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**Cracks, bumps, potholes and U-turns:
Negotiating the road to peace in Mindanao**

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Abstract

On 4 August 2008, the Supreme Court of the Philippines suspended the Memorandum of Agreement on Ancestral Domain (MOA-AD) that would have paved the way for lasting peace in the war-torn island of Mindanao. The MOA-AD would have facilitated the establishment of a Bangsamoro Juridical Entity (BJE) that would have been the basis of autonomous governance for those areas that were predominantly populated by Muslims. The reasons for the suspension (and the subsequent determination by the Supreme Court of the MOA-AD's unconstitutionality) and the eventual declaration by the administration of President Gloria Macapagal-Arroyo that it would no longer pursue the MOA-AD with the Moro Islamic Liberation Front (MILF) have been the topic of much discussion and debate. What happened after, however, illustrates the continuing difficulties faced by the Filipino people engendered by a weak state that has to deal with an insurgency situation. It showed the continuing danger that a peace process would backslide into conflict, with the prospect of frustrations making it unlikely that talks would proceed seamlessly from the MOA-AD. In a postscript to this paper, the author reviews the Framework Agreement on the Bangsamoro (FAB) signed in October 2012, and its significance.

Biography

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1. Introduction

This paper explores the factors that have been acting upon the peace process between the Moro Islamic Liberation Front (MILF) and the Government of the Republic of the Philippines (GRP). The process has been characterised by fits and starts, seeing a constant cycle of intermittent resumptions of violence and returns to ceasefire. What this protracted and continuing cycle of movement between war and wary peace interspersed with negotiations has shown over time is that neither side has the military or the political wherewithal to win the conflict. At the same time, attempts at negotiations have not been all that successful in setting up an acceptable basis for a political settlement, much less a lasting peace on the island of Mindanao. In 2008, the MILF and the GRP successfully negotiated a Memorandum of Agreement on Ancestral Domain (MOA-AD) that would have paved the way for moving peace negotiations significantly forward. Subsequent developments, including the declaration by the Supreme Court of the Philippines that the agreement was unconstitutional, reverted the process back to its cycle and just barely avoided the resumption of all-out war between the MILF and the GRP.

We explore in this paper (1) the factors that influence the process of peace talks between the MILF and the Philippine government, and their inability to find a lasting solution to the question of peace in Mindanao; (2) how these factors will impact on the peace talks that resumed on 29–30 January 2010; and (3) given these factors, what the prospects are for the success of the current talks.

2. Context of the conflict

The conflict in Mindanao has been an ongoing security concern for the Philippines since it erupted in 1971. Yet, the popular narrative of the conflict presents it as a continuation of the long history of resistance to colonialism that characterised relations between Manila and Mindanao. This narrative, uncritically accepted by most stakeholders as part of the official account of the origins of the current conflict, gives the MILF the basis for the legitimacy of its struggle to build a separate Moro homeland in Mindanao. A more careful scrutiny, however, of this claim of a continuing struggle since the Spanish colonial era raises questions about consistency, accuracy, ahistoricism and even hypocrisy.¹ A more nuanced study of the current conflict's origins, while recognising the impact of historically-conditioned factors (such as resistance to a 'Christian imperial Manila'), would have to also take into consideration the question of Moro nationhood in the face of traditional conflicts between different Muslim groups (which undoubtedly has been used by political forces based in Manila to maintain their sway over Mindanao, but which also in fact impacts on the organisational unity of the MILF) and the situation of non-Muslim indigenous groups in Mindanao. Such an exploration, however, goes beyond the purview of an article looking into the factors that have been influential in the progress (or lack thereof) of the ongoing peace process involving the MILF and the GRP. Suffice to say that the narrative of an anti-colonial struggle has caused the question of self-determination for the Muslims of Mindanao, Sulu and Palawan, and the context within and the form in which this self-determination will be exercised, to become the fundamental root of conflict in the area.

¹ See, for a start: P.N. Abinales, 'Sancho Panza in Buliok Complex', *Wither the Philippines in the 21st century?* ed. R.C. Severino and L.C. Salazar (Singapore: Institute of Southeast Asian Studies, 2007), 278–87.

The MILF has represented its struggle in terms of the aforementioned narrative of resistance, that is, asserting a Moro national identity (that is unapologetically Islamic in context compared to the broader definition favoured by the Moro National Liberation Front [MNLF]) distinct from that of a Filipino national identity and the establishment of a Moro homeland separate from the Philippines.² Despite major military engagements with the Armed Forces of the Philippines (AFP) in the last 10 years, the MILF has adopted a tack different from that of the Communist New People's Army (NPA) and has been engaged in continuing peace talks with the government. The sensitive nature of these talks pushed the Philippine government early in 2002 to work against the idea of the MILF being designated as a terrorist organisation by the United States of America.³ This is, however, becoming more and more difficult as evidence has emerged linking the MILF with identified terrorists. Furthermore, while not well documented, there have been reports of collaboration between the MILF and the Abu Sayyaf in some field operations. It is not unlikely that the Abu Sayyaf receives assistance from MILF units during their operations.⁴

The Philippine state's responses to the MILF secessionist movement have largely been framed along the lines of a state's reaction to armed challenges to the legitimacy of its government. According to Carolina Hernandez, this could be characterised as a

right hand and left hand [approach] to counterinsurgency from the 1950s onwards. The balance between the right hand (primarily the use of military force) and left hand (socioeconomic and political measures to address root causes and win hearts and minds of the people) tilted in favor of one side, depending on the overall political, economic, social, and environmental context, the strategic situation on the ground, and on the personality and policy preferences of political and military leaders.⁵

This multifaceted approach was noted in the *Philippine Human Development Report* of 2005, which observed that the Estrada and Arroyo administrations' strategies largely consisted of (1) pacification and demobilisation; (2) military victory; and (3) institutional peace-building. The first is said to consist of negotiating concessions necessary to achieve the cessation of hostilities and demobilisation of rebel combatants. The second advocates the military defeat of the MILF and NPA, the political defeat or marginalisation of the MNLF, and the extermination of the Abu Sayyaf and other terrorist and kidnap-for-ransom groups. Institutional peace-building refers to the promotion of peace in the economic, social, political, cultural and ecological spheres through participatory and consultative mechanisms over other short-, medium- and long-term policies and institutions.⁶ The tendency to conflate

² This narrative is illustrated in S. Jubair, *Bangsamoro: A nation under endless tyranny* (Kuala Lumpur: IQ Marin Sdn Bhd, 1999).

³ For the debates on the Philippine government's reasons for trying to keep the Moro Islamic Liberation Front (MILF) from being tagged as a terrorist group, see: *Far Eastern Economic Review*, 14 February 2002, 16–18.

⁴ International Crisis Group (ICG), 'Southern Philippines backgrounder: Terrorism and the peace process', *Asia Report*, no. 80 (Singapore/Brussels, 13 July 2004).

⁵ C.G. Hernandez, 'Security sector governance and practices in Asia', *Journal of Security Sector Management* 3, no. 1 (2005): 2.

⁶ 'Evolution of the armed conflict on the Moro front', in *Philippine Human Development Report 2005* (2005), 74, accessed 20 November 2010, http://hdn.org.ph/wp-content/uploads/2005_PHDR/Chapter%202%20Evolution%20of%20the%20Armed%20Conflict%20on%20the%20Moro%20Front.pdf

approaches to counter-insurgency and counter-terrorism was given attention and the *Philippine Human Development Report* warned against overemphasising the second track, especially in the context of counter-terrorism operations.

By 2009, the Office of the Presidential Adviser on the Peace Process (OPAPP) acknowledged the need to have an integrated response on the issue of peace in Mindanao. This was reflected in the development approach pursued by the OPAPP on the negotiated political settlement of all armed conflicts and the complementary programmes to address the roots of armed conflicts and other issues that affected the peace process. Similar strategies have been utilised by the government in the past, too. For instance, during the dictatorship of Marcos – a period that is considered to have marked the beginning and seen the growth of communist insurgency and Muslim separatism – the government sought to end these armed conflicts with the use of force but also carried out development and infrastructure programmes undertaken under the auspices of the Philippine military. There were also attempts to politically settle the conflict or pursue institutional responses in the form of peace agreements particularly with the Moro secessionist movement through the 1976 Tripoli Agreement and, after Marcos, the Jakarta Accord of 1996 with the MNLF. Those agreements, however, did not end the conflict in the South. It was during this period, when the government sought a political settlement with the MNLF, that the secessionist movement split into two factions – the MNLF and the MILF.

The MILF was established in 1977 from a breakaway faction of the MNLF. Growing differences in ideological orientation, political strategy and ethnic allegiance with the leadership of the MNLF led a group of fighters led by Salamat Hashim to establish the MILF in order ‘to regain the illegally and immorally usurped freedom and self-determination of the Bangsamoro people’.⁷ Even as it pursued the original objective of the MNLF of establishing an independent state, the MILF moved away from the latter’s conception of a secular state that was inclusive of all the downtrodden people of Mindanao and instead argued that the Bangsamoro state should be based on Islamic foundations using *Daw’ah* (proselytisation), *Tarbiyyah* (education) and *Jihad* as the principal strategies. In his book, *The Bangsamoro Mujahid: His objectives and responsibilities*, Hashim argued that jihad was necessary ‘to defend their [Bangsamoro] religion, the dignity of the Bangsamoro people, and regain their legitimate right to self determination’.⁸ The MILF established its own army, the Bangsamoro Islamic Armed Forces (BIAF). Its area of operations eventually spread to cover central Mindanao, the Lanao region, southwest Zamboanga Peninsula, Basilan, Tawi-Tawi, Sulu and southern Palawan. By 2010, it was estimated to have as many as 12,000 regular troops under its command. Although these were scattered in different camps across Mindanao, they still constituted the largest armed threat to the Philippine government.⁹

⁷ S.M. Santos and P.V.M. Santos, ‘Moro Islamic Liberation Front and its Bangsamoro Islamic Armed Forces (MILF-BIAF)’, in *Primed and purposeful: Armed groups and human security efforts in the Philippines*, ed. S. M. Santos and P.V.M. Santos (Geneva: Small Arms Survey, 2010), 345.

⁸ Quoted in: J.C.Y. Liow, ‘Muslim resistance in Southern Thailand and Southern Philippines: Religion, ideology, and politics’, *East West Center Policy Studies* 24 (2006): 15.

⁹ S.M. Santos, ‘War and peace on the Moro front: Three standard bearers, three forms of struggle, three tracks (overview)’, in Santos and Santos, *Primed and purposeful*, 77. The group, however, claims to have a mobilisable force of 120,000 fighters armed with 60,000 weapons of various types. See: J. Maitem, ‘MILF to AFP: We have 60,000 weapons to fight you’, *Philippine Daily Inquirer*, 8 October 2010, accessed 9 October 2011, newsinfo.inquirer.net/breakingnews/nation/view/20100810-285998/MILF-to-AFP--We-have-60000-weapons-to-fight-you

Attempts on the part of the MILF to initiate a unity process intended to establish a common agenda and objective for the two Moro groups have foundered on the inability to reconcile their varying demands.¹⁰ The gaps between the two organisations became even more difficult to bridge with the completion of the GRP-MNLF peace agreement. At an operational level, the provisions of the agreement that have allowed many former MNLF fighters to be integrated into the AFP have led to many of them being given assignments that put them directly in conflict with MILF forces and this further complicated relations between the two groups.¹¹ The major bone of contention, however, was the issue of what would be the nature of the political settlement with the Philippine government. The MNLF eventually opted to settle for autonomy, even as the MILF continued to fight for the independence of the Moros. More strategically, however, it was the eventual operationalisation of autonomy under the 1996 Agreement in the form of the Autonomous Region of Muslim Mindanao (ARMM) and its implementation that made it impossible for the MNLF and the MILF to be reconciled.

The establishment of the ARMM actually predated the 1996 Agreement. When it was created in 1990, it was supposed to be based on the terms of the 1976 Tripoli Agreement that provided for the holding of a plebiscite that would determine which areas would be placed under the jurisdiction of an autonomous government in the Mindanao, Sulu and Palawan areas. It was generally seen as a way towards finally resolving the problem of peace in Mindanao and hastening the economic development of those areas that had predominantly Muslim populations. The plebiscite held in 1989, however, resulted in a much-condensed ARMM covering only the four provinces of Sulu, Tawi-Tawi, Maguindanao and Lanao del Sur. The predominantly Christian residents of the other 14 provinces and 10 cities made it known that they would prefer not to be part of the ARMM.

Having accepted the ARMM as the framework for the autonomous governance of Muslim Mindanao, the MNLF participated in elections for various offices on 9 September 1996. The support of the administration of President Fidel V. Ramos proved to be a key factor in the election of Nurallaji Misuari, Chairman of the MNLF, as governor and Guimid P. Matalam as vice governor. A regional assembly was also elected with 121 members, the majority of whom were affiliated with the MNLF. To the detriment of sustainable peace and development, the MNLF leaders proved to be poor administrators. Mismanagement, the inability to deal with the internal peace-and-order situation in the area covered by the peace agreement, widespread corruption and the lack of improvement in the economic situation of the region eventually led to the marginalisation of the MNLF and the intensification (with certain families being favoured and receiving support from the central government) of dynastic politics in the ARMM. The most powerful families in the region competed for political dominance with the support of armed auxiliary forces, and even the police. Consequently, the ARMM has become an example of bad governance with its current state of human development and local officials' continued usage of coercive force to stay in power.¹²

¹⁰ Santos, 'War and peace on the Moro front', 78.

¹¹ Santos and Santos, 'Moro Islamic Liberation Front and its Bangsamoro Islamic Armed Forces (MILF-BIAF)', 352.

¹² This dynastic contestation reached appalling heights with the killing of 58 people on 23 November 2009 near the town of Ampatuan in the province of Maguindanao. More popularly known as the Maguindanao or Ampatuan Massacre, it involved the death of family members of the Mangudadatu clan (mostly women) and their companions (mostly journalists) on their way to register the candidacy of Esmael Mangudadatu for

The peace settlement with the MNLF had the effect of focusing the still unresolved question of peace in Mindanao on the relationship between the government and the MILF.¹³ At the same time, the situation in the ARMM made it unacceptable to the MILF as a framework for furthering peace discussions. In 1997, an Agreement for General Cessation of Hostilities was signed by the GRP and the MILF to formally resume peace talks. This was followed by the General Framework of Agreement of Intent between the GRP and the MILF in August 1998 that recognised that a ‘negotiated political settlement’ was necessary to promote enduring peace and stability in Mindanao, which could only be achieved if ‘there is mutual trust, justice, freedom, and tolerance for the identity, culture, way of life and aspirations of all the peoples of Mindanao’.¹⁴ Just like the roads in Metro Manila, however, the road to peace in Mindanao proved to be cracked, bumpy, and full of potholes and u-turns.

In 2000, the Philippine government under the administration of President Joseph Estrada, decrying armed provocations from MILF forces on the ground, set aside peace negotiations and declared all-out war. A massive military offensive against the MILF led to the capture of Camp Abubakar in Central Mindanao. This stage of the conflict ended in 2001, when peace talks were again revived by the Arroyo administration and the MILF was brought back to the negotiating table. Talks were once again stalled when a major military offensive was launched in 2003, which led to the capture of the Buliok complex in Central Mindanao. The resumption of talks, though painfully slow in terms of progress, indicated the importance to everyone concerned of settling the Mindanao peace question once and for all. The difficulty of achieving this common objective, however, was noted by the 2005 *Philippine Human Development Report*. In the section on peace and security, the document noted that the MILF negotiations constitute the linchpin to peace in Mindanao. It warned, however, that it would be unrealistic to expect that the MILF would be willing to settle for just an enhancement of the ARMM, noting that to get the MILF to agree to sign a peace treaty, the institutional arrangement for governance in Muslim Mindanao would have ‘to be qualitatively and substantially better than that’.¹⁵

3. The Memorandum of Agreement on Ancestral Domain (MOA-AD)

It was in this context that peace negotiations with the MILF seemed to reach a breakthrough in 2008 with the drafting of what became known as the MOA-AD. The logic behind the MOA-AD essentially locates the source of the conflict in Mindanao in the historically conditioned economic backwardness and poverty of Mindanao, the relative lack of attention given to it by the Philippine national leadership (historically dominated by political dynasties from Luzon and the Visayas), and the rapaciousness of local elites, their clans and their armed

governorship of the province of Maguindanao. Even though the case remained unresolved in early 2012, significant evidence points to members of the Ampatuan clan as being responsible.

¹³ This is not to say that the future of peace in Mindanao is solely a Government of the Republic of the Philippines (GRP)-Moro Islamic Liberation Front (MILF) issue. The Communist New People’s Army (NPA) remains active and operates in significant armed strength in Eastern and Northeastern Mindanao.

¹⁴ The General Framework of Agreement of Intent between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) signed on 27 August 1998 in Sultan Kudarat, Maguindanao, the Philippines.

¹⁵ *Philippine Human Development Report 2005*, 94.

supporters.¹⁶ These issues are seen as part of a peace process which, in order to proceed, must give historical justice to the Muslim people (indicating the degree to which the narrative of resistance had become enshrined as the legitimate basis for negotiations) and therefore recognise their ancestral rights to the land and the resources in and on the Mindanao, Sulu and Palawan areas.¹⁷

The MOA-AD by itself does not constitute a peace agreement but is considered to be an essential element of any such agreement. The MOA-AD itself shows that it follows from previous sets of agreements entered into by the GRP and the MILF that would lay the foundations of lasting peace in Mindanao. For instance, the Tripoli Agreement on Peace of 2001, which aims to establish 'a peaceful environment and a normal condition of life in the Bangsamoro homeland',¹⁸ is the first document that relates the aspect of ancestral domain in the peace negotiations. It stated the principles and guidelines for conduct and action on the security, rehabilitation and ancestral domain aspects of these peace negotiations. The cessation of hostilities and security arrangements as well as respect for human rights and observance of international humanitarian law were addressed in the implementing guidelines signed on 7 August 2001 and 7 May 2002, respectively. The aspect of the Bangsamoro ancestral domain only became part of the agenda in April 2005 because of its linkage to the territorial and governance aspects of the Bangsamoro problem.¹⁹ In effect, it is a codification of the consensus points on principles, territory and resources needed as foundational considerations prior to discussions on Governance and the Comprehensive Compact defining the peace agreement. It is the result of more than a hundred consultative dialogues and fora with various stakeholders conducted by the GRP panel across four years. Joint statements were released to the public on key issues tackled after every exploratory talk. The GRP panel also took into consideration local government resolutions, statements and memoranda expressing their sentiments on the key issues, including opposition to being part of a Bangsamoro homeland.

The concept of ancestral domain and the right of Muslims in Mindanao to claim such has its basis in Philippine legal institutions. Section 5, Article XII of the Philippine Constitution presents the commitment of the Philippine state to,

subject to the provisions of [the] Constitution and national development policies and programs, ... protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

¹⁶ Ibid., 300. See also: E. Gutierrez and S. Borras, Jr., 'The Moro conflict: Landlessness and misdirected state policies', *East West Center Policy Studies* 8 (2004): 1–5.

¹⁷ See: S. Jubair, *The long road to peace: Inside the GRP-MILF peace process* (Cotabato City: Institute of Bangsamoro Studies, 2007), 4–22. Of course, the issue of ancestral domain is just a starting point in the process of correcting a historical injustice. Gutierrez and Borras have argued that central to the resolution of the issue of violence in Mindanao is redistributive justice in the form of agrarian reform, which in the end raises questions about justice in intra-Muslim communal relations. See: *ibid.*, 5.

¹⁸ Agreement on Peace between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front signed on 22 June 2001 in Tripoli, Libya.

¹⁹ Santos, 'War and peace on the Moro front', 78.

Acting on this constitutional provision, the Philippine legislature promulgated the Republic Act No. 8371 (also known as the Indigenous Peoples' Rights Act of 1997, or IPRA), which recognised the right of indigenous groups to land that constituted their ancestral domains. These domains covered both the physical aspect of as well as the spiritual and cultural bonds to the territorial space which the indigenous communities possess, occupy and use and to which they have claim of ownership.²⁰ The IPRA recognises the right of indigenous cultural communities to: (1) ownership of land and bodies of water they have traditionally occupied; (2) develop lands and natural resources; and (3) stay in these territories.²¹ Responding to a legal challenge, the Supreme Court affirmed the constitutional validity of the law on 6 December 2000.

The language contained in the MOA-AD fundamentally accords to the Muslim and indigenous people in the Southern Philippines a historic right to land in Mindanao, Sulu and Palawan by virtue of occupation at the time of 'conquest or colonization'.²² Most of those who support the idea noted that recognising the right of Muslims and indigenous people to their ancestral domain in the territory covered by the MOA-AD was a fundamental step to correcting a historic injustice and, therefore, towards the complete cessation of hostilities and lasting peace in Mindanao.²³ As if to affirm this point, the MILF had entered into a ceasefire agreement prior to the discussions on the MOA-AD, which was subject to the supervision of an international monitoring team (IMT) led by Malaysia. Between 2003 and 2008, Mindanao enjoyed considerable calm and very low levels of violence between the military forces of the Philippines and the MILF on account of this ceasefire. Discussions, however, were partially stalled until November 2007 because of an impasse on the issue of territory. By early 2008, the two panels had arrived at an understanding of the final text of the MOA-AD and a thorough review of its legal implications, particularly on the appropriate legal processes that had to be undertaken to address the proposals contained in the agreement.

Essentially, the MOA-AD proposed the establishment of a Bangsamoro Juridical Entity (BJE) that would be the implementing body of its provisions. The BJE would have jurisdiction over a territory that would have as its core the current ARMM, including certain municipalities in Lanao del Norte that had voted for inclusion in the ARMM. The rest of Mindanao, Sulu and Palawan, however, would be situated under different categories and would be subject to a plebiscite (on whether or not they would like to join the BJE) in the future. Over the territory under its direct jurisdiction, the BJE would exercise full authority to govern in all areas of concern except external defence.

Upon completion of the negotiations on the MOA-AD in July 2008, the whole process began to unravel. Vice-governor Emmanuel Piñol of North Cotabato demanded the full publication

²⁰ See: Republic Act no. 8371: An Act to recognize, protect, and promote the rights of indigenous cultural communities, creating a national commission on indigenous peoples, establishing implementing mechanisms, appropriating funds thereof, and for other purposes, 29 October 1997.

²¹ See: sections 4 and 7 of the Republic Act no. 8371.

²² The Memorandum of Agreement on the Ancestral Domain aspect of the GRP-MILF Tripoli Agreement on Peace signed on 22 June 2001 in Tripoli, Libya, paragraph 1 of the section on Concepts and Principles.

²³ See, for example: 'The MOA is dead! Long live the MOA! – Atty. Soliman M. Santor, Jr.', *ABS-CBN News*, 9 September 2008, accessed 10 December 2010, www.abs-cbnnews.com/print/18395; R.C. Garcia, 'Peacetalk: GRP-Moro conflict: Is there an end in sight?' *Mindanews*, 24 September 2008; S. Candelaria, 'Silencing the peace: The story of MOA-AD', *ABS-CBN News*, 5 September 2008, accessed 12 October 2010, <http://www.abs-cbnnews.com/views-and-analysis/09/05/08/silencing-peace-story-moa>

of the content of the draft agreement. Despite the claims made by its supporters in the GRP panel of consultation and full disclosure of all agreements as they were completed in the negotiating process, there was an apparent lack of transparency on what would be the content of the MOA-AD, which led to an outcry for full disclosure. Piñol eventually gained support from provincial officials in North Cotabato as well as other political figures from Mindanao and across the country in his endeavour to have the Supreme Court issue a restraining order to keep the GRP panel from signing the MOA-AD.²⁴ While the initial core of the opposition to the MOA-AD had come from self-interested traditional political dynasties in Mindanao, it eventually came to include people from across the economic, socio-cultural and political spectrum of the country.²⁵

The mounting hostility to the draft agreement came at a time when President Gloria Macapagal-Arroyo and her administration was itself embattled politically. Since before 2004, it had been reeling and smarting from a succession of political crises that had largely eroded its credibility and, in the eyes of many, its legitimacy.²⁶ It could ill afford another political debacle over the issue of the MOA-AD. At her 2008 State of the Nation Address, the MOA-AD and its pending signing was mentioned very late and with very little detail by the President.²⁷ On the appointed date of signing (5 August 2008) in Kuala Lumpur, the GRP panel was unable to sign the agreement because of the snowballing opposition in the Philippines. On the part of the MILF, frustration over the delays led to an escalation of armed activity as a number of their field units attacked Christian areas in the Lanao and Cotabato areas. The situation only intensified opposition to the MOA-AD even as the Supreme Court started hearings on 15 August 2008 on the petition filed by Piñol and other Mindanao politicians which called into question the constitutionality of the MOA-AD. The next day, 16 August, the Arroyo administration announced that it would not sign the document regardless of the findings of the Supreme Court – a decision in no little way paved by the prospect of rebellion among her own political allies as well as further deterioration in her already overdrawn political capital. On 14 October 2008, the Supreme Court found the MOA-AD to be unconstitutional.

The Supreme Court decision was based primarily on issues of procedure and institutional jurisdiction, but more importantly on substantive questions about the nature of the MOA-AD

²⁴ International Crisis Group (ICG), 'The Philippines: The collapse of peace in Mindanao', *Asia Briefing*, no. 83 (23 October 2008): 6–7, 10–11.

²⁵ No nationwide survey was conducted on the perceptions of the Memorandum of Agreement on Ancestral Domain (MOA-AD), which makes it difficult to determine the national sentiment on the subject. A study, however, that attempted to capture the manner in which the narrative of and on the MOA-AD played across national and local groups noted the strong similarities in the negative social representations of the MOA-AD. See: C.J. Montiel and J.M. de Guzman, 'Social representations of a controversial peace agreement: Subjective public meetings of the GRP-MILF MOA', *Philippine Political Science Journal* 32, no. 55 (2011): 64.

²⁶ For a discussion of the problems with legitimacy encountered by the Arroyo administration, see: H.J.S. Kraft, 'A (not so) funny thing happened on the way to the forum: The travails of democratisation in the Philippines', in *Political change, democratic transitions and security in Southeast Asia*, ed. M. Caballero-Anthony (Abingdon: Routledge, 2010), 58–71.

²⁷ C. Arguillas, 'SONA 2008: Mindanao peace process mentioned in seconds only; no mention of ARMM poll postponement', *Mindanews*, 28 July 2008, accessed 12 October 2010, www.mindanews.com/index.php?option=com_content&task=view&id=4821&Itemid=190

itself and its intended institutional outcomes.²⁸ More specifically, these included the following:

1. *Lack of consultation during and transparency in the process.* Despite the claims of the GRP negotiating panel to the contrary, the Supreme Court affirmed and noted the absence of a consultation process. The fact that Vice-governor Piñol had to demand the full disclosure of the contents of the MOA-AD indicated the lack of full transparency that had accompanied the process. The Supreme Court pointed out that this was a major oversight, especially considering the grave significance of the agreement to the population affected by it and to the country at large.
2. *Disregard for existing laws.* The MOA-AD contained provisions regarding access (and limits thereto) to ancestral domain that went beyond what was contained in the IPRA and other laws pertaining to the issue. In particular, the MOA-AD included mechanisms for governance that were represented by those opposed to it as compromising national sovereignty in a way that was not envisioned by the IPRA.
3. *The need for constitutional change.* The completion of the process, that is, the implementation of the MOA-AD itself, clearly presupposes that constitutional change will be institutionalised to accommodate details regarding governance and the relationship between the BJE and the Philippine state. This would require a national plebiscite, the outcome of which the government was in no position to guarantee.

The MOA-AD contains the following crucial provision, which may also explain the unique and non-self-executing character of the document:

The Parties agree that the mechanisms and modalities for the actual implementation of this MOA-AD shall be spelt out in the Comprehensive Compact to mutually take such steps to enable it to occur effectively. Any provisions of the MOA-AD requiring amendments to the existing legal framework shall come into force upon signing of the Comprehensive Compact and upon effecting the necessary changes to the legal framework with due regard to the non derogation of prior agreements and within the stipulated time frame to be contained in the Comprehensive Compact.²⁹

This, however, would not have precluded the government panel from negotiating on such a basis. As one legal scholar noted, (1) under E.O. No. 125 (15 September 1993) and E.O. No. 3 (28 February 2001), the comprehensive peace process may require administrative action, new legislation or even constitutional amendments;³⁰ (2) it was well within the mandate of the GRP panel to submit recommendations to the Executive as a result of discussions at the negotiating table; and (3) it was up to the Executive to consider these for appropriate coordination with the Legislative Branch, which may then undertake the necessary legal processes.

²⁸ Supreme Court, G. R. 183591, Manila, 2008, 39–68, accessed 13 December 2010, <http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/183591.htm>

²⁹ The Memorandum of Agreement on Ancestral Domain (MOA-AD), paragraph 7 of the section on Governance.

³⁰ The discussion is taken from: Candelaria, 'Silencing the peace'.

4. *The status of the BJE*. An issue raised by the MOA-AD's critics was that the relationship of the BJE with the Republic of the Philippines was described as associative. In the context of international relations, this concept is usually 'used as a transitional device of former colonies on their way to full independence'. This generated interest in and concern about the creation of a new state as a result of the MOA-AD. Candelaria noted, however, that nowhere in the MOA-AD was there any description of the BJE that reflected the requisites of an independent state. References to the 'central government' and the need to undertake legal processes within the legal framework of the GRP clearly showed a hierarchical relationship similar to an empowered autonomous region, which already exists in the Philippine Constitution.³¹ Candelaria noted two points that challenged the issues raised on this point by those who had petitioned the Supreme Court:
- a. *Territory*. Contrary to popular impressions, the MOA-AD does not grant territory to the BJE without the benefit of plebiscites at three levels: the more than 700 barangays in Category A (within 12 months from signing of the MOA-AD), Category B (not earlier than 25 years from the signing of the Comprehensive Compact) and the implementation of the BJE after the Comprehensive Compact. The criteria for choosing the areas would be covered by the plebiscite and included historical, population patterns, contiguity and functionality.
 - b. *Independence*. Independence and eventual secession was never an issue between the two panels. Nor was there any intention to establish 'a republic within the republic'. In fact, the MOA-AD sought to ensure that (1) the rights of the indigenous peoples inside the BJE would be governed by the principles of equality of peoples and mutual respect; and (2) the protection of their civil, political, economic and cultural rights would remain as guaranteed in the Philippine Constitution.

4. In the aftermath of the collapse

The Supreme Court decision coupled with the earlier refusal of the administration to uphold the agreement basically put paid to the process at that point. It did raise, however, what turned out to be unfounded fears that re-starting the peace process would become difficult because of MILF uncertainties about the utility of entering into negotiations with a government that did not guarantee support for any product that was the outcome of a process it was involved in. While there was eventually a resumption of talks, the process of establishing peace in Mindanao took a few steps backwards.

In the wake of the Supreme Court decision and the subsequent policy decision on the part of the Arroyo administration to drop the MOA-AD, three MILF commanders – Ameril Umbra Kato, Abdullah Macapaar (Kumander Bravo) and Aleem Sulaiman Pangalian – attacked villages in North Cotabato and Lanao del Norte as a sign of disapproval of the Supreme Court ruling. Their violent actions were directed against predominantly Christian communities. Other MILF units joined their forces even as the MILF Central Command declared that these attacks were not sanctioned by the organisation. The AFP followed these attacks with massive military operations against the MILF forces involved. According to the National Disaster Coordinating Council (NDCC), over 140 people were reported to have been killed in the initial attacks and more than 610,000 people displaced within two

³¹ Ibid.

months of the resumption of violence.³² The AFP operations in turn led to an increase in human rights violations involving both regular and auxiliary forces. As the conflict spread across nine provinces and three cities, a number of politicians and local groups supported the activation and *arming* of more citizen volunteer organisation (CVO) units, as well as the re-establishment of some vigilante groups. Illustrative of the problems mounting from the inherent weakness of the state, the Arroyo administration could not prevent local politicians and personalities from arming CVOs and leading them into combat operations even prior to the arrival of regular AFP units.³³ In fact, local leaders and politicians decried the lack of immediate action by the AFP, prompting them to provide resources and encourage their people to take up arms to defend themselves.

The arming of civilians, however, fed the perpetual cycle of violence in the region, and the MILF used these developments to justify some of their actions following the initial attacks.³⁴ As Sam Zarifi, Amnesty International's Asia Pacific Director, pointed out,

MILF units that targeted villages have engaged in serious violations of international law and should be held to account ... But experience from around the world shows that the deployment of civilian militias can set off a chain of reprisals and only increases the danger facing civilians ... All sides to this conflict should step back from the brink and demonstrate their commitment to avoid harming civilians. The MILF must control its forces, and the *Philippine government should take responsibility for the security of all peoples in the Philippines, regardless of religion or ethnicity.* (italics inserted)³⁵

This quote captures one of the main issue areas that bedevils the peace process, that is, the ability of the leadership of both the MILF and the Philippine government to control their forces in the field. The violence that erupted following the suspension of the MOA-AD, the subsequent determination by the Supreme Court of its unconstitutionality and the eventual declaration by the administration of President Gloria Macapagal-Arroyo that it would no longer pursue the MOA-AD illustrate the continuing difficulties faced by the Filipino people regarding the illusiveness of peace on the island of Mindanao. Engendered by a weak state that has to deal with a protracted insurgency situation and a largely war-weary population, it showed the continuing danger of a peace process sliding once again into conflict and the resulting mutual frustrations that make it unlikely for further talks to proceed with greater facility. Backsliding on the peace process is more than just a matter of political will. In the best of cases, policy is influenced, if not directed, by those in the field. This reflects on the command structures and leadership context of both the MILF and the Philippine government. In the case of the latter, it also shows the impact of the political environment (especially the state of security sector governance) within which the leadership has to operate.

A critical factor in the post-MOA-AD situation involved the international dimension of the process. An IMT had been established during the discussions on the MOA-AD as part of the

³² Amnesty International (AI), *Shattered peace in Mindanao: The human cost of conflict in the Philippines* (London: Amnesty International Publications, 2008), 2.

³³ *Ibid.*, 12.

³⁴ 'Mindanao civilians under threat from MILF units and civilian militias', Amnesty International press release, 21 August 2008, accessed 19 January 2009, www.amnesty.org/en/news-and-updates/news/mindanao-civilians-under-threat-from-milf-units-and-militias-20080822

³⁵ *Ibid.*

peace process, with Malaysia as the facilitator. This followed the model provided by the successful process undertaken during the GRP-MNLF talks that had Indonesia in a facilitating (although not a mediating) role. The IMT provided a critical element of the ceasefire structure as a neutral investigator of reported ceasefire violations. This was particularly important at the time of the eruption of fighting following the Supreme Court decision, when there were concerns that Malaysia might pull its 12-member team out.³⁶ At the same time, however, there was a deep-seated suspicion in Manila that Malaysia was using the conflict and its position as IMT facilitator to undermine the longstanding (though unpursued since 1991) claim of the Philippines to Sabah. Some quarters in the Philippines have argued that this issue between the Philippines and Malaysia (with some Philippine bureaucrats and politicians pushing the reopening of discussions over the Philippine claim) in fact creates a conflict of interest on the part of the latter. Furthermore, in the event of an all-out war, Malaysia could be a covert supplier of or transit for the supply of arms and funding to the MILF. These feelings were particularly strong against the chief facilitator of the peace process till the MOA-AD, Datuk Othman Razak. In fact, the Philippine antipathy towards Othman and its insistence on his replacement caused delays in the resumption of talks till February 2011 – a delay that caused such resentment and frustration among the MILF leadership, as well as its rank and file, that talk of a resumption of armed conflict became dangerously common.³⁷ At the same time, the apparent support of countries such as the United States of America for the MOA-AD and the establishment of the BJE did not have any apparent impact on the final decision of the Arroyo administration to drop the agreement.³⁸ Such cross-border support, however, indicates the importance of the counter-terrorism aspect of the Mindanao conflict to international players.

The terrorism aspect of the existing conflict has both an international (in terms of the involvement of the United States of America as well as the noted links between operatives of Jemaah Islamiyah, the Abu Sayyaf and elements of the MILF) and domestic dimension (the links between field operatives of the MILF, the Abu Sayyaf and even the Rajah Solaiman group). It also links back to the first issue of the command and control situation within the MILF. In October 2001, President Arroyo had issued Memorandum Order No. 37, which presented a 14-pillar anti-terrorism policy that largely emphasised military measures. The

³⁶ ICG, 'The Philippines: The collapse of peace in Mindanao', 13–14.

³⁷ See: International Crisis Group (ICG), 'The Philippines: Back to the table, warily, in Mindanao', *Asia Briefing*, no. 119 (24 March 2011): 4–5. In early September 2011, the Malaysian government appointed Tengku Abdul Ghaffar Mohammad to replace Othman Razak as the third-party facilitator of the peace process between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) after the Philippine government indicated its displeasure over his perceived lack of impartiality in the negotiation process. Like Othman though, he is a former official in the security services of Malaysia, and not someone from the Foreign Ministry as requested by the GRP. See: K. Evangelista, 'MILF seeks third party intervention over peace talks stalemate', *Philippine Daily Inquirer*, 6 September 2011, accessed 10 September 2011, <http://newsinfo.inquirer.net/54169/milf-seeks-third-party-intervention-over-peace-talks-stalemate>

³⁸ Alongside other national representatives, then US Ambassador to the Philippines, Kristie Kenney, was in Kuala Lumpur prepared to be one of the witnesses of the signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) in 2008. Moro Islamic Liberation Front (MILF) spokesperson Ghazali Jaafar downplayed this, however, and claimed that the US had never supported the MILF position that the Bangsamoro Juridical Entity (BJE) should represent a sub-state within the Philippines. See: J. Aning, R. Rosauero and J. Alipala, 'MILF on claims of US support: It's good news but not true', *Philippine Daily Inquirer*, 9 September 2011, accessed 10 September 2011, <http://newsinfo.inquirer.net/55549/milf-on-claims-of-us-support-it%e2%80%99s-good-news-but-not-true>

confluence of the anti-terrorism campaign with counter-insurgency and, consequently, the peace process, has made the path to a political settlement in Mindanao more complex.³⁹ Not only this, reports that members of the MILF were involved with the Abu Sayyaf and/or the Jemaah Islamiyah contributed to perceptions of either a perfidious MILF leadership or one that is weak and did not have all that much control over its field forces and personnel.⁴⁰

The stark reality of a resumption of conflict was made evident by the attacks of Kato and his allies within the MILF on the Christian communities in Northern Cotabato and Lanao del Norte, and the subsequent heavy response of the AFP. Clearly, the disappointment with which the Supreme Court decision was greeted by members of the MILF indicates the extent to which trust had been broken, especially on the part of the MILF in relation to the GRP. An unfortunate consequence of this loss of trust in the GRP was the loss of credibility of the MILF leadership itself among its own members. This incident led to the move by Kato to establish his own breakaway unit. MILF chief negotiator Mohagher Iqbal said that they were continuing in their efforts to persuade Kato's group to stay but also prepared to impose sanctions if no decision was made before the resumption of the Malaysian-brokered peace talks on 27–28 April 2011.⁴¹ Kato eventually formalised his separation from the MILF and called his faction the Bangsamoro Islamic Freedom Fighters (BIFF), and its *raison d'être* does not bode well for the prospects for lasting peace in Mindanao as it claimed to continue the fight for freedom – a concern expressed by the Philippine government.⁴² Murad Ibrahim, Chairman of the MILF, still considers the establishment of the BIFF as an internal matter to be resolved by the MILF.⁴³ Nevertheless, the August injunction on the MOA-AD and the resulting conflict within the MILF raise concerns on the ability of both parties to deliver on their promises.⁴⁴

The concern with spoilers, however, is not the principal issue in the negotiations between the GRP and the MILF. There will always be spoilers on both sides of a negotiation. The Mindanao peace process has always had to contend with hard-liners, whether this was on the GRP side or on the MILF's. The question is whether either side has the political capital and the willingness to use this political capital to reach a viable agreement and make the

³⁹ According to Santos, Arroyo was widely reported in the media in December 2003 as stating that 'the government would not allow the peace process to stand in the way of the overriding fight against terrorism'. This was seconded by a number of analysts and commentators, which showed that 'the anti-terrorism paradigm basically put at risk the viability of various peace processes'. See: Santos, 'War and peace on the Moro front', 103.

⁴⁰ For an account of the case of Mukosid Delna alias Abu Badrin of the 108th Base Command, see: ICG, 'The Philippines: Back to the table, warily, in Mindanao', 12.

⁴¹ 'MILF gives rogue commander ultimatum: Stay or go', *Philippine Daily Inquirer*, 28 March 2011, A12.

⁴² J. Maitem and R.M. de Guzman, 'Ex-MILF leader forms new armed group', *Philippine Daily Inquirer*, 6 February 2011, accessed 10 September 2011,

<http://globalnation.inquirer.net/news/breakingnews/view/20110206-318713/Ex-MILF-leader-forms-new-armed-group>; see also: Agence France-Presse (AFP), 'Philippines "seriously concerned" over rebel split', *Philippine Daily Inquirer*, 6 February 2011, accessed on 10 September 2011,

<http://newsinfo.inquirer.net/breakingnews/nation/view/20110206-318764/Philippines-seriously-concerned-over-rebel-split>

⁴³ Indeed, Kato's stated reasons for establishing the Bangsamoro Islamic Freedom Fighters (BIFF) had more to do with his relationship with the MILF rather than the fight for independence of the Bangsamoro people. See: *ibid.*

⁴⁴ ICG, 'The Philippines: The collapse of peace in Mindanao', 14–15.

agreement stick among what would certainly be a sceptical audience. The MILF has to contend with the BIFF, even as the GRP has to face up to a variety of political forces in and outside of Mindanao. While the credibility of the MILF is still under a cloud of doubt among those it claims to represent,⁴⁵ the issue of political legitimacy that bedevilled the Arroyo administration seems now to be a thing of the past.

5. Prospects for peace negotiations in the Aquino administration

Peace negotiations resumed with the accession to power of President Benigno Simeon C. Aquino III in the second quarter of 2011. There was quiet confidence that his administration was determined to end the longstanding issue with the MILF and complete negotiations towards a peace agreement. Unlike the Arroyo administration, Aquino was not bogged down by concerns about regime survival and perceptions of legitimacy. He had won the 2010 Presidential elections with very strong popular support, albeit also with high expectations about reforming government institutions and mechanisms.⁴⁶ In the context of the peace process in Mindanao, Aquino pointed out that his administration would be guided by three points: (1) a comprehensive understanding of the root causes of the conflict and a genuine desire to attain a just and lasting peace; (2) transparent and participative process that would lead to a shared vision under one sovereign flag; and (3) the consent of the people.⁴⁷

However, whether these guidelines will translate into a willingness to use political capital to end the conflict in Mindanao is a different matter altogether.

By August 2011, the negotiating panels had laid down their initial positions, which had some clear points of agreement. The first issue was the question of autonomy. The GRP submitted a proposal in August 2011 that presented the 'possibility of a more empowered, more workable and thus, more genuine autonomy of a Bangsamoro (Filipino Muslim) region'.⁴⁸ Similarly, the MILF leadership has talked about the need for 'real autonomy' to be the basis for relations between the Bangsamoro people and the Republic of the Philippines.⁴⁹ Second, both sides agreed on the significance of the ARMM to the negotiations. Aquino had stated that the ARMM represented a 'failed experiment', a sentiment that became part of the official position of the GRP panel, now chaired by Attorney Marvic Leonen of the University of the

⁴⁵ Even Moro Islamic Liberation Front (MILF) chief Murad has acknowledged that foot-dragging on the part of the government is, in fact, heightening the frustration of the younger and more militant members of the MILF and the effect that this had on the ability of the leadership to maintain the peace to keep talks ongoing. See: R.M. de Guzman-Maitem, 'MILF insists on substate proposal', *Philippine Daily Inquirer*, 5 September 2011, accessed 10 September 2011 at <http://newsinfo.inquirer.net/53543/milf-insists-on-substate-proposal>

⁴⁶ According to reports, he assumed office with a very high (over 85%) trust rating. See: 'Editorial: President Benigno S. Aquino III's first one hundred days in office', *Manila Bulletin*, 7 October 2010, accessed 19 March 2012, www.mb.com.ph/node/280970/pre

⁴⁷ Benigno S. Aquino III's speech at the Peace & Security Forum on 22 April 2010 at the Mandarin Hotel in Makati City.

⁴⁸ Agence France-Presse (AFP), 'Philippine government offers autonomy to MILF', *Philippine Daily Inquirer*, 22 August 2011, accessed on 10 September 2011, <http://globalnation.inquirer.net/9839/philippine-government-offers-autonomy-to-milf>

⁴⁹ De Guzman-Maitem, 'MILF insists on substate proposal'.

Philippines.⁵⁰ The MILF position virtually concurred with this assessment and declared that the ARMM was not an acceptable arrangement since it constituted a “fake” autonomy symbolizing mendicancy.⁵¹ Third, both sides did not consider the current territory under the jurisdiction of the ARMM to be immutable.⁵² Even with these points of concurrence, moving forward from the basic principles constituted a major problem.

For the government panel, the operationalisation of ‘genuine autonomy’ necessarily included reforming the ARMM. Their proposal contained a two-year period of transformation and reform of its institutional mechanisms and political context.⁵³ A major aspect of the plan was to introduce procedural instruments during the two-year transition designed to take power away from the dominant clans in the region. The basic idea behind the reform project was to show that the ARMM could be well governed.⁵⁴ On the other hand, the MILF had no qualms about the mutual exclusivity of the two issues. In fact, they argued that ‘real autonomy’ meant the establishment of a ‘sub-state’ similar to a US federated state. It would have the function and powers of a government except those pertaining to national defence (although internal security would be the responsibility of the sub-state), foreign affairs, currency and postal services.⁵⁵ In this context, the ARMM had no role to play. According to Murad, the sub-state that the MILF envisioned fell under the sovereignty of the Philippine Republic but would be a ‘region *outside the operations of the Autonomous Region in Muslim Mindanao* [italics inserted], that can stand alone without Malacañang’s administration and funding support’.⁵⁶

The issue of the sub-state, however, has already generated much interest and concern among Christian political leaders in Mindanao. Two points that dominated the reactions to the proposed sub-state were the questions about constitutionality and territory. There was no problem with the principle behind the establishment of a sub-state as long as this was framed within the context of the Constitution. Constitutionality, however, raised questions about the meaning of autonomy. It is easy to define autonomy in terms of defined powers and responsibilities. The question, however, remains as to the extent to which the sub-state would be accountable to the national government and the Constitution.⁵⁷ Could the concept of a sub-state, as proposed by the MILF, be accommodated within the framework of the Constitution, as it was currently worded? The issue of territory comes into play precisely

⁵⁰ N. Bordadora, ‘Palace says ARMM failed experiment’, *Philippine Daily Inquirer*, 15 February 2011, accessed 19 March 2012, <http://newsinfo.inquirer.net/inquirerheadlines/regions/view/20110215-320468/Palace-says-ARMM-failed-experiment>. See also: G. Lacorte and J. Alipala, ‘No Charter change seen in talks with MILF’, *Philippine Daily Inquirer*, 9 September 2011, accessed 10 September 2011, <http://newsinfo.inquirer.net/56105/no-charter-change-seen-in-talks-with-milf>

⁵¹ C.C. Señase et al., ‘MILF eyes new state’, *Philippine Daily Inquirer*, 9 August 2011, accessed 10 September 2011, <http://newsinfo.inquirer.net/38543/milf-eyes-new-state>

⁵² Ibid.

⁵³ On 30 June 2011, President Aquino signed into law Republic Act 10153, which postponed elections in the Autonomous Region of Muslim Mindanao (ARMM) until May 2013. In the meantime, the ARMM will be run by appointed officers-in-charge. See: International Crisis Group (ICG), ‘The Philippines: A new strategy for peace in Mindanao?’ *Asia Briefing*, no. 125 (3 August 2011): 2.

⁵⁴ For a more detailed exploration of the probable rationale and prospects of the ARMM in the new approach being taken by the Philippine government, see: *ibid.*, 1–4.

⁵⁵ Señase et al., ‘MILF eyes new state’.

⁵⁶ De Guzman-Maitem, ‘MILF insists on substate proposal’.

⁵⁷ Ibid.

because of this. The current configuration of local government units can only be changed through a particular process defined in the Constitution. It cannot be changed through Executive fiat even in the interest of lasting peace in Mindanao. In the end, would it be necessary to introduce changes in the Constitution to accommodate demands being made by the MILF in connection with their concept of a sub-state? If such was the case, would such changes be forthcoming?

The MILF is clearly adamant about the establishment of the Mindanao sub-state, and that this would not be the ARMM. The issue of the need for constitutional change is already covered in past agreements, a reason why the MILF is insistent that past agreements should be the basis from which talks should proceed.⁵⁸ The question of territory was already settled by the Tripoli Agreement of 2001, which acknowledged the claim of ancestral domain made by the Bangsamoro over Mindanao. The MILF has always believed that a political settlement ultimately includes Charter change,⁵⁹ and this brings the issue of the ARMM, and the claim of the MILF that the GRP panel's insistence on an enhanced ARMM as a take-off point for a political settlement would be a non-starter, front and centre in the negotiations.

There were initial indications that the Aquino administration was open to Charter change in the context of the Mindanao peace process with Attorney Leonen pointing out that the government was open to amending the Constitution to accommodate a comprehensive political accord with the MILF even prior to the resumption of talks.⁶⁰ This, however, was quickly dismissed by Aquino's spokesperson who pointed out that Charter change was not the priority of the administration.⁶¹ When the government panel made its offer of autonomy to the MILF, Leonen reiterated the position that Charter change was not the government's priority and instead they would like to concentrate on things that were already in the Constitution.⁶² The GRP panel presented a 'three-in-one' approach in August 2011 that included the offer of autonomy, the infusion of massive economic assistance and social services into Mindanao, and the historic retelling of the Moro people's history, which would acknowledge the injustice done to them as a people. The proposal also included 'a system of cooperation' for revenue sharing from the natural resources extracted from the region. It was emphasised, however, that any final peace deal would require that the MILF disarm and allow its fighters to be rehabilitated back into society.⁶³

⁵⁸ R. Elusfa, 'Respect past agreements, MILF urges gov't', *Mindanews*, 7 September 2011, accessed 10 September 2011, www.mindanews.com/top-stories/2011/09/07/respect-past-agreements-milf-urges-gov%e2%80%99t/

⁵⁹ A. Nawal and R. Rosaura, 'Charter change necessary to achieve peace – MILF', *Philippine Daily Inquirer*, 17 August 2010, accessed 10 September 2011, <http://newsinfo.inquirer.net/breakingnews/nation/view/20100817-287328/Charter-change-necessary-to-achieve-peace---MILF>

⁶⁰ C.O. Avendaño, Associated Press (AP) and Agence France-Presse (AFP), 'Gov't open to Cha-cha to win peace in South', *Philippine Daily Inquirer*, 17 August 2010, accessed 10 September 2011, <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100817-287202/Govt-open-to-Cha-cha-to-win-peace-in-South>

⁶¹ N. Bordadora, 'Palace throws cold water on Charter change talk', *Philippine Daily Inquirer*, 17 August 2010, accessed 10 September 2011, <http://newsinfo.inquirer.net/breakingnews/nation/view/20100817-287320/Palace-throws-cold-water-on-Charter-change-talk>

⁶² G. Lacorte and J. Alipala, 'No Charter change seen in talks with MILF'.

⁶³ AFP, 'Philippine government offers autonomy to MILF'.

The ARMM, however, remains an issue that will not go away. While Leonen noted that the government did not want to go back to the ARMM, he acknowledged that the economic development programme that was part of the government proposal would involve the transformation of the ARMM.⁶⁴ Aquino himself has been reported as stating that the ARMM would have to figure in the talks.⁶⁵ At the resumption of talks in March 2012, Leonen emphasised the importance of a transformed ARMM in the transition towards a more ideal form of governance for the Bangsamoro people.⁶⁶

Aquino completely rejected the MOA-AD as a starting point for peace negotiations and seems to have adopted a more conservative line, having been reported to have said that even as both sides need to define what ‘territory’ means as far as negotiations are concerned, this ‘is not a Muslim problem alone’,⁶⁷ indicating that stakeholders other than the Bangsamoro would have to be involved in the negotiations. This issue continues to be a focal point of the dispute, however. The Christian stakeholders in the issue have, by and large, rejected the ARMM. It is unlikely that they will be more accepting of an arrangement that grants the Bangsamoro greater autonomy over a larger territory. In this context, strong public support for the President does not seem to be a factor that favours the MILF, an issue that is already of some concern to the MILF.⁶⁸

6. Some tentative conclusions

The prospect for a resolution to the question of peace in Mindanao seems to continue being unclear at best and dim at worst. In fact, the conditions surrounding the current process are closer to dim than unclear, with a number of issues factoring in setting the pessimistic tone.

First is the question of transparency. There was clearly a strategic rationale as to why the details of the MOA-AD were kept from the public while the negotiations were on. Very little or no time was given for consultation with the people, as speculation by an inquisitive public and a concerned set of politicians would have led to a heightening of suspicions between the two groups (if not their negotiating panels).⁶⁹ And yet, keeping the details of an agreement free from public scrutiny could become the basis for a public outcry at the end of the process, as had happened in the case of the MOA-AD. The public should be appraised on

⁶⁴ Elusfa, ‘Respect past agreements, MILF urges gov’t’.

⁶⁵ Señase et al., ‘MILF eyes new state’.

⁶⁶ C.O. Arguillas, ‘GHP to MILF: It’s still the ARMM’, *Mindanews*, 20 March 2012, accessed 20 March 2012, www.mindanaotimes.net/ghp-to-milf-it%E2%80%99s-still-the-armm/

⁶⁷ Señase et al., ‘MILF eyes new state’.

⁶⁸ T.J. Burgonio, ‘MILF asks Aquino: Popularity or peace?’ *Philippine Daily Inquirer*, 15 August 2011, accessed 19 March 2012, <http://newsinfo.inquirer.net/41669/milf-asks-aquino-popularity-or-peace>. Aquino, however, has shown a willingness to go against the popular grain when he met with MILF Chair Al Haj Murad Ibrahim at Narita Airport on 5 August 2011 – a move that Aquino was criticised for by both the opposition and some of his own supporters. See: R. Tiglaio, ‘Republic downgraded in Aquino-MILF meet’, *Philippine Daily Inquirer*, 18 August 2011, accessed 10 September 2011, <http://opinion.inquirer.net/10143/republic-downgraded-in-aquino-milf-meet>; N.H. Cruz, ‘No more secret pacts with the MILF, please’, *Philippine Daily Inquirer*, 8 August 2011, accessed 10 September 2011, <http://opinion.inquirer.net/9585/no-more-secret-pacts-with-the-milf-please>

⁶⁹ Ryan Sullivan (Government of the Republic of Philippines [GRP] Panel, Moro Islamic Liberation Front [MILF] Peace Talks) who was interviewed by the author on 15 February 2011 at Makati.

what is going on, even as sensitive matters might be kept out of the public's purview. Even this, however, requires a certain amount of political adeptness and public trust in the political leadership. On this issue, however, it is likely that even an administration as popular as Aquino's would be hard pressed to keep the details of discussions under wraps. What is more, demands for greater transparency from the various stakeholders involved could compromise the negotiations irrespective of whether the process becomes more transparent or not.⁷⁰

The second has to do with the framing of the issue. 'Constructive ambiguity'⁷¹ was used in the drafting the MOA-AD such that certain concepts were phrased in a way that would allow flexibility in interpretation. The question of acknowledging historical rights to land and basing the foundations of a governance mechanism on these rights (and the need to correct the injustice caused by a historical condition) creates a point of contention for groups with interests vested in those lands. For instance, the most stringent cries of opposition to the MOA-AD came from Christian politicians and landowners in Mindanao who were concerned about their own property rights. This, together with the lack of transparency and public debate on the process, guaranteed that there would be strong opposition to the MOA-AD from a very influential group. These same groups constitute the backbone of the opposition to any forthcoming agreement that would promise anything more than what was in the ARMM.

The third factor relates to the strategy of basing a resolution of the land issue on the prospect of constitutional change in the future. The provisions defining the relationship between the GRP and the BJE clearly raised questions about the derogation of the sovereign power of the country. Ignoring the clear constitutional challenge that this agreement posed begged the question of whether or not the Arroyo administration was guilty of either bad faith (knowing that whatever the agreement reached on the question of ancestral domain, it would be subject to constitutional challenge and therefore not likely to be enforceable) or naiveté (treating the question of Charter change as a non-problem). In the end, the fundamental weakness of the Arroyo administration was its unpopularity – it did not have any political capital that it could use to sell the MOA-AD when push came to shove. This situation should be partly resolved by the strong public support that the Aquino administration enjoys. Strong public support, however, could also mean that the GRP might be empowered to renege on previous commitments. What do past agreements mean to the current administration in their attempt to settle the peace question? Will Aquino be willing to seek changes in the Charter (which seems to be the only way to accommodate past promises and the current demands being made by the MILF) in order to find a political settlement? Will Aquino be willing to make unpopular decisions in order to find a lasting political solution?

⁷⁰ Already, questions about details of the government's offer have raised the hackles of Mindanao officials who are considered to be the principal spoilers in the peace process. See: J. Alipala et al., 'Mindanao officials: Just what is gov't promising MILF?' *Philippine Daily Inquirer*, 14 August 2011, accessed 11 September 2011, <http://newsinfo.inquirer.net/41225/mindanao-officials-just-what-is-gov%E2%80%99t-promising-milf>

⁷¹ This was the term used by Datu Michael Mastura to describe the manner in which the Memorandum of Agreement on Ancestral Domain (MOA-AD) was drafted. Ryan Sullivan (Government of the Republic of Philippines [GRP] Panel, Moro Islamic Liberation Front [MILF] Peace Talks), who was interviewed by the author on 15 February 2011 at Makati.

The last three questions are at the heart of the issue at present. The MILF has made it clear that it will not allow backsliding on past agreements – that even if it had to compromise on these past agreements, this would not help ensure peace in Mindanao in the face of splits within the MILF and the presence of other armed groups promising to fight on for Bangsamoro independence. The MILF is effectively caught in a corner from where it has no way out. It had promised something more than the ARMM, and whatever else the MNLF got; this was effectively the rationale for continuing the conflict and absorbing the losses of crushing defeats at the hands of the Philippine military since the signing of a peace treaty between the GRP and the MNLF in 1996. Yet, the MILF is too weak to assert its claims militarily, especially in the face of rebellion within its ranks. It is in fact relying on Aquino to continue the progressive track that the talks have taken in the context of the MOA-AD, and to use his popular standing to be able to push for what might be an unpalatable agreement against an entrenched opposition. In fact, in the face of the MILF's weakness, the prospects for lasting peace in Mindanao is in the hands of the government and its willingness to take on new ideas and new ways of framing the issues that would pave the way for lasting peace in Mindanao. Aquino, however, does not seem inclined to do so.

The peace talks between the MILF and the GRP have stalemated and the prospects of a breakthrough are slim, simply because the forces that militated against the MOA-AD remain in place – the spoilers on both sides with their political entitlements, the constitutional requirements that create inflexibility in the talks and the absence of a political will to take on unpopular positions in the name of peace. Moreover, it does not appear that this situation will change for the better in the meantime.

Postscript: A straight path to breaking the stalemate?

On 15 October 2012, the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) signed the Framework Agreement on the Bangsamoro (FAB), a document that outlined the basis for an autonomous arrangement that would supersede the existing Autonomous Region of Muslim Mindanao (ARMM). This agreement brought the process involving the MILF to heretofore unexplored areas. At the close of the 37th Formal Exploratory Talks between the Philippine government and the MILF in Kuala Lumpur on 11 April 2013, the chair of GPH (Government of the Philippines) negotiating panel, Professor Miriam Coronel-Ferrer, pointed out that

[w]e are where the process has never been before. Never before had the negotiations between the government and the MILF come to the stage of actually defining and listing down powers; of actually identifying sources of funds and revenues for the new political entity that we are creating. Never before has the transformation of an armed group been discussed let alone imagined in detail.⁷²

This development has consequently brought with it a heightening sense that the process is entering its final stages and that President Aquino's *daang matuwid* (straight path) will make certain that none of the potholes, bumps and u-turns that had heretofore bedevilled the protracted negotiations with the MILF will stifle progress towards a programme of sustainable peace in Muslim Mindanao. Initial indications seem to show that there are reasons to be fairly optimistic about the situation.

The signing of the FAB was followed by the signing of the first annex covering transitional arrangements and modalities on 27 February 2013. A significant part of this annex includes provisions for the establishment of the Third Party Monitoring Team (TPMT) and the Independent Commission on Policing (ICP) which are both tasked with reviewing, assessing, monitoring and evaluating the implementation of the FAB and the ceasefire during the transition period. These provide the institutional mechanisms for ensuring that the FAB will be implemented properly and constitute important confidence-maintenance tools that will hopefully make all parties involved keep faith with the process. Due diligence has also been exercised in relation to the Moro National Liberation Front (MNLF) with the signing of the cooperation agreement with the MILF on May 2010. A similar agreement had been signed prior to the non-signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) to ensure that close coordination between the two groups on substantive developments in the negotiations would be maintained. This keeps the MNLF in the loop and hopefully would

⁷² As a side note, this is in stark contrast with the difficulties faced by the peace talks between the Philippine government and the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF). These talks are currently stalled with the Philippine government urging the CPP-NPA to stop its attacks on military and police outposts, and what they have referred to as 'soft civilian targets'. A Special Track that was proposed by Jose Maria Sison designed to speed up the negotiations had held an initial meeting on 17–18 December 2012 in the Netherlands. At that meeting it was agreed that further discussions would proceed on the draft Declaration of National Unity and Just Peace prepared by Sison. This Special Track was discontinued, however, when the resumption of meetings in February 2013 saw new documents being presented by the CPP-NPA panel that backtracked from the initial draft. See: 'GPH-MILF peace process reaches "new phase", says gov't chief negotiator', 12 April 2013, accessed 15 April 2013, <http://opapp.gov.ph/milf/news/gph-milf-peace-process-reaches-%E2%80%98new-phase%E2%80%99-says-govt-chief-negotiator>

prevent a repeat of the 1996 situation wherein the peace process between the Philippine government and the MNLF marginalised the MILF, which consequently continued with the armed struggle.

Beyond these institutional mechanisms designed to maintain the confidence of the parties involved in the process are the political factors that are key to ensuring that the peace process continues to move forward. These include the continued strong support from key publics including civil society and the international community. More importantly, the spoilers who had been instrumental in the debacle over the MOA-AD have kept themselves clear of the developments in relation to the FAB. A strategy involving consultations with these key players have provided the necessary reassurance over what will happen with the establishment of the Bangsamoro political entity defined in the FAB. Arguably, the most important factor is the combination of the personal commitment of President Aquino to the successful completion of the peace process and the implementation of a peace agreement, and the fact of President Aquino's willingness to risk his vast political capital in his support for the process. This is a sea-change from the situation faced by President Arroyo in the aftermath of the negotiations around the MOA-AD, and the subsequent political decision to back out of signing it. All these contribute to the optimism that surrounds the prospect of the peace process between the MILF and the Philippine government.

There are, nonetheless, continuing issues that at best could delay the completion of the process, and at worst completely derail it, opening up the prospect of a renewal of the conflict. The signing of the annex on transitional arrangements in February 2013 cannot cover up the fact that all the annexes were intended to be signed by the end of 2012. The annexes on power-sharing, wealth-sharing and normalisation have yet to be signed. What has been problematic about this delay (aside from the obvious irritation caused by the delay itself) is the fact that the MILF leadership has indicated its willingness to sign the three annexes. The delay has primarily been on the side of the government. While there have been reports that this has been due to a need to review the implications of the contents of the annexes on administration, the government has presented a proposal to amend the wealth-sharing provisions contained in one of the annexes.⁷³ As it is, the delay is already causing frustration in the MILF camp and 'erosion of confidence and trust' in the Philippine government's intentions, more so with this proposed amendment.⁷⁴ The organisation's ground commanders are reportedly losing faith in the political process.

The question of the relationship between the central leadership of the MILF and its field commanders remains an issue, especially given the options on the ground. Much in the same way that the MILF provided an alternative to the peace process involving the Philippine government and the MNLF, factions within the MNLF and breakaway groups from the MILF provide similar options to frustrated MILF field commanders. The MNLF faction led by Nur Misuari continues to be critical of the FAB and has not participated in the coordination with the MILF. Similarly, breakaway factions from the MILF, which constitute the Bangsamoro Islamic Freedom Movement and its armed component, create a similar situation. These frustrations will only become more critical as the process moves forward and further obstacles and delays are met.

⁷³ N. Dizon, 'Wealth sharing at heart of gov't-MILF stalemate', *Philippine Daily Inquirer*, 23 June 2013, accessed 23 June 2013 at <http://newsinfo.inquirer.net/431235/wealth-sharing-at-heart-of-govt-milf-stalemate-2>

⁷⁴ N. Dizon, 'MILF unhappy with talks', *Philippine Daily Inquirer*, 15 June 2013, A1 and A8.

The Aquino administration and the MILF leadership remain committed to the peace process and there are few indications at this point that this has changed. As presented in the main text, however, the personal commitment of the President is a major factor in the successful completion of the process, and, more importantly, the implementation of the agreement that comes out of it. While there are still three years to the end of the current administration, it is a short three years to an MILF leadership that is concerned about having to start all over again with a new President. To an even greater degree, the quick completion of the process makes certain that President Aquino will still be presiding over the implementation of the agreement, a not inconsequential consideration. The MILF will be requiring all the help it can get from President Aquino in the transition towards the establishment of the Bangsamoro political entity in 2016. Sustainable peace in Mindanao will depend to a large degree on the how the transition is going to be handled. In this context, the jury is still out on the prospect for peace in Mindanao.