruitment and Use of Child Soldiers in the Armed Conflict in Mindanao, [http://theirwords.org/media/transfer/doc/1\\_ph\\_milf\\_biaf\\_2009\\_14-ccc4b2a59bb14cc91824e4ffb35f6591.pdf](http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2009_14-ccc4b2a59bb14cc91824e4ffb35f6591.pdf) (last accessed 9 June 2022).

251 Ibid.

252 Children and Armed Conflict: Report of the Secretary-General, UN doc A/65/820– S/2011/250, 23 April 2011, §21.

253 UN and the MILF, Children in Armed Conflict, supra fn 230, p xiii.

use and recruitment of children by the MILF including in military functions,<sup>254</sup> and also noted the killing and maiming of children in encounters with the government.<sup>255</sup>

The extended Action Plan lapsed in July 2011 and there was a delay in signing an addendum, and the Secretary-General's report noted that there was 'a significant delay in its implementation' but that 'the (MILF) continued to express commitment in principle to the action plan'.<sup>256</sup> According to UNICEF at this time:

The focus on the Action Plan shifted away from registering children already associated with the armed group to raising awareness on preventing recruitment and establishing a workable complaints mechanism in case recruitment was to occur. At the community level, a partnership between UNICEF and the Bangsamoro Development Agency saw the establishment of Community-based Child Protection Networks in conflict-affected areas. It was envisaged that supporting communities to conceptualise and 'own' the protective environment in MILF-controlled areas would be invaluable to the goal of longer-term social and attitudinal behaviour change.<sup>257</sup>

The following year it was noted in the Secretary-General's report that the MILF signed an addendum on extension on 29 April 2013 but that it had not formally responded to communications about 'the development of an operational plan outlining practical steps towards action plan implementation'.<sup>258</sup> According to a later UNICEF study, 'Action Plan implementation again stalled due to the political and conflict situation, with a general slowdown in the engagement between UNICEF and MILF likely owing to the complexities of the overarching peace process with the Government'.<sup>259</sup>

#### **In June 2014 the UN Secretary-General noted:**

the MILF leadership reappointed a panel to engage with the United Nations on a roadmap to expedite implementation of the action plan to end and prevent the recruitment and use of children and took a number of important steps, notably that of appointing focal points in all of its base and front commands, displaying command orders prohibiting the recruitment and use of children, including sanctions against perpetrators, facilitating orientations on the roles and responsibilities of BIAF members vis-à-vis the action plan, and submitting progress

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254 Children and Armed Conflict: Report of the Secretary-General, supra fn 149, §147;

Children and Armed Conflict: Report of the Secretary-General, UN doc A/67/845\*- S/2013/245\*, 15 May 2013, §188.

255 Children and Armed Conflict: Report of the Secretary-General, supra fn 149, §149;

Children and Armed Conflict: Report of the Secretary-General, 15 May 2013, supra fn 251, §193.

256 Children and Armed Conflict: Report of the Secretary-General, 15 May 2013, supra fn 251, §197.

257 UN and MILF, Children in Armed Conflict, supra fn 230, p xiii.

258 Children and Armed Conflict, Report of the Secretary-General, UN doc A/68/878-S/2014/339, 15 May 2014, §199.

259 Action Plan between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines, supra fn 68, p xiii.

reports to the United Nations every two months. MILF has also guaranteed unhindered access for action plan-related activities, including verification exercises.<sup>260</sup>

In addition, the UN, in partnership with the MILF-aligned Bangsamoro Development Agency, ‘established 16 community-based child protection networks in conflict-affected communities in Mindanao to strengthen their capacity to prevent and respond to all forms of child rights violations’.<sup>261</sup>

The following year the UN highlighted ‘significant progress’ in the implementation of the action plan and that ‘the majority of the benchmarks have been reached and ...[MILF] leaders agreed on the steps required to identify and disengage any children associated with it’.<sup>262</sup>

In December 2017, satisfied that the MILF had met its obligations under its Action Plan, the UN removed it from its list of grave violators.<sup>263</sup> During the period from when the Action Plan was first signed to delisting, it was reported that the MILF had disengaged 1,869 children from its ranks.<sup>264</sup> According to a UN official involved in the engagement of the MILF on this issue, the Secretary-General’s listing was a ‘strong instrument to root out practices like recruiting child soldiers’ that shamed the MILF and others into changing their ways.<sup>265</sup>

#### 4. THE PROTECTION OF EDUCATION

Under customary IHL,<sup>266</sup> children affected by armed conflict are entitled to respect and protection. This includes notably access to education, food and health care. Under Article 4(3)(a) of AP II, children shall be provided with the care and aid they require, and in particular ‘they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care’. In addition, schools are considered to be civilian objects and are thus protected against attacks, unless they are used for military purposes and become lawful military objectives.

Under the principle of precaution, parties to armed conflict, including ANSAs must take constant care, in the conduct of military operations, to spare civilian objects, including schools. In addition, all feasible precautions must be taken to avoid, and in any event to

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260 Children and Armed Conflict: Report of the Secretary-General, UN doc A/69/926-S/2015/409, 5 June 2015, §251.

261 Ibid, §252.

262 Children and Armed Conflict: Report of the Secretary General, UN doc A/70/836-S/2016/360, 20 April 2016, §208.

263 UNICEF, ‘UN Officials Congratulate MILF for Completion of Disengagement of Children From Its Ranks’, 4 December 2017, <https://www.unicef.org/philippines/press-releases/un-officials-congratulate-milf-completion-disengagement-children-its-ranks> (last accessed 9 June 2022).

264 Children and Armed Conflict in the Philippines: Report of the Secretary-General, UN doc S/2020/777, 4 August 2020, §18.

265 A. Rock, ‘The UN Should Stop Playing Politics With Children’s Lives’, Al Jazeera, 5 April 2021, <https://www.aljazeera.com/opinions/2021/4/5/the-un-should-stop-playing-politics-with-childrens-lives>.

266 Rule 135, ICRC CIHL Database, supra fn 96.

minimize, incidental damage to schools. In light of this principle, the use of functioning schools for military purposes must be avoided unless it is done for imperative military reasons.<sup>267</sup>

According to an INGO staff member interviewed for this report, education is very important to the MILF. The movement is considered to be very conscious that ‘social transformation happens through education’ but also that such education needs to be inculcated with spiritual guidance that promotes the right values and facilitates ‘moral governance’.<sup>268</sup> This observation is borne out by one of the provisions in the MILF’s 2006 statement on children in war:

**3.** The rightful place of children, being in tender ages, must be in schools to prepare them for the future either as leaders of the community or as good, law-abiding, and productive members.<sup>269</sup>

MILF forces have been considered responsible for attacks on schools. In 2008 the MILF was implicated in an attack on Kolambugan town in Lanao Del Norte that led to 28 children (amongst over 100 residents) being held hostage and 5 classrooms in a school being destroyed.<sup>270</sup> In his report on children and armed conflict covering 2011 the UN Secretary-General attributed six attacks on schools or hospitals to MILF forces – unfortunately, data as to which type of institution was subject to attack was not disaggregated.<sup>271</sup>

According to a staff member of an INGO, MILF forces mainly targeted schools that were occupied by the military.<sup>272</sup> It was contended by an MILF leader that this would happen only if the attackers were assured of the absence of children and teachers. The view was that in

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267 Rules 7 and 15, *ibid.* See also the Guidelines for Protecting Schools and Universities From Military Use During Armed Conflict, [http://protectingeducation.org/wp-content/uploads/documents/documents\\_guidelines\\_en.pdf](http://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf) (last accessed 9 June 2022): ‘Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in anyway in support of the military effort. (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods. (b) Parties to armed conflict should neither use force nor offer incentives to education administrators to evacuate schools and universities in order that they can be made available for use in support of the military effort.’ The Guidelines as well as the Safe Schools Declaration are non-binding instruments through which a number of states have expressed political support for and a commitment to protecting education in armed conflict. See Global Coalition to Protect Education from Attack, ‘Safe Schools Declaration and Guidelines on Military Use’, <https://protectingeducation.org/gcpea-publications/safe-schools-declaration-and-guidelines-on-military-use/> (last accessed 9 June 2022).

268 Interview with INGO manager, 30 January 2020.

269 Mantawil, ‘Children in War’, *supra* fn 240.

270 Children and Armed Conflict: Report of the Secretary-General, UN doc A/63/785– S/2009/158, 26 March 2009, §124.

271 Children and Armed Conflict: Report of the Secretary-General, *supra* fn 149, §151.

272 Interview with INGO staff member, 26 July, 2019; interview with international organization manager, 17 July 2019.

such instances the school would be a military target and therefore any damage to the buildings would count as being collateral in nature.<sup>273</sup>

An interviewee noted that schools have differing levels of vulnerability depending on location.<sup>274</sup> An MILF commander suggested that schools and their staff were sometimes caught in the crossfire<sup>275</sup> or damaged as a result of community-level disputes.<sup>276</sup>

There were few allegations of the occupation of schools by MILF forces, although the UN Secretary-General identified an instance in 2006.<sup>277</sup> In 2011 MILF forces were accused of seizing and occupying a school in Zamboanga Sibugay.<sup>278</sup>

As mentioned above, the MILF is supportive of education and it has been noted that many of the children that were associated with the movement attended school.<sup>279</sup> The Committee on Da'wah played a role in encouraging parents to make sure that children went to school.<sup>280</sup>

The MILF did not run schools itself – formal education remained the preserve of the state system. It did, however, have an Tarbiyah (Education) Committee which mainly focused on coordinating early learning with other bodies.<sup>281</sup> The MILF facilitated a UNICEF-led project in its area that included the training of *tahderiyyah* (kindergarten) teachers and the development of an Islamic kindergarten curriculum, and led the recognition by the Department of Education of the *tahderiyyah* as a form of kindergarten.<sup>282</sup> MILF representatives were on the Project Advisory Panel that steered this project and ‘their keen interest in the project and its expansion to more communities’ was noted by the Australian Government who funded it.<sup>283</sup>

## 5. HUMANITARIAN ACCESS

Common Article 3, Paragraph 2 of the 1949 Geneva Conventions provides that ‘an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its

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273 Interview with MILF leader, 16 July 2019.

274 Interview with INGO manager, 30 January 2020.

275 Interview with members of MILF Committee on Tarbiyah, 27 January 2020.

276 Interview with international organization manager, 17 July 2019.

277 Report of the Secretary-General on Children and Armed Conflict in the Philippines, *supra* fn 229, §35.

278 ‘8 Killed, 11 Hurt in Fresh Attacks Blamed on MILF, GMA News Online, 23 October 2011, <https://protectingeducation.org/news/8-killed-11-hurt-in-fresh-attacks-blamed-on-milf/>.

279 Interview with international organization manager, 17 July 2019.

280 Interview with MILF Social Welfare Committee member, 31 January 2020.

281 Interview with international organization manager, 17 July 2019.

282 UNICEF, Towards the Expansion of the Implementation of Islam-Responsive Kindergarten Curriculum in Public Schools, Tahderiyyah and Private Madaris and Children Associated with Armed Forces and Armed Groups: Implementing the UN-MILF Action Plan Progress Report 1 May 2011 to 30 April 2012, p 6, <https://www.dfat.gov.au/sites/default/files/beam-armm-annual-report.pdf> (last accessed 9 June 2022).

283 *Ibid*, p 11.

services to the Parties to the conflict'. This provision has been considered to be one of the legal bases on which humanitarian organizations, other than the ICRC, may provide humanitarian relief and protection to people in need. Under customary IHL, the parties to an armed conflict 'must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control'.<sup>284</sup> Humanitarian relief personnel and objects must be respected and protected.<sup>285</sup>

The Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001 include a provision where the government and the MILF agreed to 'cooperate fully with the International Committee of the Red Cross (ICRC) to facilitate its work in accordance with its mandate, ensuring full access to such persons, irrespective of their status, wherever they might held, for visits in accordance with ICRC's standard operating procedures'.<sup>286</sup>

The 2009 Agreement on the Civilian Protection Component of the International Monitoring Team<sup>287</sup> contains two provisions particularly relevant to humanitarian access, as the parties committed themselves to:

- c) Take all necessary actions to facilitate the provision of relief supplies to affected communities;
- e) Ensure that all protective and relief actions shall be undertaken in a purely non-discriminatory basis covering all affected communities.

A humanitarian access analysis undertaken in 2019 found that the Philippines was a context with low access constraints though insecurity and physical constraints in Mindanao sometimes limited access.<sup>288</sup>

Humanitarian actors indicated that the MILF was generally facilitative of humanitarian access.<sup>289</sup> Access was generally good even in instances where there were spikes in the conflict.<sup>290</sup> Humanitarian actors mentioned that the MILF had been instrumental in opening

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284 Rule 55, ICRC CIHL Database, *supra* fn 96.

285 Rules 31 and 32, *ibid*.

286 Art IV, Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001, *supra* fn 40.

287 Art 1, Agreement on the Civilian Protection Component of the International Monitoring Team, *supra* fn 66.

288 'Humanitarian Access overview', ACAPS, March 2018, [https://www.acaps.org/sites/acaps/files/products/files/humanitarian\\_access\\_overview\\_march\\_2018\\_acaps.pdf](https://www.acaps.org/sites/acaps/files/products/files/humanitarian_access_overview_march_2018_acaps.pdf) (last accessed 9 June 2022).

289 Interview with international organization manager, 17 July 2019; interview with international organization manager, 27 January 2020.

290 ICRC, 'Philippines: Red Cross Escorts Civilians Out of Combat Zone on Mindanao', 22 August 2008, <https://www.icrc.org/en/doc/resources/documents/news-release/2009-and-earlier/philippines-news-220808.htm> (last accessed 9 June 2022).

and maintaining humanitarian corridors.<sup>291</sup> It was apparent that coordination between the government and the MILF through the ceasefire mechanisms facilitated access.<sup>292</sup> During the spike in fighting in 2008 there had been allegations by the military of the diversion of assistance<sup>293</sup> but actors familiar with the situation in recent years did not highlight this as an issue.<sup>294</sup>

MILF leaders and members interviewed for this project generally had a good understanding of the neutrality and impartiality of humanitarian actors,<sup>295</sup> though knowledge of the legal framework governing access was more limited.

In a study undertaken by Geneva Call, the MILF indicated that assistance in the areas under its control should 'be needs based and appropriately monitored'. It was noted that the 'MILF feels it is both its duty to regulate the passage of these agencies and its right to know how their activities would benefit civilians'.<sup>296</sup> An NGO leader indicated that the MILF generally required information about the agency and its plans and what items were being brought into areas under its control or influence. Procedures varied depending on location with more conservative areas requiring more in-depth negotiations.<sup>297</sup>

According to a minister in the Bangsamoro government, the MILF had not generally provided assistance itself.<sup>298</sup> It did, however, have a Social Welfare Committee that would mobilize in the event of 'calamities'.<sup>299</sup>

## 6. PROTECTION OF HEALTH CARE

Under Common Article 3(2) of the 1949 Geneva Conventions, the 'wounded and sick' shall be collected and cared for. As stipulated in Article 7 of AP II, applicable to the conflict between the MILF and the Philippines Government, '[i]n all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones'.

Medical personnel, facilities and transports that are exclusively assigned to medical purposes must be respected and protected in all circumstances, although they lose such protection if

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291 Interview with international organization manager, 17 July 2019.

292 Interview with Bangsamoro minister, 28 January 2020.

293 Amnesty International, *Shattered Lives*, supra fn 147, p 45.

294 Interview with international organization manager, 17 July 2019.

295 E.g., interview with Bangsamoro minister, 28 January 2020.

296 Geneva Call, *In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action*, May 2016, p 17, [https://www.genevacall.org/wp-content/uploads/2019/05/WHS\\_Report\\_2016\\_web.pdf](https://www.genevacall.org/wp-content/uploads/2019/05/WHS_Report_2016_web.pdf) (last accessed 9 June 2022).

297 Interview with NGO leader, 9 July 2019.

298 Interview with Bangsamoro minister, 28 January 2020.

299 Interview with NGO leader, 9 July 2019.

they carry out or are used to commit acts harmful to the enemy.<sup>300</sup> Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.<sup>301</sup>

In 2003 the MILF's founding Chairman, Salamat Hashim, made a statement where he asserted that the MILF 'is governed by basic rules of war, including treating the wounded enemy, not harming those who surrender'.<sup>302</sup>

Three relevant provisions (or elements thereof) were incorporated into the MILF's Code of Conduct by General Order No. 2:

4. Wounded enemy combatants – Never betray or be treacherous or vindictive. Do not mutilate...(Al-Hadith).

...

6. ...Collect and care for wounded combatants (Al Insan: 5-9).

7. Medical or distinctive signs – Respect personnel and facilities or persons bearing an object marked with signs as Red Cross or Red Crescent, including religious persons, military or civilians carrying white flag used for negotiations, truce or surrender.<sup>303</sup>

Although the incorporation of these rules into the Code of Conduct was seen by some within the MILF as clarifying the rules around injured enemy combatants, there have been allegations that the MILF summarily executed injured troops. In a high-profile incident in January 2015, 44 Police Special Action Force (SAF) personnel were killed in an encounter with fighters in Mamasapano. It was later established that fighters were from the MILF and other entities such as the BIFF, and private armed groups were involved. There were allegations that some of the troopers – included those who were wounded – were captured during the confrontation and then summarily killed.

The MILF set up a Special Investigative Commission that found that its forces had not been responsible for IHL violations. The IMT undertook an investigation into the incident and found that around 16 of the SAF troopers had received final shots or blows at close range. However, it was not able to establish whether the MILF had been responsible for any or all of these killings because, as mentioned above, there had been other different armed actors involved in the encounter.<sup>304</sup>

In his report on children and armed conflict covering 2011 the UN Secretary-General attributed six attacks on hospitals or schools to the MILF – as mentioned in the section 5D,

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300 Rules 25, 28 and 29, ICRC CIHL Database, supra fn 96.

301 Rule 30, *ibid.*

302 Hashim, 'Message to All Peace-Loving People, From the MILF Leadership', supra fn 37, p 384.

303 General Order No. 2, supra fn 48.

304 IMT Verification and Assessment Report, Ceasefire Violations Mamasapano Incident, submitted on 6 April 2015, cited in Santos, 'Jihad and International Humanitarian Law', supra fn 37, pp 382–384.

data on which type of institution was subject to attack was not disaggregated.<sup>305</sup> There were also instances where local-level facilities were damaged in fighting, though not targeted as such.<sup>306</sup> A well-respected analyst interviewed for this report was not aware of the MILF recently targeting health facilities, confiscating medicine, firing on ambulances or kidnapping or targeting personnel.<sup>307</sup> Another observer had not heard of instances where the MILF had used medical facilities for military purposes.<sup>308</sup>

In terms of health care within the MILF, a Health and Dental Department was responsible for providing treatment to BIAF members, particularly those who were sick or wounded in relation to the armed conflict. According to an MILF health-care official, medics would also sometimes provide care to wounded enemy soldiers and civilians.<sup>309</sup>

MILF interviewees indicated that the structure was such that there should have been medics within each battalion,<sup>310</sup> though there was scepticism from some observers as to whether this was actually the case in practice.<sup>311</sup> It was acknowledged that medical services were rudimentary, such as dealing with flesh wounds and the removal of bullets that were not located near vital organs, and that only first aid and very simple surgery could be provided. Those seriously sick or wounded might be sent to a nearby government hospital. Relatives of sick or injured civilians would be expected to arrange the transport for such transfers.<sup>312</sup> They would look to transfer wounded soldiers back to the army.<sup>313</sup>

The MILF medical staff were drawn from the BIAF. All BIAF members were trained in first aid, as well as in firearms and physical fitness. Those who showed capacity would become part of the set-up of the Health and Dental Department. Women were drawn from the BIWAB in the same way and received the same training as the men.<sup>314</sup> Medics received training in first aid from the ICRC, and the Malaysian-led IMT, which monitored the ceasefire, also provided some input on medical care. Patients would generally receive care from personnel of their sex. Only male medics would accompany BIAF fighters on military operations.<sup>315</sup>

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305 Children and Armed Conflict: Report of the Secretary-General, supra fn 149, §151.

306 Interview with INGO manager, 26 July 2019.

307 Interview with analyst, 16 July 2019.

308 Interview with NGO manager, 16 July 2019.

309 Interview with senior MILF health official, 28 January 2020.

310 Ibid.

311 Interview with analyst, 16 July 2019.

312 Interview with senior MILF health official, 28 January 2020.

313 Ibid.

314 Ibid.

315 Ibid.

The MILF did not use protected emblems,<sup>316</sup> though medics would often wear a specific badge on their uniforms. However, the badge was very small and unlikely to be seen during combat.<sup>317</sup> Medics were only permitted to take pistols on military operations.<sup>318</sup>

According to a Senior MILF health official, the medics were instructed to prioritize life-saving interventions, regardless of whether the patient was from the MILF, a detainee from government forces or a civilian.<sup>319</sup> For other interventions they would prioritize MILF fighters, then civilians, while government soldiers were given the least priority.<sup>320</sup>

Informed observers doubted that medical care had been systematically provided to detained enemy soldiers<sup>321</sup> and considered that the provision of care to civilians was uncommon, given the availability of better care elsewhere.<sup>322</sup>

## 7. THE PROHIBITION OF FORCED DISPLACEMENT

IHL prohibits the forced displacement of civilians ‘unless the security of the civilians is involved or imperative military reasons so demand’.<sup>323</sup> It also provides that in case of displacement, all possible measures shall be taken to ensure that the displaced persons are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.<sup>324</sup> Displaced persons have a right to return to their homes as soon as the reason for their displacement ceases to exist and security allows.<sup>325</sup>

MILF internal rules do not contain provisions specifically related to most aspects of displacement. The Supplemental General Order to General Order Nos. 1 and 2 did include a provision whereby IDPs should be ‘protected against discriminatory practices of recruitment

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316 Ibid; interview with international organization manager, 17 July 2019; interview with analyst, 16 July 2019.

317 Interview with senior MILF health official, 28 January 2020.

318 Ibid.

319 Ibid; interview with MILF leader, 16 July 2019.

320 Interview with senior MILF health official, 28 January 2020.

321 Interview with analyst, 16 July 2019; interview with academic, 15 July 2019.

322 Interview with civil society organization leader, 15 July 2019.

323 Art 17, AP II; Rule 129, ICRC CIHL Database, supra fn 96.

324 Rule 131, ICRC CIHL Database, supra fn 96.

325 Rule 132, ibid.

into the BIAF or other groups as a result of their displacement'.<sup>326</sup> It was noted in a Geneva Call study that this provision goes beyond existing legal and normative standards.<sup>327</sup>

Agreements with the government do contain provisions relevant to displacement. In the 2001 Agreement on the General Framework for the Resumption of Peace Talks Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front the parties agreed 'to undertake relief and rehabilitation measures for evacuees'.<sup>328</sup> In the Tripoli Agreement that followed shortly afterwards the parties agreed to the 'protection of evacuees and displaced persons in the conduct of their relations'.<sup>329</sup>

Large numbers of people have been displaced during the MILF's conflict with the GPH, with between 700,000 and a million persons displaced at its height around 2000.<sup>330</sup> It was noted that displacements were often from outlying areas to central areas of municipalities, which were generally considered to be safer.<sup>331</sup> A Geneva Call study noted that military operations frequently resulted in internal displacement, especially of families of MILF members who often constituted a significant proportion of IDPs.<sup>332</sup> It was asserted that, in many instances, the MILF warned civilians of the risk of impending attack and advised them to leave.<sup>333</sup> Although this was usually on the basis of persuasion, it was acknowledged that coercion would sometimes be employed if the danger was particularly grave.<sup>334</sup>

There were allegations that the MILF and others involved in the conflict forcibly displaced civilians. For instance, in May 2009 in the Municipality of Kalamansig in Sultan Kudarat, where the MILF reportedly burned at least 30 houses in a banana plantation reportedly owned by a politician in North Cotabato. The MILF fighters were also accused of burning several pieces of heavy equipment and stealing horses and buffaloes.<sup>335</sup> Employing the tactic of burning houses, the MILF (and other armed actors) were also accused of deliberately looking to prevent the return of displaced people.<sup>336</sup>

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326 Supplemental General Order for General Order Nos. 1 & 2, *supra* fn 247.

327 Geneva Call, *Armed Non-State Actors and Displacement in Armed Conflict*, October 2013, p 25, <https://www.genevacall.org/wp-content/uploads/2019/02/Armed-non-State-actors-and-displacement-in-armed-conflict1.pdf> (last accessed 9 June 2022).

328 2001 Agreement on the General Framework for the Resumption of Peace Talks Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, 24 March 2001, <https://www.peaceagreements.org/view/282> (last accessed 9 June 2022).

329 Section B(1), Agreement on Peace Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, *supra* fn 21.

330 Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on His Mission to the Philippines, UN doc A/HRC/32/35/Add.3, 5 April 2016, p 3.

331 Interview with staff of international organization, 29 January 2020.

332 Geneva Call, *Armed Non-State Actors and Displacement in Armed Conflict*, *supra* fn 324.

333 Interview with academic, 15 July 2019.

334 Interview with Bangsamoro minister, 15 July 2019.

335 Amnesty International, *Shattered Lives*, *supra* fn 147, p 52.

336 *Ibid*, p 40.

A Geneva Call study found that, in some instances, the MILF facilitated the movement of civilians, with its women's wing in particular playing a role in facilitating evacuations. The study notes that these displacements would be lawful if undertaken for imperative military reasons and with the intention to protect civilians.<sup>337</sup> Although MILF interviewees said that members of the movement would not accompany the movement of civilians, as it would put civilians at risk,<sup>338</sup> there were instances when the BIWAB had done so.<sup>339</sup>

In relation to the return of the displaced to MILF-controlled areas, it was noted by an analyst that there were usually no restrictions on return. He noted that family of MILF members were usually the first to return but would be followed by others.<sup>340</sup> It was noted by a former senior MILF official that during the conflict there might be instances when those considered to be 'enemies' were not allowed to return, though details as to who would be defined as such and the extent of the practice were not provided.<sup>341</sup>

## 8. USE OF LANDMINES AND OTHER EXPLOSIVE DEVICES

The use of landmines – both AP and anti-vehicle (AV) – is not prohibited per se under customary IHL. However, when landmines are used, particular care must be taken to minimize their indiscriminate effects.<sup>342</sup> In addition, parties to the conflict using landmines must record their placement, as far as possible.<sup>343</sup> At the end of active hostilities, they must also remove or otherwise render them harmless to civilians or facilitate their removal.<sup>344</sup> Although the elimination of AP landmines is not considered customary law yet, more than three-quarters of states today are parties to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

The first statement of MILF policy in relation to AP mines was issued in 2000. In it the MILF committed to a prohibition on the indiscriminate use of such devices, various restrictions on their use, stockpiling, production and transfer and mapping of when they were utilized.<sup>345</sup> In March 2000 the MILF committed to a ban on AP mines by signing the Geneva Call Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in

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337 Geneva Call, *Armed Non-State Actors and Displacement in Armed Conflict*, supra fn 324, p 12.

338 Interview with academic, 15 July 2009.

339 Interview with BIWAB members, 19 July 2019; interview with NGO leader, 27 January 2020.

340 Interview with analyst, 16 July 2019.

341 Interview with Bangsamoro minister, 28 January 2020.

342 Rule 81, ICRC CIHL Database, supra fn 96.

343 Rule 82, *ibid*.

344 Rule 83, *ibid*.

345 Moro Islamic Liberation Front–MILF, *Internal Regulations on Use, Stockpiling, Production and Transfer of Anti-Personnel Mines*, 21 March 2000, [http://theirwords.org/media/transfer/doc/ph\\_milf\\_biaf\\_2000\\_01-ae9e9486eb35d748abbe66a69e240fdc.pdf](http://theirwords.org/media/transfer/doc/ph_milf_biaf_2000_01-ae9e9486eb35d748abbe66a69e240fdc.pdf) (last accessed 9 June 2022).

Mine Action which included a commitment to a prohibition on the use, development, production, acquisition, stockpiling, retention and transfer of such devices.<sup>346</sup>

In 2000 and 2001, the Armed Forces of the Philippines (AFP) accused the MILF of planting improvised mines around its camps in Mindanao. The group responded that the incidents may have been caused by unexploded ordnance (UXO) dropped by the AFP and called for an independent investigation. A subsequent verification mission conducted by Geneva Call revealed that the MILF had misconceptions regarding the types of mines covered by its recent ban because of confusion regarding the concept of ‘command detonation’. The MILF admitted to having used ‘string-pulled’, improvised devices for the defence of its camps against attacks by the AFP. The MILF viewed the use of such devices, in trip-wire mode and in no-man’s land zones where civilians are forewarned, as consistent with the Deed of Commitment. However, the devices used by the MILF were not electronically detonated and, when they were left behind by fighters after withdrawal, they became potentially victim-activated, which would mean they were prohibited under the Deed of Commitment. After discussion, the MILF agreed to no longer employ string-pulled, improvised devices under any circumstances.<sup>347</sup> Following this the wording of the Deed of Commitment was amended to ensure clarity on this point and the MILF became the first signatories of the revised version.<sup>348</sup>

In 2008, during a spike in the conflict, another spate of allegations of AP mine use was made against the MILF. Geneva Call again sought and secured agreement from the MILF and the government for a verification mission to investigate the allegations, which took place the following year. The mission found that there had been limited AP mine use but, given the presence of several armed actors, was not able to attribute such use to the MILF.<sup>349</sup> The mission recommended that ‘the Mine Ban in general and the *Deed of Commitment* in particular are incorporated into relevant materials provided to MILF forces (e.g. reissuing of the order banning AP mines, incorporation of the mine ban into the BIAFs Code of Conduct)’.<sup>350</sup>

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346 Geneva Call, *Seeking Rebel Accountability: Report of the Geneva Call Mission to the MILF in the Philippines 2–8 April 2002*, 2002, Appendix 3; Geneva Call, *Engaging Non State Actors in a Landmine Ban Progress Report (2000–2007)*, p 5, <https://www.files.ethz.ch/isn/100311/gc-progress-report-07.pdf> (last accessed 9 June 2022).

347 For more details, see Geneva Call, *Seeking Rebel Accountability*, supra fn 343.

348 *Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*, supra fn 41.

349 Geneva Call, *Fact Finding During Armed Conflict: Report of the 2009 Verification Mission to the Philippines to Investigate Allegations of Anti-Personnel Landmine Use by the Moro Islamic Liberation Front*, 2010, [https://www.genevacall.org/wp-content/uploads/dlm\\_uploads/2013/12/Report-of-the-2009-Verification-Mission-to-the-Philippines-to-Investigate-Allegations-of-Anti-Personnel-Landmine-Use-by-the-Moro-Islamic-Liberation-Front.pdf](https://www.genevacall.org/wp-content/uploads/dlm_uploads/2013/12/Report-of-the-2009-Verification-Mission-to-the-Philippines-to-Investigate-Allegations-of-Anti-Personnel-Landmine-Use-by-the-Moro-Islamic-Liberation-Front.pdf) (last accessed 9 June 2022).

350 *Ibid*, p 40.

In June 2010 the MILF general staff passed a resolution that resolved to incorporate the Deed of Commitment into its Code of Conduct,<sup>351</sup> and in the same month General Order No. 3 – the order to enact this incorporation – was issued.<sup>352</sup>

In 2008 the MILF also signed The Rebel Group Declaration of Adherence to International Humanitarian Law on Landmines, in which it agreed to be bound by rules governing a broader set of mines and other explosive devices as set out in the 1997 Ottawa Treaty; the 1996 Amended Protocol II on Mines, Booby-Traps and Other Devices of the Convention on Certain Conventional Weapons (CCW); the 2003 Protocol V on Explosive Remnants of War (ERW) of the CCW and the section on landmines contained within the ICRC study on customary IHL.<sup>353</sup>

The GPH and the MILF agreed to facilitate a project by the Fondation Suisse de Deminage (FSD) and the Philippine Campaign to Ban Landmines (PCBL) to clear mines and UXO in 2007.<sup>354</sup> The Annex on Normalization to the 2014 Comprehensive Agreement on the Bangsamoro (CAB) contained a provision entitled Landmines and Unexploded Ordnance, which committed the parties to uphold the abovementioned Deed of Commitment signed by the MILF and to undertake and facilitate mine action work including mine detection and clearance and mine-risk education.<sup>355</sup> In 2021 the PCBL/FSD project was ongoing.<sup>356</sup>

## 9. DETENTION, FAIR TRIAL AND ADMINISTRATION OF JUSTICE

### A. TREATMENT OF PERSONS IN DETENTION

Common Article 3 of the 1949 Geneva Conventions, Articles 4 and 5 of AP II, as well as customary IHL provide numerous rules concerning the treatment of persons in detention, notably the prohibition of ill-treatment, the provision of food and water and safeguards with regards to health and hygiene. Generally, persons deprived of their liberty are ‘entitled to respect for their person, honour and convictions and religious practice’ and ‘shall in all circumstances be treated humanely, without any adverse distinction’.<sup>357</sup> ICRC access to

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351 Resolution Adopted by the General Staff (GS) Incorporating into the Code of Conduct of the Bangsamoro Islamic Armed Forces the Pledges of the Moro Islamic Liberation Front Under the Geneva Call’s ‘Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action, 27 June 2010, [http://theirwords.org/media/transfer/doc/sc\\_ph\\_milf\\_biaf\\_2010\\_04-33aefa5044f7d811ec5f7b80236b2f00.pdf](http://theirwords.org/media/transfer/doc/sc_ph_milf_biaf_2010_04-33aefa5044f7d811ec5f7b80236b2f00.pdf) (last accessed 9 June 2022).

352 General Order No. 3, supra fn 69.

353 Santos, ‘Jihad and International Humanitarian Law’, supra fn 37, p 387.

354 Guidelines for the Implementation of the Philippine Campaign to Ban Landmines – Fondation Suisse de Deminage (PCBL-FSD) Project Pursuant to the Joint Statement of the GRP-MILF Peace Panels Dated 15 November 2007, 5 May 2010, <https://www.peaceagreements.org/viewmasterdocument/1004> (last accessed 9 June 2022).

355 Annex on Normalization, supra fn 25.

356 Landmine and Cluster Monitor, ‘Philippines Mine Ban Policy’, last updated 17 November 2021, <http://www.the-monitor.org/en-gb/reports/2021/philippines/mine-ban-policy.aspx> (last accessed 9 June 2022).

357 Art 4, AP II.

persons deprived of their liberty is mandatory only in the context of international armed conflicts and, as such, is not an obligation for ANSAs. In the context of a NIAC, and according to Common Article 3, the ICRC ‘may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families’.<sup>358</sup> According to the ICRC study on customary IHL, persons deprived of their liberty in relation to a NIAC must be released as soon as the reasons for their detention cease to exist.

It should be noted that ‘unjustified arrest’ was one of the ‘prohibited hostile acts’ listed in the Implementing Guidelines on the Security Aspect of the GRP–MILF Tripoli Agreement of Peace.<sup>359</sup>

The 2006 amendment made by General Order No. 2 to Article 34 of the MILF’s Code of Conduct has two relevant provisions:

5. Surrendered enemy combatants – Maintain and observe justice at all times and avoid blind retaliation. Protect and treat them humanely (Al–Maaidah: 8).

6. Prisoners of war or captives – Be kind at all times to captives or prisoners of war...(Al Insan: 5–9).<sup>360</sup>

In terms of actual practice, an MILF leader described the capture of large numbers of troops around 2000, which was very much the height of the conflict. He said that they were given food, and, as necessary, first aid and medicine. They were then held at a camp, in separate locations from those detained for other reasons. They were subject to interrogation. He said that those carrying out the interrogations were trained in effective techniques and asserted that torture was not employed.<sup>361</sup>

MILF leaders claimed that captured combatants were never held for long periods. As suggested by the founding Chairman, Salamat Hashim, in 2003, with the facilitation of the ICRC and other agencies, what he termed ‘prisoners of war’ would be returned.<sup>362</sup> In terms of how this happened in practice, we were informed by an MILF commander that information about those detained was passed to the MILF general staff and leadership. The government and other relevant actors were then informed and provided with relevant information as to those being held. Negotiations for release followed.<sup>363</sup>

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358 Rule 124, ICRC CIHL Database, supra fn 96.

359 Art 3.1.1 Implementing Guidelines on the Security Aspect of the GRP–MILF Tripoli Agreement of Peace of 2001, supra fn 39.

360 General Order No. 2, supra fn 48.

361 Interview with MILF commander, 16 July 2019.

362 Hashim, ‘Message to All Peace–Loving People, From the MILF Leadership’, supra fn 37, p 384.

363 Interview with MILF commander, 16 July 2019.

Not only enemy combatants were detained in MILF camps. Others held included MILF personnel who were suspected of transgressions,<sup>364</sup> others suspected of, or being punished for, certain offences where the punishment involved confinement and those with drug problems.<sup>365</sup> We were informed that the latter were sometimes sent by their families in the hope that it would assist their recovery. Such detainees were subject to rules of behaviour and assigned tasks.<sup>366</sup> Any category of detainee that violated the rules could be subject to solitary confinement.<sup>367</sup>

Camp Abubakar, the MILF's main headquarters before its capture by the government in 2000, was described as having several locations where detainees were kept.<sup>368</sup> Detention facilities managed by the respective base commands were also found in many other camps. An NGO manager expressed doubts as to whether the central MILF leadership had full information about who was being detained in such locations and why they were being held.<sup>369</sup> Although most detainees were men, women were sometimes detained and held in a facility staffed by women.<sup>370</sup> According to one observer, children were not detained.<sup>371</sup>

There have been allegations that, rather than being detained, members of government forces were summarily killed by the MILF. In 2011 the MILF in Basilan was alleged to have killed six soldiers it had captured. The MILF asserted that they were killed during combat.<sup>372</sup> The IMT conducted an investigation of the incident, but in line with its terms of reference, confidentially passed its findings to the conflict parties and did not publicly disclose them. The MILF later claimed that the IMT had found that the military had been responsible for 'at least' 10 violations of the ceasefire whilst it had been found responsible for one such violation. It did not disclose what that violation was but said that, as a consequence, three BIAF

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364 Ibid.

365 C. Arguillas, 'Rehabilitating Moro Drug Dependents: "Islamization" as Cure', MindaNews, 11 February 2019, <https://www.mindanews.com/top-stories/2019/02/rehabilitating-moro-drug-dependents-islamization-as-cure/>; K. Bacongco, 'A Closer Look Inside an MILF Detention Facility', Manila Bulletin, 23 August 2018, <https://mb.com.ph/2018/08/23/a-closer-look-inside-an-milf-detention-facility/>.

366 Arguillas, 'Rehabilitating Moro Drug Dependents', supra fn 362. Bacongco, 'A Closer Look Inside an MILF Detention Facility', supra fn 362.

367 Arguillas, 'Rehabilitating Moro Drug Dependents', supra fn 362; Bacongco, 'A Closer Look Inside an MILF Detention Facility', supra fn 362.

368 Interview with MILF commander, 16 July 2019.

369 Interview with INGO manager, 26 July 2019.

370 Interview with MILF commander, 16 July 2019.

371 Interview with NGO leader, 9 July 2019.

372 A. Nawal 'Ceasefire Monitor Asks MILF to Ensure Fair Treatment of POWs- report', INQUIRER.net, 23 October 2011, <https://globalnation.inquirer.net/16215/ceasefire-monitor-asks-milf-to-ensure-fair-treatment-of-pows%E2%80%9494report>.

commanders had been suspended for three months, and had been obliged to undergo education on the ceasefire provisions, human rights and IHL.<sup>373</sup>

MILF interviewees also suggested that Umbra Kato, who went on to form the BIFF, faced disciplinary action for the killing of an unarmed soldier, though the exact circumstances were not clear.<sup>374</sup>

In the 2015 Mamasapano incident (described in section 5F above) the MILF was alleged to have summarily executed captured soldiers. As mentioned, the MILF's Special Investigative Commission found that its forces had not been responsible for IHL violations and an IMT investigation found that whilst summary executions had taken place, it found no evidence that these had been carried out by MILF forces.<sup>375</sup>

## **B. FAIR TRIAL AND ADMINISTRATION OF JUSTICE**

Under customary IHL, '[n]o one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees'.<sup>376</sup> Article 6 of AP II provides further details on fair trial guarantees and the administration of justice.

The rules governing military discipline are contained within the MILF's Code of Conduct.<sup>377</sup> Article 22 describes a military disciplinary board composed of 17 members appointed by the chief of staff with input from the general staff, though in practice the numbers were smaller.<sup>378</sup> The board is described as playing the role of judge advocates general for all cases involving BIAF personnel, apart from the general staff who are subject to discipline by a special committee. The board was tasked with making decisions on disciplinary sanctions, apart from where the death penalty or dismissal from service were recommended, in which circumstances the case was passed to the general staff for review.<sup>379</sup> Article 37 indicates that only transgressions contained in the Code of Conduct could lead to suspension or expulsion and that allegations from complainants should be in writing, signed and sworn.<sup>380</sup> The MILF's Code of Conduct also contains details of what it terms 'war offences and other Disciplinary Acts' that would evoke disciplinary measures. Offences include desertion, disrespect to a

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373 J. S. Alipala and R. Rosauero, 'MILF Reveals Results of Probe into Al-Barka Massacre', INQUIRER.net, 31 March 2012, <https://newsinfo.inquirer.net/170127/milf-reveals-results-of-probe-into-al-barka-massacre#>.

374 Interview with MILF leaders, 17 July 2019.

375 Santos, 'Jihad and International Humanitarian Law', *supra* fn 37, pp 382–384.

376 Rule 100, ICRC CIHL Database, *supra* fn 96.

377 General Order No. 1, *supra* fn 44.

378 Interview with MILF leader, 30 January 2020.

379 General Order No. 1, *supra* fn 44.

380 *Ibid*.

superior, mutiny and sedition. Maximum punishments in monetary and length of sentence are set out.<sup>381</sup>

The board worked from the MILF's headquarters at Camp Darapanan.<sup>382</sup> Although the Code of Conduct indicates the disciplinary board was very much an internal mechanism, MILF leaders claimed that complaints could also be made by those outside the organization.<sup>383</sup>

There was no information indicating that captured enemy combatants were ever tried by the MILF – either by the disciplinary boards or other means. Generally, the disciplinary board considered alleged infractions by BIAF members and disputes between them.<sup>384</sup> One of the major issues considered was the alleged involvement of BIAF members in family feuds.<sup>385</sup> The MILF also created a task force to handle such cases. It was composed of representatives from the disciplinary court, the Sharia court, BIAF and administrative staff. The purpose of the task force was to foster reconciliation rather than to issue sanctions.<sup>386</sup>

According to the Code of Conduct, civil cases involving BIAF members would be considered within the (separate) Sharia court system, which was mainly – but not exclusively – used for settling disputes between civilians.<sup>387</sup> The Sharia courts have been popular in resolving civil disputes in MILF areas, not least because of the slow speed of the government courts.<sup>388</sup> In the past there had also been a civil-military tribunal.<sup>389</sup> In our interviews it was suggested that disputes between the BIAF and others were usually considered within the Sharia system. On occasion, a case would start with the disciplinary board, and when the details of the case were known, be referred to a Sharia court.<sup>390</sup>

The MILF has claimed it adhered to 'due process'<sup>391</sup> but there is a lack of information as to how it considers this was achieved in practice. It has been reluctant to publicize details of the work of its disciplinary mechanisms, even when this has involved high-profile cases, such as those involving the allegations of multiple violations made against Commanders Kato and Bravo in 2008.<sup>392</sup>

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381 Ibid.

382 Interview with MILF leaders, 30 January 2020.

383 Ibid.

384 Interview with MILF commander, 31 January 2020.

385 Ibid.

386 Interview with MILF leaders, 30 January 2020.

387 Art 67, General Order No. 1, supra fn 44.

388 Interview with MILF commander, 31 January 2020.

389 Interview with MILF leaders, 30 January 2020.

390 Ibid.

391 'MILF Refuses to Surrender 2 commanders', GMA News Online, 20 August 2008, <https://www.gmanetwork.com/news/news/nation/114860/milf-refuses-to-surrender-2-commanders/story/>.

392 Ibid.

There were a range of punishments handed down by the disciplinary boards and the Sharia courts. There were instances where those convicted of violations were imprisoned for over a year.<sup>393</sup> Corporal punishment was sometimes meted out.<sup>394</sup> In the case of minor violations those found responsible were sometimes subject to forced labour, for instance in plantations.<sup>395</sup>

Death sentences were sometimes imposed by Sharia courts in relation to criminal cases in MILF-controlled areas, usually in instances of murder where family members refused to accept blood money from those convicted.<sup>396</sup> In a high-profile case that was recorded on video, Commander Bravo oversaw the execution by gunfire of three men accused of murder related to drugs. It was asserted that those executed had been tried before a Sharia court and that due process had been adhered to leading to the convictions, but no further details were forthcoming about the proceedings. It was reported that, prior to the execution, an appeal for clemency was denied by unidentified civilians, who were presumably family members of the victim. It was also alleged that the execution resolved a blood feud.<sup>397</sup>

## 10. THE SPECIAL PROTECTION OF CERTAIN OBJECTS, SUCH AS CULTURAL PROPERTY

Under customary IHL, each party to the conflict must respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.<sup>398</sup> In addition, the use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.<sup>399</sup> All seizure or destruction of or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited. Any form of theft, pillage or

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393 Interview with MILF leader, 16 July 2019.

394 Interview with NGO leader, 20 July 2019.

395 Interview with MILF leader, 16 July 2019.

396 Interview with NGO leader, 20 July 2019.

397 R. Arevalo, 'WATCH: MILF's Commander Bravo Implements Own Drug War', ABS-CBN News, 12 January 2017, <https://news.abs-cbn.com/news/01/12/17/watch-milfs-commander-bravo-implements-own-drug-war>; F. del Mundo, 'Commander Bravo Builds His Shangri-La', INQUIRER.net, 5 April 2021,

<https://newsinfo.inquirer.net/1414762/commander-bravo-builds-his-shangri-la>; 'MILF Commander Says Leaked Execution Video Shows 3 Men Sentenced to Death by Sharia Court, Coconuts Manila, 6 Jan 2017, <https://coconuts.co/manila/news/milf-commander-says-leaked-execution-video-shows-3-men-sentenced-death-sharia-court/>.

398 Rule 38, ICRC CIHL Database, *supra* fn 96.

399 Rule 39, *ibid*.

misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.<sup>400</sup>

Considering a key aspect of the MILF's struggle has been the distinct cultural heritage of the Moro people there is a lack of awareness of the special protection of cultural property by both those within the MILF and those that have observed the conflict. The MILF has no regulations in relation to the protection of culturally important objects, which is compounded by the absence of clear rules around the protection of civilian objects in general. One observer has commented that, despite the Philippines having a National Cultural Heritage law<sup>401</sup> and a good level of awareness as to the importance of protecting it within the country, there was a lack of any serious discussion about protecting cultural property from conflict.<sup>402</sup>

In the conflict both mosques and churches have been destroyed, sometimes when civilians were inside them.<sup>403</sup> In one notable case a bomb exploded immediately outside Cotabato Cathedral, just as worshippers were leaving a mass. Although the Cathedral was not severely damaged, several people were killed in the attack which was attributed by the military to the MILF though a spokesman for the organization denied its involvement.<sup>404</sup>

The Moro live alongside a number of non-Muslim indigenous peoples. Relations between them are complex and outside the scope of this report, but generally indigenous people do not share the Moro's political aspirations.<sup>405</sup> During the peace process there were disputes when MILF territory being demarcated in the process overlapped with what indigenous people considered to be part of their ancestral domain.<sup>406</sup> Access to cultural sites has been particularly contentious. The MILF maintains that it respects these and highlights that one such site is within an MILF camp and that it has not damaged or interfered with it. That said, indigenous people have been required to seek permission to access it.<sup>407</sup>

According to one former MILF commander, the only buildings given special protection by the MILF are the house of the founding chairman and certain mosques.<sup>408</sup>

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400 Rule 40, *ibid*.

401 National Cultural Heritage Act of 2009 (Republic Act No. 10066), <https://wipolex.wipo.int/en/legislation/details/8946> (last accessed 9 June 2022).

402 Interview with international organization manager, 17 July 2019.

403 Interview with community leader, 26 July 2019.

404 'Five Killed in Blast After Catholic Church Mass', France 24, 5 July 2009, <https://www.france24.com/en/20090705-five-killed-blast-after-catholic-church-mass->

405 International Crisis Group, The Philippines: Indigenous Rights and the MILF Peace Process Asia Report no 213, 22 November 2011, p 2, <https://d2071andvipowj.cloudfront.net/213-the-philippines-indigenous-rights-and-the-milf-peace-process.pdf> (last accessed 9 June 2022).

406 G. Lacorte, 'As Peace Dawns, "lumad" Seeks Answers', INQUIRER.net, 23 March 2014, <https://newsinfo.inquirer.net/588162/as-peace-dawns-lumad-look-for-answers>.

407 Interview with community leader, 22 July 2019.

408 Interview with a former MILF commander, 17 July 2019.

## CONCLUSIONS

The following conclusions can be extracted from this case study:

- The MILF's attitude to IHL gradually evolved throughout its existence. In its early years the movement emphasised its adherence to Islamic law in its actions and its attitude to IHL was not publicly expressed. From the early part of this century, it began to acknowledge its commitment to meet its obligations under IHL but only several years later was it apparent that it was taking concrete steps to do so.
- The change in approach was, at least in part, driven by political considerations, influenced by developments in the peace process and a more general desire to be seen to be pursuing a just struggle by acceptable means.
- External actors played a role in promoting and facilitating consideration of IHL-compliant policy and practice but actors within, or associated with, the movement were central to ensuring that the changes took place.
- It was important to the MILF that it could take the time to analyse relevant rules of IHL and be comfortable that they did not contradict Islamic law. For many, but not all, norms this proved to be straightforward.
- The MILF's practice in respect of IHL varied not only with time but according to location. In some areas allegations of violations continued even after commitments to respect IHL were made. This is indicative of loose command and control.
- The most fundamental shift undertaken by the MILF was in relation to the use and recruitment of children, where there was initially a large gulf between the international standards and MILF's doctrine and practice. It is apparent that the change in policy and practice was driven in large part by the MILF's desire for this issue not to lead to negative perceptions of the movement in general and for it to be taken off of the UN's list of 'grave violators' against children.
- There was a taboo around sexual violence in the conflict context and an absence of mechanisms in or associated with the MILF to identify and address it.

## ANNEXE

Map of Mindanao<sup>409</sup>

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409 Source: 'Philippines, Muslim Rebels Relaunch Peace Talks', Digital Journal, 13 August 2016, <https://www.digitaljournal.com/world/philippines-muslim-rebels-relaunch-peace-talks/article/472378>.

