

THIRD-PARTY COST-SHARING AGREEMENT
BETWEEN THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE AUSTRALIA
(THE DONOR) AND
THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)
Donor AGREEMENT No. 72540

WHEREAS Donor hereby agrees to contribute funds to UNDP on a cost-sharing basis for the implementation of Peace and Reconciliation Initiatives for Empowerment in the Bangsamoro Project (PRIME – BANGSAMORO) in the Philippines. The project will be carried out in accordance with and as described in the Project Document (Project 00096170, PRIME – BANGSAMORO], in the Philippines, and submitted to Donor for information. A summary of the Project Document is at Attachment A.

WHEREAS this bilateral Agreement between Donor and UNDP stipulates the terms and conditions of the contribution, and is not an international treaty,

WHEREAS UNDP is prepared to receive and administer the contribution for the execution/implementation of the programme/project,

WHEREAS the Government of the Philippines has been duly informed of the contribution of Donor to the project,

NOW THEREFORE, UNDP and Donor (the Parties) hereby agree as follows:

Article I. Scope and Objective

1. This Agreement sets forth the terms and procedures for Donor's contribution to the project as described in the Project Document.
2. The Goal of the project is to contribute to efforts to strengthen the enabling environment for peace and stability and sustain the gains for peace and development in the Bangsamoro.
3. The Objectives of the programme/project are:
 - To provide support towards the implementation of the recommendations of the Transitional Justice and Reconciliation Commission (TJRC)
 - To enhance capacities towards strengthening mechanisms and processes for Interim Security Arrangements
 - To support capacity-building for sustaining the transformation of the MILF towards active engagement in political processes
 - Strengthen enabling environment for continued peace and stability during the interim period as the new Administration firms up its peace policy for the Bangsamoro, by supporting a multisectoral symposium that will provide a platform for discussion towards defining concrete steps and recommendations for the new Administration's peace/Bangsamoro agenda

Article II. The Contribution

1. (a) Donor shall, in accordance with the schedule of payments set out below, contribute to UNDP the amount of A\$3,000,000. The contribution shall be deposited in the [bank and bank account].

UNDP Contributions Account (AU\$)
Account #816601
Reserve Bank of Australia
65 Martin Place
Sydney NSW 2000
SWIFT: RSBKAU2S

<u>Schedule of payments</u>	<u>Amount</u>
3 May 2016	AU\$1,000,000
30 August 2016	AU\$1,000,000
30 August 2017	AU\$1,000,000

(b) Donor will inform UNDP when the contribution is paid via an e-mail message with remittance information to contributions@undp.org, providing the following information: Donor's name, UNDP country office, [Project 00096170, Sustained Support to Peace and Stability in the Bangsamoro], Donor reference (if available). This information should also be included in the bank remittance advice when funds are remitted to UNDP.

2. [The value of the payment, if made in a currency other than United States dollars, shall be determined by applying the United Nations operational rate of exchange in effect on the date of payment. Should there be a change in the United Nations operational rate of exchange prior to the full utilization by the UNDP of the payment, the value of the balance of funds still held at that time will be adjusted accordingly. If, in such a case, a loss in the value of the balance of funds is recorded, UNDP shall inform Donor with a view to determining whether any further financing could be provided by Donor. Should such further financing not be available, the assistance to be provided to the programme/project may be reduced, suspended or terminated by UNDP after written notification to Donor by UNDP.]

3. The above schedule of payments takes into account the requirement that the payments shall be made in advance of the execution/implementation of planned activities. It may be amended in accordance with Article XVI to be consistent with the progress of project delivery.

4. UNDP shall receive and administer the payment in accordance with the regulations, rules, policies and procedures of UNDP.

5. All financial accounts and statements shall be expressed in United States dollars.

Article III. Utilization of the Contribution

1. The implementation of the responsibilities of UNDP and of the Implementing Partner pursuant to this Agreement and the Project Document shall be dependent on receipt by UNDP of the contribution in accordance with the schedule of payment as set out in Article II, paragraph 1, above.
2. If unforeseen increases in expenditures or commitments are expected or realized (whether owing to inflationary factors, fluctuation in exchange rates or unforeseen contingencies), UNDP shall submit to Donor on a timely basis a supplementary estimate showing the further financing that will be necessary. Donor shall use its best endeavours to obtain the additional funds required.
3. If the payments referred to in Article II, paragraph 1, above are not received in accordance with the payment schedule, or if the additional financing required in accordance with paragraph 2 above is not forthcoming from Donor or other sources, the assistance to be provided to the programme/project under this Agreement may be reduced, suspended or terminated by UNDP after written notification to Donor by UNDP.
4. Any interest income attributable to the contribution shall be credited to UNDP Account and shall be utilized in accordance with established UNDP procedures.

Article IV. Administration and Reporting

1. Programme/project management and expenditures shall be governed by the regulations, rules, policies and procedures of UNDP and, where applicable, the regulations, rules, policies and procedures of the Implementing Partner, provided that they do not contravene the regulations, rules, policies and procedures of UNDP. In case of contradiction, regulations, rules, policies and procedures of UNDP shall prevail.
2. Programme/project management shall be in accordance with UNDP policies and practices in relation to anti-corruption and prevention, detection and investigation of fraud and recovery of funds the subject of fraud.
3. UNDP headquarters and country office shall provide to Donor all or parts of the following reports prepared in accordance with UNDP accounting and reporting procedures.
 - 3.1. For Agreements of more than one year:
 - (a) From the country office (or relevant unit at headquarters in the case of regional and global projects) an annual status report of programme/project progress for the duration of this Agreement, as well as the latest available approved budget.
 - (b) From UNDP Bureau of Management/Office of Finance and Administration, an annual certified financial statement as of 31 December every year to be submitted

no later than 30 June of the following year.

- (c) From the country office (or relevant unit at headquarters in the case of regional and global projects) within six months after the date of completion or termination of this Agreement, a final report summarizing programme/project activities (including progress in achieving activities' goal and objectives) and impact of activities as well as provisional financial data.
- (d) From UNDP Bureau of Management/Office of Finance and Administration, on completion of the programme/project, a certified financial statement to be submitted no later than 30 June of the year following the financial closing of the programme/project.

4. If special circumstances so warrant, UNDP may provide more frequent reporting at the expense of Donor. The specific nature and frequency of this reporting shall be specified in an annex of this Agreement.

Article V. Administrative and Support Services

1. In accordance with the decisions and directives of UNDP's Executive Board reflected in its Policy on Cost Recovery from Other Resources, the contribution shall be subject to cost recovery for indirect costs incurred by UNDP headquarters and country office structures in providing General Management Support (GMS) services. To cover these GMS costs, the contribution shall be charged a fee equal to 8%. Furthermore, as long as they are unequivocally linked to the specific programme/project, all direct costs of implementation, including the costs of the Implementing Partner, will be identified in the project budget against a relevant budget line and borne by the project accordingly.

2. The aggregate of the amounts budgeted for the programme/project, together with the estimated costs of reimbursement of related support services, shall not exceed the total resources available to the programme/project under this Agreement as well as funds which may be available to the programme/project for programme/project costs and for support costs under other sources of financing.

Article VI. Evaluation

All UNDP programmes and projects are evaluated in accordance with UNDP Evaluation Policy. UNDP and the Government of Philippines in consultation with other stakeholders will jointly agree on the purpose, use, timing, financing mechanisms and terms of reference for evaluating a project including an evaluation of its contribution to an outcome which is listed in the Evaluation Plan. UNDP shall commission the evaluation, and the evaluation exercise shall be carried out by external independent evaluators.

Article VII. Equipment

Ownership of equipment, supplies and other properties financed from the contribution shall vest in UNDP. Matters relating to the transfer of ownership by UNDP shall be determined in accordance with the relevant policies and procedures of UNDP.

Article VIII. Auditing

The contribution shall be subject exclusively to the internal and external auditing procedures provided for in the financial regulations, rules and directives of UNDP. Should the annual Audit Report of the Board of Auditors of UNDP to its governing body contain observations relevant to the contributions, such information shall be made available to Donor.

Article IX. Completion of the Agreement

1. UNDP shall notify Donor when all activities relating to the project have been completed.
2. Notwithstanding the completion of the project, UNDP shall continue to hold unutilized payments until all commitments and liabilities incurred, prior to the date of receipt of the notice, in the execution/implementation of the project have been satisfied and project activities brought to an orderly conclusion.
3. If the unutilized payments prove insufficient to meet such commitments and liabilities, UNDP shall notify Donor and consult with Donor on the manner in which such commitments and liabilities may be satisfied.
4. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be refunded to Donor or may be used by UNDP as agreed in writing with Donor.

Article X. Termination of the Agreement

1. After consultations have taken place between Donor, UNDP and the programme country Government, and provided that the payments already received are, together with other funds available to the project, sufficient to meet all commitments and liabilities incurred in the execution/implementation of the project, this Agreement may be terminated by UNDP or by Donor. This Agreement shall cease to be in force 30 (thirty) days after either of the Parties have given notice in writing to the other Party of its decision to terminate this Agreement.
2. Notwithstanding termination of all or part of this Agreement, UNDP shall continue to hold unutilized payments until all commitments and liabilities incurred, prior to the date of receipt of the

notice, in the execution/implementation of all or the part of the project, for which this Agreement has been terminated, have been satisfied and project activities brought to an orderly conclusion.

3. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be refunded to Donor or may be used by UNDP as agreed in writing with Donor.

Article XI. Counter-Terrorism

Consistent with UN Security Council Resolutions relating to terrorism, including UNSC Resolution 1373 (2001) and 1267 (1999) and related resolutions, both Donor and UNDP are firmly committed to the international fight against terrorism, and in particular, against the financing of terrorism. It is the policy of Donor to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. To those ends, UNDP undertakes to use all reasonable efforts to ensure that Donor's contribution is not used to provide support to individuals or entities associated with terrorism. If, during the course of this Agreement, UNDP discovers a link with any organization or individual associated with terrorism it shall inform Donor immediately.

Article XII. Fraud and Anti-Corruption

1. The Parties confirm their respective commitments that it is essential to take all necessary precautions to avoid Fraud (as defined in this Agreement). In that regard they take note of the Staff Regulations and Rules of the United Nations; the UNDP Financial Regulations and Rules and the UNDP Legal Framework for addressing non-compliance with UN Standards of Conduct, and UNDP confirms that it will continue to ensure compliance with these instruments. UNDP will take appropriate steps to prevent and detect Fraud by its officials, consultants, and implementing partners in implementing the project or using Donor's contribution.

2. All credible allegations of Fraud in connection with the implementation of the project or the expenditure of Donor's contribution will be investigated by the appropriate authorities within UNDP (unless such time has passed that the matters alleged cannot be properly investigated) and appropriate follow-up action initiated without delay by UNDP in accordance with its applicable policies, procedures and guidelines. UNDP will promptly advise Donor's Fraud Control Section of any investigations and follow up action that it is undertaking or proposes to undertake in relation to a fraudulent practice or corrupt practice involving any activities funded in whole or in part with Donor's contribution.

3. UNDP will (i) promptly advise Donor's Fraud Control Section of any UNDP investigation in relation to a fraudulent practice or corrupt practice involving any activities funded in whole or in part with Donor's contribution; and (ii) provide Donor with regular updates, no less frequently than every three (3) months, regarding the status of, and actions relating to such investigation, including where a matter has been referred to a Member State authority, any action that the Member State advises UNDP it has taken as a result (to the extent the Member State permits disclosure by UNDP).

4. Following the conclusion of any investigation initiated in accordance with the preceding paragraph, UNDP will make every effort to recover all funds which it determines were diverted through Fraud and in that regard will, in consultation with the UNDP Legal Support Office, give proper consideration to referring the matter to the appropriate authorities of the Member State where the Fraud is believed to have occurred and to the provisions of General Assembly resolution 62/63. UNDP will refund any recovered funds to each donor contributing to implementation of project in accordance with the ratio of that donor's contribution to the total contributions received for the project.

5. The definition of fraud varies among countries and jurisdictions. In simple terms, fraud is any act or omission that intentionally misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation. Corrupt practices are generally understood as the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party. For the purposes of this Agreement, fraud is defined in a broader sense and includes, but is not limited to, theft, embezzlement, forgery, coercive practice, collusive practice, obstructive practice and corrupt practices. Examples of fraud include the following, which is not an exhaustive list:

- (a) Forging documents, preparing false entries in UNDP systems or making false statements to obtain a financial or other benefit to which a person is not entitled;
- (b) Offering or receiving something of value to improperly influence a procurement process;
- (c) Asking for or receiving money for providing information to a vendor in the procurement of goods and services;
- (d) Asking for or receiving personal reward or other private gain in return for showing favour to a candidate in a recruitment process;
- (e) The misuse or theft of a password for the unauthorized access to IT systems;
- (f) Collusion or other anti-competitive scheme between suppliers during a tender process;
- (g) Coercion by impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (h) Obstruction through both (i) deliberately destroying, falsifying, altering, or concealing evidence material to an investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and (ii) acts intended to materially impede the exercise of inspection and audit rights; and
- (i) Stealing or misappropriating UNDP assets.

6. Consistent with UNDP's standard practices, when a contract is to be issued in connection with expenditure of Donor's contribution, that contract shall include an undertaking by the vendor, consultant or civil society implementing partner (as the case may be) that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the proposal, have been given, received or promised in connection with the selection process or in contract execution.

7. The obligations of UNDP under paragraphs 1 to 5 above will survive the termination or expiration of this Agreement.

Article XIII. Child Protection

1. UNDP will not engage in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child. UNDP shall ensure that its contracts with contractors provide that the Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
2. Donor's contribution is subject to UNDP's regulations, rules, policies and procedures including those relating to child protection and protection from sexual exploitation.

Article XIV. Transparency

Donor and UNDP are committed to principles of transparency consistent with Donor's Transparency Charter and UNDP's Disclosure Policy, and relevant decisions of UNDP's Executive Board. Donor and UNDP will apply these principles of transparency to information relating to Australian funding of UNDP's programmes of cooperation. Donor will periodically publish detailed information about work under this Agreement on its website. This will include information about UNDP's policies, plans, processes, the results of UNDP's programmes of cooperation and our evaluations of UNDP's performance. Donor and UNDP will consult prior to publication or release of information regarded as sensitive (for example, fraud or corruption matters).

Article XV. Branding

1. Achieving visibility and recognition for Donor's contribution to UNDP's work is important to the Australian Government. Wherever appropriate and feasible, attempts must be made to achieve this.
2. UNDP shall take all appropriate measures to publicise the fact that the project has received funding from Donor provided that such actions do not jeopardise the United Nations privileges and immunities provided under the 1946 Convention on the Privileges and Immunities of the United Nations and the safety and security of United Nations staff. In line with the above, recognition of Donor's support to the project should be included in documents, publications and signage, both hard copy and electronic, media releases, speeches, formal correspondence and other announcements.

Article XVI. Amendment of the Agreement

This Agreement may be amended through an exchange of letters between Donor and UNDP. The letters exchanged to this effect shall become an integral part of this Agreement.

Article XVII. Resolution of Disputes

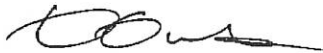
Any dispute between UNDP and Donor over its interpretation or application (or both) shall be resolved amicably between the Parties.

Article XVIII. Entry Into Force

1. This Agreement shall enter into force upon signature by the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement in the English language in two copies.

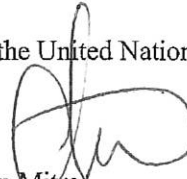
For DFAT Australia



Dr David Dutton
Deputy Head of Mission

Date: 3/5/16

For the United Nations Development Programme



Titon Mitra
Country Director, Philippines

Date: 3.5.16