

The Philippines: The Collapse of Peace in Mindanao

I. OVERVIEW

On 14 October 2008 the Supreme Court of the Philippines declared a draft agreement between the Moro Islamic Liberation Front (MILF) and the Philippines government unconstitutional, effectively ending any hope of peacefully resolving the 30-year conflict in Mindanao while President Gloria Macapagal-Arroyo remains in office. The Memorandum of Agreement on Ancestral Domain (MOA-AD or MOA), the culmination of eleven years' negotiation, was originally scheduled to have been signed in Kuala Lumpur on 5 August. At the last minute, in response to petitions from local officials who said they had not been consulted about the contents, the court issued a temporary restraining order, preventing the signing. That injunction in turn led to renewed fighting that by mid-October had displaced some 390,000.

The immediate task now is to prevent escalation and discourage the government and local officials from plans to arm civilians. Interested governments and donors should press both sides to keep existing ceasefire mechanisms in place, while quietly urging a return to talks. They can also take steps now to build or strengthen the institutions that a post-conflict Mindanao will need, even if peace seems a long way off.

The MOA was an extraordinary document intended as a roadmap for a so-called Comprehensive Compact or final peace treaty. It acknowledged the Muslims of Mindanao, the Bangsamoro, as a First Nation and laid the groundwork for setting up a Bangsamoro Juridical Entity (BJE) as their homeland. The BJE's relationship with the central government was defined as "associative", suggesting almost-equals. This, and the definition of ancestral domain, the territory to be included in the BJE, were the most controversial parts of the agreement. The revelation of the planned geographic scope led outraged local politicians, whose land would be affected and who had not been consulted during the negotiations, to demand an injunction. President Arroyo's opponents and potential successors after the 2010 elections also saw political advantage to be gained from condemning the MOA.

Once the injunction was granted, the president and her advisers announced the dissolution of the government negotiating team and stated they would not sign the MOA in any form. Instead they would consult directly with affected communities and implied they would only resume negotiations if the MILF first disarmed.

In the past when talks broke down, as they did many times, negotiations always picked up from where they left off, in part because the subjects being discussed were not particularly controversial or critical details were not spelled out. This time the collapse, followed by a scathing Supreme Court ruling calling the MOA the product of a capricious and despotic process, will be much harder to reverse.

While the army pursues military operations against three "renegade" MILF commanders – Ameril Umbra Kato, Abdullah Macapaar alias Bravo, and Aleem Sulaiman Pangalian – who attacked villages in North Cotabato and Lanao del Norte after the August injunction, the likelihood of full-scale war engulfing Mindanao seems low. Neither side has the resources to engage in sustained combat, and the generally moderate MILF leadership said after the 14 October ruling that it would not order its forces into battle. A few other individual commanders, however, could conclude that the strategy of pursuing peace had failed and join the "renegades". Another possibility is that some of the few dozen foreign, mostly Indonesian, jihadists in Mindanao could decide to undertake retaliatory action, since Kato and Bravo have assisted them in the past. A major urban bombing could turn trigger a much wider conflict.

Looking ahead, if and when peace talks resume, the government will have to do a better job of heading off potential spoilers, through consultation or co-optation, and delivering what it promises. The MILF will have to show more backbone in dealing with errant commanders.

II. PATTERN OF PEACE TALKS

The MOA was the most far-reaching of more than 70 agreements reached by the government and MILF since they began talks in July 1997.¹ From the beginning, negotiations have followed a pattern of two steps forward, one step back. The two sides come to the table and hammer out a key issue, only to confront a major obstacle: either they reach an impasse or fighting erupts, usually in the areas controlled by commanders known as “renegades”, men with large personal followings who are very much part of the MILF structure but sometimes act independently of the chain of command. Negotiations come to a halt. After a delay, one side, usually the government, offers to resume, and talks pick up where they left off. Until now, progress has been glacial but steady through the administrations of Presidents Fidel Ramos, Joseph Estrada and Gloria Macapagal-Arroyo.

A. INCHING TOWARD PEACE

Ramos oversaw the July 1997 signing of the Agreement on General Cessation of Hostilities. This was followed four months later by implementing guidelines that created the Coordinating Committees for Cessation of Hostilities (CCCH), local monitoring teams from each side that became a critical element of the ceasefire infrastructure.

Soon after Estrada took office, in August 1998, the government and MILF signed the General Framework of Agreement of Intent. Formal talks opened a year later, in October 1999, but conflict had resumed by early 2000, culminating in “all-out war” and a military assault on 9 July 2000 against MILF headquarters at Camp Abubakar.

In early 2001, after street protests in Manila forced Estrada out, Arroyo sought Malaysian assistance in resuming negotiations; the first talks in Kuala Lumpur, with Malaysia as the facilitator, took place on 24

March.² In June 2001, the venue for discussions moved to Tripoli, in recognition of Libya’s role in peace negotiations going back to 1970s.³ The result was the Tripoli Agreement on Peace, setting out three clusters to be negotiated: security; relief and rehabilitation, later referred to as humanitarian aid and development; and ancestral domain, the territory to be included in the BJE. Implementing guidelines for the first two clusters established an International Monitoring Team (IMT) and the Bangsamoro Development Agency in August 2001 and May 2002 respectively. Everyone recognised that ancestral domain was going to be the most difficult.

Conflict erupted again in February 2003 in North Cotabato and Maguindanao and while a ceasefire went into effect after three weeks of fighting, little progress took place in the talks for the rest of the year. The death of MILF founder Salamat Hashim in July and the so-called “Oakwood Mutiny” of young military officers in downtown Manila the same month meant both sides were preoccupied with their own internal politics. Al Haj Murad Ebrahim replaced Hashim as the top MILF leader.

“Exploratory talks” resumed in Malaysia in February and December 2004, only to have momentum disrupted again by a January 2005 attack on government military positions by MILF forces loyal to “renegade” commander Ameril Umbra Kato. The MILF leadership was genuinely taken aback by the clear ceasefire violation by its own and suspended Kato and his deputy for a year. It also temporarily deactivated Kato’s 105th base command, in which the men served.⁴ With

¹For a background to the talks, see Crisis Group Asia Report N°80, *Southern Philippines Backgrounder: Terrorism and the Peace Process*, 13 July 2004. For additional Crisis Group reporting on the Philippines, see Asia Reports N°152, *The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao*, 14 May 2008; and N°110, *Philippines Terrorism: The Role of Militant Islamic Converts*, 19 December 2005. The most complete account of the negotiations, from an MILF perspective, is Salah Jubair, *The Long Road to Peace: Inside the GRP-MILF Peace Process* (Manila, 2007). Jubair is a pseudonym for the MILF’s chief negotiator, Mohagher Iqbal.

²There are various reasons put forward for why she sought Malaysian help. One was that relations had soured badly because of Estrada’s unabashed support for Anwar Ibrahim, Mahathir’s deposed deputy prime minister, jailed on politically motivated charges of sodomy. One way of repairing relations, according to this explanation, was inviting Malaysia to help with the peace talks. Crisis Group interview, Manila-based journalist, 7 September 2008.

³Libya brokered a key agreement between the Moro National Liberation Front (MNLF) and the Philippines government that established autonomous regions for Mindanao Muslims. It was never implemented, but twenty years later, in September 1996, a modified version of that agreement was reached, with the Indonesian government acting as facilitator, that established the Autonomous Region of Muslim Mindanao. Libya continues to play a minor role in negotiations with the MILF; six of its nationals serve on the International Monitoring Team. The MILF regards the 1996 agreement as deeply flawed and does not wish to see Libya playing a greater role.

⁴Base commands in the area were reportedly restructured so that some of the area of the 105th was covered by others. Given Kato’s local power base, it is unclear whether this “deactivation” was effective.

the help of the monitoring bodies, negotiations got back on track, and, in April 2005, the two sides reached a number of “consensus points”. Major military operations in July 2005 in Maguindanao against suspected Jemaah Islamiyah militants and Abu Sayyaf members hiding in MILF strongholds did not disrupt the negotiations; the MILF recognised that the presence of foreign jihadis had become a liability.⁵

Over the next year, the two sides made significant progress finding common ground on the thorny issues of territory and governance. In September 2005, nine consensus points were reached on governance during new talks in Kuala Lumpur, causing a huge controversy when leaked to the press.⁶ In February 2006, in a major breakthrough, both sides endorsed 29 consensus points on ancestral domain; a coup attempt later that month, however, absorbed all government attention.

Talks stalled in September 2006 when the government insisted that any expansion of the existing autonomous region should be through “constitutional processes”, anathema to the MILF which considers the constitution inherently biased toward a centralised, unitary state.⁷ Later that year, the lead government negotiator introduced a “self-determination framework”, suggesting that since the right to self-determination is incorporated in Philippines domestic law, it might offer a way to reach an agreement without jumping through constitutional hoops.

Despite the impasse, work continued behind the scenes, and in November 2007, a breakthrough was announced on ancestral domain. The two parties prepared to sign an agreement that was essentially the same as the MOA, but talks in Kuala Lumpur broke down again when the government introduced “new elements”, relating

to its insistence on constitutional processes, into discussion. From March to July 2008, they were back on track, finally resulting in the MOA that was initialled by both parties on 27 July. The signing ceremony, scheduled for 5 August, was then aborted by the court injunction.

B. WHY THIS BREAKDOWN IS DIFFERENT

For eleven years, it was possible to inch forward because critical details were never spelled out. Holding peace talks was uncontroversial. But the MOA, while still a roadmap with the most sensitive details left to be worked out in the final Comprehensive Compact, did include specifics on the territory proposed for inclusion in the BJE. Opposition was swift and loud from those who saw their political and economic interests threatened and feared potential “dismemberment” of the nation.⁸

The halt to negotiations this time is thus more serious. It is based not on the eruption of conflict but on deep suspicions about the substance of the MOA, meaning that it will be very difficult, even if negotiations resume, to go back to this agreement as the starting point for the next round. The MILF says the agreement is a “done deal” and it will not countenance any renegotiation. The MOA is also feeding into national politics, with Arroyo’s opponents determined to use it against her as political manoeuvring intensifies ahead of presidential polls in 2010. The general feeling is that while both sides may go through the motions of resuming talks, no movement is possible until after a new president is in place. Even then it will be difficult, if not impossible, to simply pick up where the MOA left off.

⁵ See Crisis Group Report, *The Philippines: Counter-insurgency vs. Counter-terrorism*, op. cit., pp. 10-12.

⁶ Some of these points were repeated almost verbatim in the MOA. They included agreement on the concept of a homeland with a system of governance “suitable and acceptable to them as a distinct dominant people”; popular consultation leading to a referendum to determine future political status of Bangsamoro; transfer of power to the BJE during a transition period; BJE empowered to build institutions necessary for developing society, including civil service, judicial system and police; a “multinational third party” to monitor implementation of the eventual Comprehensive Compact; power of BJE to generate revenue and create its own tax base; establishment and entrenchment of “government institutions” with “defined executive, legislative and judicial powers and functions”, to be further defined in the Comprehensive Compact; budgeting powers; and establishment of a constitutional commission tasked to write the BJE charter. Jubair, op. cit., p. 141.

⁷ See Crisis Group Report, *The Philippines: Counter-insurgency vs. Counter-terrorism*, op. cit., p. 4.

III. THE MOA: A QUICK REVIEW

The MOA is divided into five sections: terms of reference; concepts and principles; territory; resources; and governance. Most of the main principles had been on the table for the last two years as “consensus points”. But there were some important new details in the MOA. One was the definition of Bangsamoro itself. Literally “Moro Nation”, it has always referred to Muslims, with the word “Moro” taken from the Spanish for Muslim (*Moor*). The MOA expanded the definition to “those who are natives or original inhabitants of Mindanao and its adjacent islands including Palawan and the Sulu archipelago at the time of conquest

⁸ Amando Doronila, “Self-Inflicted Dismemberment”, *Inquirer.net*, 8 August 2008.

or colonization and their descendants whether mixed or of full native blood". It then, however, suggested that non-Muslim indigenous communities would be allowed to choose whether they wished to be included in the BJE. Several groups rejected the MOA, however, because its definition of ancestral domain clashed with their own.⁹

A. THE ANNEXES

The real revelation was the agreement's annex, which spelled out the territory considered part of the Bangsamoro homeland and thus part of the BJE. The core would be the original Autonomous Region of Muslim Mindanao (ARMM) and the six municipalities that voted for inclusion in 2001.¹⁰ An additional 737 Muslim-majority villages (*barangays*) grouped as category A would be offered a chance to opt in through a plebiscite to be held within twelve months of the MOA's signing. 1,459 other "conflict-affected areas" (category B) would be the subject of "socio-economic and cultural affirmative action" from the central government for 25 years, at which time a plebiscite would be conducted to see if they wanted to join. The category B areas included some of the most resource-rich land in Mindanao.

It would be a huge swath of territory if everyone voted to join, but the MILF leadership itself recognised that only about half the listed *barangays* would vote in favour. Generally those that were doing well economically, for example, Zamboanga City, had little interest in a major change in the status quo. Areas with large populations of Christian settlers, especially if they controlled the local government, would almost certainly opt out. Indigenous tribal communities would be given the choice of opting in or out, even if their lands were included in the *barangays* that voted to

join. Nothing was going to be forced on anyone, or at least that was how the negotiators on both sides saw it.

Some local officials and landholders saw it differently: if the document became official, it would be a recognition of Moro land claims whether or not the population voted to join. From the point of view of settlers who acquired title through dubious means during the Marcos years, it would be a threat to vested interests. In some areas such as North Cotabato, where land disputes have been particularly bitter and clashes often take place between farmers and MILF fighters at harvest time, there was a sense that the MOA could be an invitation to "renegade" commanders to take back land by force.

Settler confidence that they would retain ownership or usufruct rights was probably not strengthened by a clause that forest and mining concessions "and other land tenure instruments of any kind or nature whatsoever granted by the Philippines Government including those issued by the present ARMM shall continue to operate from the date of formal entrenchment of the BJE unless otherwise expired, reviewed, modified and/or cancelled by the latter".¹¹

The annex also led to concern, particularly in Manila, that the *barangays* in question might not be contiguous after a plebiscite and raised the prospect of an ungovernable territory with bits and pieces scattered beyond the original ARMM.

B. NATURAL RESOURCES

While the geographic extent of the BJE was most controversial and the issue that led to the Supreme Court's restraining order, other issues arose once the document was open to scrutiny. The agreement calls for wealth sharing with the central government on a 75:25 basis in favour of the BJE over the income and revenues derived from natural resources.

It states that the BJE is free to enter into any economic and trade relations with foreign countries, provided they "do not include aggression against" the Philippines government.¹² One of the government negotiators suggested that this is no different from individual U.S. states, like New York or California, opening trade offices in Manila, but it was among the provisions that led to howls of "treason" from opposition politicians.¹³

⁹The rights of indigenous communities in the Philippines are protected under Republic Act No. 8371, known as the Indigenous Peoples Rights Act of 1997. Among the many such groups opposing the MOA was the T'boli people of South Cotabato, whose chief said that the MILF should not intrude on the T'boli ancestral domain. "The IPs of South Cotabato reject MOA-AD", Kota Wato Express, 8 September 2008.

¹⁰The ARMM, formed in 1990 after negotiations between the MNLF and the Philippines government, originally consisted of four Muslim majority provinces: Maguindanao, Lanao del Sur, Sulu and Tawi-Tawi. It was extended in 2001 to include Basilan province and six municipalities. In 2007 Maguindanao province was divided and a new province, Shariff Kabunsuan, formed, making a sixth province in ARMM. The partition was ruled unconstitutional in late 2008, however, and it is not clear what its administrative fate will be.

¹¹MOA Resources strand, Article 9.

¹²MOA Resources strand, Article 4.

¹³Crisis Group interview, government negotiator, Manila, 15 September 2008. By way of comparison, the 2005 Helsinki

Regarding onshore and offshore oil and gas, the BJE has jurisdiction and control of exploration, production and use “provided that in times of national emergency, when public interest so requires, the Central Government may, during an emergency for a fixed period and under reasonable terms as may be agreed by both Parties, temporarily assume or direct the operations of such strategic resources”.¹⁴

Much of the delay in working out the final wording of the MOA stemmed from wrangling over the extent of jurisdiction over marine resources. All provinces in the Philippines have jurisdiction up to 15km offshore; for the BJE, MILF negotiators wanted this extended to the boundary of Philippines territorial waters. The problem was that no one knew exactly where these lay, and different international treaties offered contradictory information.¹⁵ Eventually, both parties agreed on the principle of joint BJE-government jurisdiction beyond the 15-km limit and left final demarcation to a joint technical body.¹⁶

C. GOVERNANCE

Governance – how the new entity is to be ruled and its relationship to Manila – is deliberately left vague in the MOA. All of the details were to be worked out in the final Comprehensive Compact. The essence was to be “associative, characterized by shared authority and responsibility”. Article 8 states:

The Parties agree that the BJE shall be empowered to build, develop and maintain its own institutions, inclusive of civil service, electoral, financial and banking, education, legislation, legal, economic, and police and internal security force, judicial system and correctional institutions ...

MILF negotiators envisioned “shared sovereignty” based on two nearly equal units, but with the central government retaining control over defence, foreign policy and currency. They said they had no particular in model in

Memorandum of Understanding (MOU) between the Indonesian government and the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) states in Article 1.3.2 that “Aceh has the right to conduct trade and business internally and internationally”, a less sweeping provision. For Mindanao, details of what precisely is meant by the phrase “any trade and economic relations with foreign countries” would be worked out in the Comprehensive Compact.

¹⁴ Resources strand, Article 5.

¹⁵ Crisis Group interview, MILF negotiating team, Manila, 8 September 2008.

¹⁶ MOA Territory strand, Article 2(g). Crisis Group interview, MILF negotiators, Manila, 8 September 2008.

mind, but one person close to the team said it had looked at the relationship between the U.S. and the Commonwealth of the Northern Mariana Islands and the Federated States of Micronesia (FSM).¹⁷ The Commonwealth has more autonomy than U.S. states but residents retain U.S. citizenship; FSM is considered an independent state but depends on the U.S. for its defence. Government negotiators saw the BJE as more akin to a state in a federal system. For them, the repeated use in the MOA of the term “central government” was clear acknowledgment that the BJE was part of a larger whole, not a co-equal polity.

The vagueness of the wording, however, led the Archbishop of Cotabato, a supporter of the MOA, to write:

It is nowhere stated in the MOA-AD that the MILF acknowledges the authority and sovereignty of the Government of the Republic of the Philippines over all the territories covered by the term “Republic” in the Constitution of the Philippines. It has been reported, of course, that the MILF does not recognize the Philippine Constitution. So here are some questions:

[...] Does the MILF recognize either de jure or de facto that the Republic of the Philippines holds authority and sovereignty over the whole of Mindanao, Sulu, and Palawan? What do the negotiating panels mean by “associative relationship and associative arrangements”? Does the use of the term “central government” in the MOA-AD connote the idea that the Bangsamoro Juridical Entity recognizes the authority of a central government over it? Does the term “shared authority and control” in the MOA-AD connote the exercise of power by two equal authorities, or is it a recognition that in the sharing there is a “primus inter pares” principle?¹⁸

The two sides also agreed to invite a “multinational third party to observe and monitor the actual implementation of the Comprehensive Compact”. The MILF wants a strong international guarantor of the peace; several individuals mentioned the European Union as a favoured option. While negotiators claimed they had no model in mind for the third-party role, the agreement on South Sudan comes up frequently in MILF documents and interviews with MILF leaders, although they stress that the MOA differs in the MILF’s willing-

¹⁷ Crisis Group interview, Ishak Mastura, Manila, 7 September 2008.

¹⁸ From a series by the Archbishop of Cotabato Orlando B. Quevedo, reprinted in www.mindanews.com, 10 August 2008.

ness to forego a referendum on independence. “We gave up the option for secession”, one leader said.¹⁹

The certain contentiousness of the issues to be left to the Comprehensive Compact is such that even had the MOA signing not been aborted, the likelihood of keeping to the timeframe it envisioned – finalising the Compact within three months of the plebiscite on category A territory – was low.

D. THE MOA IN RETROSPECT

The MOA was an extraordinary achievement. But even as a roadmap, it was a radical document, giving the BJE far more sweeping powers than, for example, the 2005 Helsinki agreement between the Indonesian government and the GAM gave autonomous Aceh. And just as their Acehnese counterparts had to accept modifications and some dilution in order to secure the agreement in law, MILF negotiators would have had to do the same, even if the restraining order had not been issued. The key elements of a peace, however, have been defined. The task now is to see how – or if – discussion on them can move forward given the opposition the MOA has generated. While the most virulent rejectionists are self-interested local strongmen, most of whom hold elected office, many others, from settlers to indigenous non-Muslim communities to constitutional lawyers, have serious reservations that need to be addressed, not just by media commentators but by top government leaders. It would have been better if concerns about the MOA could have been fed, through consultations, into the negotiating process. Now that positions have hardened it is far more difficult, but the MOA still represents the best guide to peace.

IV. KILLING THE MOA: LOCAL OPPOSITION

Several elements were uneasy with, if not unalterably opposed to, the MOA. They included local officials and landowners worried about being unseated or dispossessed; President Arroyo’s rivals, who saw the political potential of using the agreement against her, especially with national elections on the horizon in 2010; the military, unhappy with concessions made to their former enemy and concerned with the implications for Philippines security; and some but not all within the MNLF,

the armed movement from which the MILF broke away and whose leaders signed the 1996 agreement setting up the ARMM. The first two were most important.

A. PETITIONS TO THE SUPREME COURT

In his 2007 book on the peace negotiations, Mohagher Iqbal, the MILF’s lead negotiator, castigates “warlord politicians” who migrated to Mindanao from elsewhere in the Philippines and singles out three men as standing against Moro aspirations: North Cotabato Governor (now Vice-Governor) Emmanuel Piñol; Zamboanga City Mayor Celso Lobregat; and former mayor of Carmen, North Cotabato Roger Toliño.²⁰ The first two filed the petitions that led to the restraining order.

Piñol had been long opposed to any effort to include North Cotabato in any Muslim-dominated political arrangement. He was governor in August 2001, when voters in his province were asked whether they wanted to join the ARMM; 98 per cent said no. On 19 July 2008, he took part in a seminar on the MOA at the Mandarin Hotel in Manila, sponsored by an international donor organisation. It was designed to win over potential spoilers and “soften the blow” when the contents of the MOA were made public.²¹ A member of the government peace panel distributed copies of the then still-embargoed MOA in its final form. According to one of those present, Piñol looked at the draft and reportedly said, “Christians will arm themselves and there will be bloodshed”. He said then that he and others were going to file a petition before the Supreme Court.²²

The next day, he personally delivered a letter to the adviser to the president on the peace process, Gen. Hermongenes “Jun” Esperon, and head of the government peace panel, Gen. Rodolfo Garcia, demanding the government reveal the contents of the draft MOA so that people in the affected areas could voice their views before it was signed. Piñol said if the government failed to respond, he would file a petition with the Supreme Court to force the government to disclose the MOA’s contents. He claimed that the North Cotabato government was never consulted on the idea that areas beyond the existing ARMM would be included

¹⁹ Crisis Group interview, Manila, 7 September 2008. The agreement usually mentioned by the MILF leaders is the 2002 Machakos Protocol that preceded the 2005 Comprehensive Peace Agreement.

²⁰ *The Long Road to Peace*, op. cit., p. 86.

²¹ Crisis Group interview, Zen Malang, Cotabato, 10 September 2008.

²² *Ibid.*

in the BJE, and yet the MOA envisioned conducting a plebiscite within twelve months.²³

Piñol then held a press conference, announcing that he and the governor of North Cotabato were filing a petition to compel the government to disclose the contents of the MOA before signing.

On July 24, Esperon distributed copies of the draft MOA to retired generals meeting at Camp Aguinaldo in Manila; one of these copies was leaked to a major Manila newspaper, the *Philippine Daily Inquirer*.

On July 27, eighteen mayors of towns in North Cotabato signed a manifesto against the inclusion of their areas in the BJE. "The inclusion of North Cotabato in the proposed plebiscite was unilaterally decided by the so-called 'peace negotiators' without proper consultation with the people and the leadership of the province", it said.²⁴

On 28 July, the MILF's other nemesis, Mayor Lobregat, filed a separate petition asking the government to "cease and desist" from signing the MOA that included eight *barangays* in the city whose residents had not been consulted about the contents. City voters overwhelmingly opted out of the ARMM first in 1989 and then in 2001, both times by margins of close to 95 per cent.²⁵

On 2 August, Piñol released a statement saying that the MOA, while purporting to be about ancestral domain, "is actually a virtual declaration of a new and distinct state in the Southern Philippines with a defined territory that includes territorial and internal waters and air space". Because of its envisaged control over maritime resources in particular, Piñol said, even if the *barangays* voted against inclusion in the plebiscite, "The MILF/BJE would still have effective control over a vast part of North Cotabato".²⁶ Besides, "We have already rejected the proposal for North Cotabato to join the ARMM several times in the past, the last being the [14 August 2001] plebiscite which was roundly thrashed by 98 per cent of the voters of the province".²⁷

On the same day, Iligan City officials sent a letter to the negotiating teams of both sides, stating "our disappointment for the lack of transparency in the negotiation process from which we, the local officials and the residents of the city, felt excluded and betrayed". The mayor claimed his city would lose more than 80 per cent of its territory to the BJE as well as rights to copper and gold deposits.²⁸

Two days later, the Supreme Court merged the petitions and issued the temporary restraining order.

B. THE CONFLICT IN NORTH COTABATO

Bad blood between North Cotabato politicians and the Moro movement did not start with the MOA, nor did violence between "renegade" MILF elements and armed paramilitaries only erupt after Supreme Court action.

The region of Cotabato is a heartland of Muslim Mindanao, home to the ethnic Maguindanaon whose sultans were once among the most powerful in South East Asia. During the American colonial period, it was part of a larger Moro province that covered all of southern Mindanao. This was divided in two after independence to become Cotabato and Davao provinces. As Christian settlers from elsewhere in the Philippines streamed into Mindanao in search of land after World War II, Muslims gradually became a minority in many areas they had once dominated. Cotabato was no exception: a 1960 census showed that only 30 per cent of the population spoke Maguindanao while 37 per cent spoke the languages of the two biggest ethnic groups in the central Philippines, Ilonggo and Cebuano.²⁹ In 1967, demographic changes and the demands of different constituencies led to the further division of Cotabato into north and south.³⁰

Tensions between settlers and the indigenous population were kept in check until Ferdinand Marcos, who became president in 1965, began manipulating them for political ends. Around the same time radical Muslim university students, educated in Manila, began to demand independence. Friction increased and broke into open conflict in 1969, thanks to the depredations of a settler called Kumander Toothpick and his band of vigilantes called "Ilaga". The word Ilaga means "rat" in Ilonggo but has also come to be an acronym

²³ "Piñol asks Govt to Divulge Details of MILF MOA; Vows to seek Supreme Court Intervention", Web Portal of North Cotabato, 21 July 2008.

²⁴ "18 mayors refuse to be part of MILF land", *Sun-Star*, 31 July 2008.

²⁵ "SC stops signing of GRP-MILF territorial deal", *Sun-Star*, 5 August 2008.

²⁶ "Cotabato governor questions peace accord", CBCP News, 2 August 2008.

²⁷ "Piñol asks Govt to Divulge Details", op. cit.

²⁸ "Iligan will lose gold, copper, 8 barangays to BJE – mayor", GMA News.TV, 5 August 2008.

²⁹ Patricio N. Abinales, *Making Mindanao* (Manila, 2000), p. 160.

³⁰ *Ibid.*, pp. 164-165.

for “Ilonggo Land Grabbers Association”.³¹ The Ilagas’ stated aim was to kill all Maguindanaon, and their attacks on Muslim communities were vicious. Marcos and settler politicians gave arms and support, seeing them as a tool to depose Muslim rivals, while Muslim politicians formed their own army, the Barracudas, in response. From 1969 to 1972, Cotabato was the site of bloody clashes that have shaped political dynamics to this day.³² A posting on the MILF’s website, for example, in mid-August refers to Piñol as a “second generation remnant of Ilaga politicians in the 1970s [who] sparked communal war with the Bangsamoro people in Cotabato Province just so he can project himself as [a hero] of Christians”.

The Ilaga overlay on bitter local political rivalries and festering unresolved land claims help explain why North Cotabato has become one of the most conflict-prone areas of Mindanao, and why one of the most troublesome MILF commanders, Ameril Umbra Kato, has turned his sights on the province. Aged 62, Commander Kato, a revered Islamic teacher who studied in Saudi Arabia, has become a law unto himself. With thousands of followers, he and his operations chief, Wahid Tundok, have too much influence for the MILF to ignore, but their actions may be driven more by local political dynamics than by the MILF’s broader strategic goals.

Commander Kato has consistently caused the greatest problems within the MILF in relation to Murad’s leadership and his support for the peace process. Aggressive acts by Kato and his followers helped trigger the 2000 “total war” period. Kato has been involved in a long-running local feud with the Ampatuan clan that has become more combustible after Zaldy “Datu Puti” Ampatuan’s election, with strong backing from Manila, as governor of the ARMM in August 2005.³³

Before that election, on 9 January 2005, some MILF commanders from the 105th base command, including Wahid Tundok and another unit commander under Kato named Abdul Rahman Binago, launched an attack on government positions in Mamasapano and Shariff Aguak, Maguindanao, that killed eight soldiers. It was a huge ceasefire violation that put the peace talks in jeopardy and was a serious embarrassment for the MILF.³⁴ Kato and Tundok were suspended for a year and the 105th base camp was “deactivated”.³⁵ But Kato and his men did not show any greater willingness to toe the line when they returned.

Kato has also played host repeatedly to foreign jihadis, especially the group around Indonesians Umar Patek and Dulmatin, in part because of ideological compatibility. Unlike most MILF commanders, Kato’s Saudi training appears to have inculcated a commitment to salafi Islam and an antipathy to Christians not just as outside interlopers but as *kafirs*. When combined with grievances over land and losses from the Ilaga period, it explains why attacks on settler farmers, especially at harvest time, have been a regular feature of Kato’s leadership.³⁶

C. CLASHES PRECEDING THE COURT INJUNCTION

Even before the aborted signing ceremony in Manila, clashes had increased between MILF fighters and government forces: the Philippines army and members of the paramilitary Civilian Armed Force Geographical Unit (CAFGU) and Civilian Volunteers Organisation (CVO).³⁷ CAFGU are recruited and trained by the army and have a reputation for brutality going back to the 1980s. The CVOs are under the local executive and in many cases are little more than private armies for local warlords who also serve as mayors or gover-

³¹ Guiamel Alim, Jose Bulano Jr and Ismael G. Kulat, “Understanding Inter-ethnic Conflicts in North Cotabato and Bukidon”, in Wilfredo Magno Torres III (ed.), *Rido: Clan Feuding and Conflict Management in Mindanao* (Manila, 2007), p. 170.

³² The activities of the Ilaga and subsequent conflict helped ignite a clan feud between two ethnic groups, the Maguindanaon and the Menuvu, which continues to this day. See Guiamel Alim et al, op. cit. Also, Marcos loyalists who rose to power in Cotabato during this period are at the top of the MILF’s list of villains, in part for their ties to the Ilaga. These include Carlos B. Cajelo, a colonel in the Philippines Constabulary who became governor of Cotabato from 1972-1982. See *The Long Road to Peace*, op. cit., p. 85.

³³ Kit Collier and Malcolm Cook, *Mindanao: A Gamble Worth Taking* (Sydney, 2006), p. 21.

³⁴ The attack was apparently a response to the death of Binago’s brother in a clash with government forces three days earlier. See Crisis Group Report, *Philippines Terrorism: The Role of Militant Islamic Converts*, op. cit., pp. 13-14.

³⁵ *The Long Road to Peace*, op. cit., p. 17

³⁶ Crisis Group interviews, Cotabato and Manila, 13 and 15 September 2008.

³⁷ AFP chief of staff Alexander Yano said the MILF as a whole had been involved in 40 separate attacks on military positions between 1 May to 30 June 2008 but caused no casualties. He told the Manila Overseas Press Club that this indicated MILF weakness and an organisation that is “not as solid and cohesive as [the rebels] would like to project”. “MILF leadership ‘weak’ says AFP chief”, *Philippine Daily Inquirer*, 9 July 2008.

³⁷ “MILF forces withdrawing”, *Malaya*, 9 August 2008.

nors; they are supposed to be unarmed but exceptions have been made in many cases.

On 25 June 2008 fighters from the 104th base command ambushed a unit of the 27th Infantry Battalion near Bgy Mindupok, Sarangani province. The next day, the CCCH went to the area and asked the MILF men responsible why they had committed such a serious violation of the ceasefire. They said they wanted the government to realise they were impatient with the slow pace of the peace talks. They also claimed to have received intelligence that the government was planning to attack them.³⁸ Over the next three days they continued to harass military and paramilitary patrol units nearby despite remonstrances from the CCCH.

On 27 June, tensions in Aleosan and Midsayap rose as a group of MILF fighters from Kato's 105th base camp reportedly shot at a CAFGU detachment and later harassed villagers, causing some to flee.³⁹ Text messages from anonymous sources circulated widely, warning of MILF attacks, prompting fear and leading Piñol and other local officials to urge Christian settlers to arm themselves for protection.⁴⁰ On 1 July, Kato's men exchanged fire with troops of the 40th Infantry Battalion.

Then on 14 July, according to the military, they fired on a group of Christian farmers harvesting rice near Bagolibas, Aleosan, who were accompanied by 40 armed CVOs for protection, and reportedly stole the unhusked rice. According to the MILF, Kato's men were shot at first by CVOs.⁴¹ The next day a CVO unit fired on a group of Kato's men, sparking a prolonged shooting exchange but one that produced no casualties. These incidents took place as a regional peace and order council meeting was taking place in North Cotabato, involving military, police and local civilian officials. The North Cotabato governor caused a stir by announcing that MILF fighters had fired on the mayor of Aleosan; a subsequent investigation showed they had not, but the farmers in question had been working on land the mayor owned.⁴²

Further clashes took place the next week, one of them involving a force of 400 armed CVOs led by the vil-

lage head of Bagolibas, Aleosan, ostensibly acting as a security force for local farmers. On 25 July, according to local sources, a unit under the command of Wahid Tundok burned several houses in the same village. Both the army and the MILF deny that they ever burn houses as a war tactic, but village houses are made of woven nipa palm and a stray bullet could easily set one alight.

The next day, an MILF *ustad* (religious teacher) named Musa Alamada alias Commander Paradise entered the town centre in Midsayap, accompanied by armed fighters, to conduct Islamic study sessions. Fearful Christians fled to the village centre and CVOs and Philippines army troops converged on the village to "establish defensive positions and protect the lives and properties of the civilians".⁴³ The North Cotabato governor also turned up.

On 27 July, the day the agreement was initialled in Kuala Lumpur, men from the 105th base camp joined local MILF fighters to "occupy" more than a dozen villages in North Cotabato. While MILF spokesmen rejected the word, saying that the MILF does not engage in occupation, they did not contest the fact that MILF units of between 80 and 100 men from Maguindanao and Shariff Kabunsuan provinces came into North Cotabato villages and traded gunfire with paramilitary forces. The CCCH went into action and on 30 July, the government and MILF panels jointly produced a resolution calling on the MILF forces to "reposition"; the word "withdraw" was considered too sensitive.⁴⁴

After Kato's men made no move in response to the CCCH resolution, the National Security Council meeting in Manila on 6 August, two days after the Supreme Court injunction, gave the MILF 24 hours to move out of "occupied" areas in North Cotabato. Interior Secretary Ronaldo Puno, one of the cabinet hardliners, said that after exhausting all peaceful measures, the government felt "entitled and authorized to undertake whatever action is necessary". He said the ultimatum was not a declaration of war but a "declaration of the enforcement of the rule of law".⁴⁵

On 8 August, withdrawal began in some areas but sporadic shooting between MILF and government forces continued in the area around Midsayap town. On 10 August, the Philippines army and police launched a "clearing operation" in the area.

³⁸ Crisis Group interview, member of CCCH team, 13 September 2008.

³⁹ All of the July incidents appear to have been led by forces under the command of Mustapha Gandulangan alias Comdr Tah, commander of the first brigade of the 105th base camp.

⁴⁰ "Armed Hostilities Initiated by the 105th BC, BIAF-MILF", document obtained from Philippines army source, Cotabato.

⁴¹ The military report cited above says the farmers were accompanied by CVOs, not CAFGU.

⁴² "Armed Hostilities", op. cit.

⁴³ Ibid.

⁴⁴ "MILF forces withdrawing", *Malaya*, 9 August 2008.

⁴⁵ "MILF occupying towns", *GMA News.TV*, 7 August 2008.

As military operations intensified and clashes with the MILF increased, not only did calls for arming civilians intensify but a new Ilaga group, the Reform Ilaga Movement, emerged, with a spokesman named Mike Santiago. The MILF claimed Santiago, in his 60s, was none other than the original Kumander Toothpick of the 1970s and accused Piñol of being the group's main supporter.⁴⁶ It also claimed separately that Piñol has "hundreds of armed followers absorbed as CAFGUs or CVOs".⁴⁷

D. THE ATTACKS IN LANA DEL NORTE

Lanao del Norte is the other area of conflict where a "renegade" commander, Abdullah Macapaar alias Commander Bravo, launched attacks after the court injunction. Bravo is the scion of a powerful local family and his influence, unlike Kato's, derives solely from military prowess and not from any religious credentials. Rumours that he trained in Afghanistan have not been substantiated – although also not conclusively disproved. He is said to be close to Benjie Midtimbang, chair of the MILF CCCH, but Midtimbang has not been able to control him either, and there is no suggestion that Bravo's August attacks had his endorsement.

Bravo has launched attacks in the middle of negotiations before. On 17 March 2000, he led an attack on the Kauswagan town hall that left dozens dead. Like Kato's actions, it was one factor in then President Estrada's decision shortly thereafter to launch all-out war.⁴⁸ In April 2003 Bravo and his men occupied the town of Maigo, saying he was trying to "cripple the economy and make the government more responsive to the political demands of the Bangsamoro people".⁴⁹

On 18 August, men under the command of Bravo and Commander Aleem Sulaiman Pangalian of the 103rd base command attacked four Christian-majority towns in Lanao del Norte – Kauswagan, Maigo, Linamon and Kolambugan – killing 28 civilians, three soldiers and a policeman. The government then launched punitive actions against Bravo, Kato and Pangalian and placed bounties of 5 million pesos (about \$107,000) on their heads. On 6 September, the bounties for Kato and Bravo were doubled. Interior Secretary Puno said the MILF itself could have the funds for development if it turned the three in, but the MILF leaders said this would be

unethical. Chief negotiator Mohagher Iqbal said the MILF would conduct its own internal investigation to see if the three had committed crimes, but as a revolutionary organisation, it would not surrender them to the government.⁵⁰ When asked what punishment it would mete out if evidence of criminal behaviour emerged, one leader said, "We would transfer them" – a standard response of militaries of authoritarian states to allegations of abuses by their officers.⁵¹

Since 3 September, the military refers to the three commanders and their followers as LMG – short for "lawless MILF group" to distinguish them from the rest of the MILF. "The MILF are not our enemy", an army officer in Cotabato said.⁵²

V. KILLING THE MOA: POLITICS IN MANILA

The MOA's fate was sealed as much in Manila as in Mindanao. By all accounts, President Arroyo was taken aback by the anger and emotion that revelation of the agreement's contents produced. Opposition politicians saw a chance to take advantage, and several would-be presidents saw a chance to grandstand. The result was a series of moves which made it highly unlikely that it would be possible to return to the status quo ante.

Several politicians added their own petitions to Piñol's, demanding the Supreme Court not just to order the government to reveal the full contents of the agreement but to declare the MOA unconstitutional. Senator Mañuel "Mar" Roxas, a candidate to replace Arroyo in 2010, was one. He argued before the Court and on numerous media interviews that the BJE would be tantamount to a separate state with sovereign powers and that the MOA had been drafted without public consultation and contained provisions "which clearly violate the Constitution".⁵³ Some 136 out of 238 members of the House of Representatives signed a resolution opposing the MOA.⁵⁴

In open hearings on the petitions, Agnes Devanadera, the solicitor general, who should have been defending

⁴⁶ "Sec. Ronaldo Puno rebuffed for lying re: Ilaga's existence", *luwaran.com*, 10 September 2008.

⁴⁷ *Ibid.*, p. 86.

⁴⁸ "MILF's Commander Bravo strikes again", *Inquirer.net*, 19 August 2008.

⁴⁹ *Ibid.*

⁵⁰ "Fighting heats up; AFP bombs rebels, 16 dead", *Philippine Daily Inquirer*, 22 August 2008; and "MILF hits govt for bounty offer vs 3 commanders", *GMA News.TV*, 9 September 2008.

⁵¹ Crisis Group interview, Manila, 9 September 2008.

⁵² Crisis Group interview, Cotabato, 13 September 2008.

⁵³ "Roxas, Drilon, Tamano join calls for SC to stop BJE MoA", *Inquirer.net*, 11 August 2008; and "Government Junks MOA in all Forms", *Philippine Daily Inquirer*, 30 August 2008.

⁵⁴ "House resolution calling for review of deal with MILF filed", *Inquirer.net*, 13 August 2008.

the government's side, maintained that President Arroyo had not read the agreement and would not have approved it if she had. Her adviser on the peace process, Gen. Esperon, was put in a difficult position. As the man who had saved her from a coup attempt and according to some, helped deliver the 2004 election in Mindanao, he had her complete trust, but the import of the solicitor general's remarks was that she had not been properly briefed.⁵⁵

Opposition politicians said they were all for peace but not for dismemberment of the state; one potential presidential candidate, Senator Panfilo "Ping" Lacson, suggested the fault lay with the negotiators' "serious errors of judgment" and that if talks resumed, they should be led by a new team.⁵⁶

Another factor was also at work. It was clear to almost everyone that any final agreement based on the governance principles outlined in the MOA would require constitutional change, despite the earlier self-determination framework proposed by government negotiators.⁵⁷ Arroyo's rivals have long suspected that she has been looking for any opportunity to revise the constitution to make it possible for her to extend her term beyond 2010. The current constitution limits presidents to a single term. Arroyo had tried unsuccessfully for "charter change" or cha-cha, in Philippines parlance, using other issues; the MOA, according to some opposition politicians, was simply a way to reach the same goal.

Finally, the hardliners in the cabinet – Defence Secretary Gilbert Teodoro, Interior Secretary Ronaldo Puno, Presidential Executive Secretary Eduardo Ermita and National Security Adviser Norberto Gonzales – were reported by some to have been opposed to the agreement from the outset and looking for ways to scuttle it. One source said, explaining the operations against Kato and Bravo, "We had to find a way for the generals to let off a little steam".⁵⁸ Another person called the attacks by Kato and Bravo a "heaven-sent gift to the military".⁵⁹

The government moved into damage control mode. On 29 August, in hearings before the Supreme Court, the solicitor general announced the MOA was being set aside

and would not be signed in this "or any other form".⁶⁰ On 2 September, the Arroyo government informed the Supreme Court it would not sign the agreement, regardless of how the court ruled on the various petitions. The next day, the government formally dissolved the peace panel. Secretary Ermita read out a statement from the president saying that the president "has directed a new paradigm in the peace process by mandating that peace negotiations be refocused from one centred on dialogue with rebels to one of authentic dialogue" with community groups. He said the president had ordered a "thorough review" of all peace initiatives, including with the Communist Party of the Philippines and the MNLF, as well as all interim agreements with the MILF. Henceforth, Arroyo's minister said, disarmament, demobilisation and reintegration (DDR) processes that usually follow a peace agreement were preconditions for resumption of talks.⁶¹

On 23 September, President Arroyo, addressing the United Nations, said she remained committed to peace talks but would only resume negotiations with the MILF when it turned in the three "renegades". At the same time, she asked that they be included on the UN terrorist list.

VI. KILLING THE MOA: THE OCTOBER 2008 SUPREME COURT DECISION

At the time of public hearings following the August injunction, the Supreme Court said it would issue a ruling on the petitions at the end of September. It had three choices: to rule against the petitioners; to rule in their favour; or to declare the petitions moot because the government had already dissolved the peace panel and announced that it would not sign the MOA. Most observers expected the latter. It would give more leeway to the two sides to find a way back to the negotiating table, and it would be less embarrassing to the president, who was widely seen in Manila as controlling the court. The court ruling on 14 October that the MOA was unconstitutional therefore came as a shock.

⁵⁵ Esperon reportedly played a key role in foiling a 26 February 2006 coup attempt by junior military officers.

⁵⁶ "Lacson: Bar Disbanded Peace Panel Members from New Panel", GMANews.TV, 4 September 2008.

⁵⁷ Despite MILF opposition to the notion of doing anything according to the constitution, which it believes is a priori biased in favour of a unitary state, there was general recognition (even, privately, from MILF leaders) that the 1987 constitution would have to be amended to allow for the BJE.

⁵⁸ Crisis Group interview, Manila, 7 September 2008.

⁵⁹ Crisis Group interview, Manila, 13 September 2008.

⁶⁰ "Govt junks MOA in all forms", *Philippine Daily Inquirer*, 30 August 2008.

⁶¹ "Puno to MILF: Disarm first before we can talk peace", *Davao Today*, 10 September 2008, available at <http://davaotoday.com/2008/09/10/puno-to-milf-disarm-first-before-we-can-talk-peace/>. Interior Secretary Puno defined the "r" in DDR as rehabilitation, not reintegration.

A. THE RULING

The fifteen judges were split, with seven dissenting, arguing the case was moot. But the 81-page majority decision was devastating, calling the MOA “perhaps the most contentious ‘consensus’ ever embodied in an instrument”, excoriating Gen. Esperon for committing “a grave abuse of discretion”, and accusing the president of exceeding her powers.⁶²

The furtive process by which the MOA-AD was designed and crafted runs contrary to and in excess of the legal authority, and amounts to a whimsical, capricious, oppressive, arbitrary and despotic exercise thereof. It illustrates a gross evasion of positive duty and a virtual refusal to perform the duty enjoined.⁶³

The court accepted the petitioners’ claim that they had a right to be consulted but went further, saying the MOA was in clear violation of the 1997 Indigenous Peoples Rights Act (IPRA) which gave indigenous cultural communities and peoples the right to participate fully in matters which may affect their lives and destinies. By making “a sweeping declaration on ancestral domain, without complying with the IPRA ... respondents clearly transcended the boundaries of their authority”.⁶⁴

The judges then addressed the issue of the “associative relationship” outlined in the MOA’s governance section. They argued that the concept of association in international law is generally understood as a “transition device of former colonies on their way to full independence” and that the parties therefore “aimed to vest in the BJE the status of an associated state, or, at any rate, a status closely approximating it”, in violation of basic provisions in the Philippines constitution.⁶⁵

Finally, the judges ruled that President Arroyo had gone far beyond her power to conduct peace negotiations, acting as if the assent of Congress to the legal changes necessary for the implementation of the MOA was assured.⁶⁶ They took issue with a sentence in the governance section of the MOA stating that all provisions which cannot be reconciled with the constitution “shall come into force upon the signing of a Comprehensive

Compact and upon effecting the necessary changes to the legal framework”. As worded, the court said, this “virtually guarantees” that the amendments and laws would be enacted and therefore was tantamount to usurping legislative powers.⁶⁷

B. THE REACTION

Vice-Governor Piñol immediately issued a triumphant declaration that the decision reflected the will of the people and strengthened their faith in the justice system.

We thank God who in His infinite wisdom made every event happen in perfect timing – from the discovery of the document, to the filing of the Supreme Court petition, and the issuance of the Temporary Restraining Order less than 24 hours before the scheduled signing of the MOA AD in Kuala Lumpur, Malaysia. That Divine Intervention by the true Prince of Peace averted a bloodshed of catastrophic proportion that would have divided the nation for years to come.⁶⁸

The MILF’s reaction was angry but resigned. Mohagher Iqbal said the leadership was weighing its options and would bring the issue to the international community, perhaps the Organisation of the Islamic Conference. He said that while it would not order its forces to launch retaliatory attacks, he could not guarantee that individual commanders would exercise the same restraint. He said the decision showed once again that “the constitution is a tool to stifle the Moros’ legitimate aspirations”.⁶⁹

But some voices were harsher. Prof. Abhoud Syed Lingga, a pro-MILF intellectual and head of the Institute of Bangsamoro Studies, said, “Staying with the Republic of the Philippines now becomes untenable, and separation appears as the only viable option left to the Bangsamoro people”.⁷⁰ And a senior MILF military figure, Commander Yang, warned that the fighting would now spread beyond the three base camps, saying, “Commanders Kato and Bravo have been vindicated.

⁶² G.R. No. 183591, *The Province of North Cotabato vs. The Government of the Republic of the Philippines*, at www.supremecourt.gov.ph/jurisprudence/2008/october2008/183591.htm, 14 October 2008, pp. 8 and 36.

⁶³ *Ibid.*, p. 71.

⁶⁴ *Ibid.*, p. 38.

⁶⁵ *Ibid.*, pp. 41-42.

⁶⁶ *Ibid.*, p. 60.

⁶⁷ *Ibid.*, pp. 62-63 and p. 72.

⁶⁸ “A Triumph of the People”, <http://spnorthcotabato.net>, 14 October 2008.

⁶⁹ “MILF to appeal ‘illegal’ MOA-AD before ICJ, OIC,” abs-cbnNEWS.com, 15 October 2008.

⁷⁰ “SC rules 8-7 vs MOA-AD; MILF panel says ‘SC ruling does not stop armed conflict’”, www.mindanews.com, 14 October 2008.

They were right when they said that the government is just playing tricks on us in the peace talks".⁷¹

VII. HUMANITARIAN CONSEQUENCES

The renewed conflict has left over 200 dead, about half of them civilians, and some 390,000 displaced by late September. These numbers were lower than the media reporting about heavy fighting would suggest. One source said there had actually been relatively few direct engagements: "The military bombs a village, people flee, the army enters and makes a declaration but there's no one around. Then they leave and the people return".⁷²

The worst episode of civilian casualties involved a family of six – a father and his five children – killed on 8 September by gun or rocket fire from a military helicopter while trying to flee to safety in a convoy of boats in the marshes near Datu Piang. The military maintains that there was gunfire from the convoy directed at the planes overhead, a charge one of the survivors rejects.⁷³

Two-thirds of the displaced fled to the homes of friends or relatives; some 100 evacuation centres had also been established, but in many the displaced lived nearby and were returning periodically to check on their homes and fields. Relief organisations were reaching those affected, and while there were complaints about the distribution, and flooding from monsoon rains was increasing the general misery, emergency needs were generally being met.

VIII. WILL THE CONFLICT WIDEN?

With the Supreme Court ruling, there appeared to be no chance of returning to the MOA, making this break in negotiations fundamentally different from earlier ones, where every time negotiations were interrupted, they eventually resumed from the point they had left off. In

⁷¹ "MILF commander warns of 'bloodbath' with SC ruling; Jaafar says SC recognized MOA-AD as 'official'", *www.minda news.com*, 15 October 2008.

⁷² Crisis Group interview, journalist covering the conflict, Manila, 7 September 2008.

⁷³ Atty. Zainudin Malang, "Initial Findings: Moro children killed in aerial bombing by AFP", email communication based on interview with thirteen-year-old survivor of attack, 11 September 2008. The child's account describes rocket fire. A military spokesman in Cotabato said the plane overhead used machine guns, Crisis Group interview, 13 September 2008.

mid-September, government representatives close to the peace process were talking of appointing a new peace panel but skipping over the MOA and starting negotiations directly on the Comprehensive Compact. It is difficult, however, to conceive how any final agreement can be contemplated if the basic principles of the MOA have already been rejected. Several MILF members and many independent observers were convinced there was little chance of anything more than pro forma discussions until after Arroyo leaves office in 2010.

In the meantime, the question is how the current conflict will evolve. One possibility is that the conflict will spread and lead the two sides back to "all-out war" as happened in mid-2000. Absent a major bomb attack or some other unforeseen contingency, the chances seem low. Neither side currently has the resources for sustained operations, although the government could probably replenish stocks of arms and ammunition more quickly than the MILF if the need arose.

MILF leaders, operating openly since the ceasefire in 2003, do not want to have to go underground again. They warn that failure to return to the negotiating table could undermine the moderate MILF central committee chair, Al Haj Murad, and lead to other commanders returning to armed struggle or a decentralised, splintered movement emerging with many small units acting independently, more akin to southern Thailand than what the Philippines faces now.⁷⁴ Military officers, however, say they have no reason to believe that Murad is facing any serious challenge. It is possible in light of the Supreme Court ruling that a few other commanders might join Kato and Bravo in returning to active combat, as the statement cited above of Commander Yang suggests, but the likelihood of all base commands joining in is remote.

Many in the Cotabato area are worried that the Malaysian-led IMT will decide it makes no sense to stay on. The Malaysians had threatened to withdraw because of lack of progress in mid-2008, but given the deteriorating situation following the Supreme Court injunction against the MOA, it committed itself to a three-month extension in late August 2008. While its numbers are small, the IMT has provided a critical element of the ceasefire structure as a neutral investigator of reported ceasefire violations. If Malaysia pulled out its twelve

⁷⁴ For analyses of conflict in southern Thailand, see Crisis Group Asia Briefing N°80, *Thailand: Political Turmoil and the Southern Insurgency*, 28 August 2008; Asia Report N°129, *Southern Thailand: The Impact of the Coup*, 15 March 2007; and N°98, *Southern Thailand: Insurgency, Not Jihad*, 18 May 2005.

members, Manila would be hard-pressed to find replacements, particularly if the fighting means that monitors cannot go into the areas where ceasefire violations would most likely take place. But there is a deep distrust of the Malaysians in Manila's political elite, many of whom believe that Malaysia is siding with the MILF as a way of trying to undermine the Philippines' long-standing claim to Sabah – and that if all-out war did return, Malaysia could be a covert supply of arms and funding to the MILF.⁷⁵

One development that could trigger serious escalation of the conflict would be foreign jihadis coming to the aid of Bravo and Kato. Kato's connections in particular make it possible, even probable, that a few of the Indonesians and Malaysians now working with the Abu Sayyaf might decide to help their beleaguered MILF friends, with or without their endorsement. If they were to undertake a urban bombing in retaliation for the military's "punitive actions" – as JI members, working with the MILF's special operations group did following the assault on the MILF's Camp Abubakar in July 2000 – it could serve as a green light to the military to go after the MILF more broadly.

Amid the general unhappiness among Manila politicians with the MOA, some senators have raised the issue of the MILF's ties to JI, although those links have been steadfastly denied by the MILF leadership, sometimes disingenuously. "Indonesians look just like us", a senior negotiator explained. "If they look like us and speak our language, how would we know if they passed through our camps?"⁷⁶ The small mobile jihadi unit led by Indonesian JI member Umar Patek, consisting of about eight to ten men from JI and two other jihadi organisations, KOMPAK and Darul Islam, has been operating from Jolo for much of the last year but has assigned individuals to the Mindanao mainland. Among the MILF commanders they have worked with are Mugasid Delna of the 108th base command, a member of Umar Patek's training cohort in Afghanistan and Zabidi alias Bedz, believed to be the leader of al-Khobar, a criminal gang that has been responsible for many bombings in the past.⁷⁷ Al-Khobar may have been the group behind a bus bombing in Digos, Davao on 1 September 2008 that killed seven. There

is no suggestion that foreign jihadis were behind the blast, but a bombing like it, in a major city and with a higher civilian toll, is what worries people on both sides of the conflict.

IX. CONCLUSIONS

The outlook for meaningful progress in peace negotiations seems bleak, but the situation is not as dire as is sometimes portrayed in the Philippines press. Several factors militate against the widening of the conflict, and while the humanitarian situation is serious, international relief agencies seem to have the problem well in hand. One pressing concern is the support, both government and private, for a greater role for paramilitary groups like CAFGU. While the need for defence against attacks by MILF units in a place like North Cotabato is real, Philippines officials should know by now that arming poorly trained civilian forces only makes things worse.

Interested governments, including the U.S., Japan and Malaysia, have made it clear they were dismayed by the failure to sign the MOA and want to see a resumption of talks. Pressure from them and major donors should continue. The branding of Kato, Bravo and their men as "LMG" has its problems but at least suggests that the government continues to see the MILF leadership as a responsible negotiating partner.

The MILF, however, will have to find a more effective way of handling problem commanders than it has shown thus far. One suggestion made by a Moro non-governmental organisation (NGO) leader in Cotabato was to use the opportunity of the "review" of the peace process to rewrite the rules of the ceasefire mechanisms, giving the IMT a more robust mandate and wider latitude to impose punishments on violators. As it stands, the monitors simply decide who was at fault in response to a violation report and then leave it to the respective sides to impose sanctions. The MILF has demoted commanders in the past but it has shown little inclination and no ability to deal with the likes of Kato and Bravo. Giving more authority to the IMT might help, but it is not clear whether a formula could be worked out that both sides could accept.

Both sides, but particularly the Arroyo government, could have done more during the negotiation process to consult affected communities and bring sceptics on board. It is unlikely that any effort would have made someone like Vice-Governor Piñol more amenable to the MOA. But when even such a strong peace advocate as the Archbishop of Cotabato raises serious questions about the agreement's meaning and implications (with-

⁷⁵ In 1962, the Philippines government under President Arroyo's father, then President Diosdado Macapagal, claimed Sabah based on its having been part of the Sultanate of Sulu. It broke off diplomatic relations with Malaysia after Sabah was included in the newly independent country in 1963. Ferdinand Marcos restored relations in 1966, but the Sabah issue has dogged Philippine-Malaysian relations ever since.

⁷⁶ Crisis Group interview, Manila, 9 September 2008.

⁷⁷ Crisis Group Report, *The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao*, op. cit., p. 5.

out, however, doubting its benefits), it suggests that more systematic consultation would have been useful.

Since donors have assisted various aspects of the peace process in the past, perhaps they could provide technical assistance to the Philippines government to “sell” consensus points reached with the MILF to a broader public through improved communication strategies. The MILF in March 2008 held a huge congress to secure a renewed mandate for negotiation with its own constituents; nothing similar happened on the government side. If Manila is interested in more than rhetoric about peace, it should be thinking about how to deliver the goods.

In the meantime, the two sides and interested donors need to be thinking about what would be needed should peace ever happen. One perennial problem, for example, is reintegration of former combatants. A political settlement may be years away, but it would be worth thinking through now how the men and women of the MILF would find alternative livelihoods, how many people would need assistance, how it would be distributed, how ethics of transparency and accountability can be built into institutions involved in aid delivery and so on.

An earlier agreement between the government and the MILF recognised the importance of management training, and a Bangsamoro Institute for Leadership and Management was created. Donors should work with the MILF to see how this institute can be developed so that it is more than an MILF institution, committed to developing a meritocracy in the region. Defining the institutions that will be needed when the conflict ends is important now, even if peace seems like a distant goal.

Finally, more analyses of local conflict that can feed directly into development programs would be useful. If land conflicts are particularly acute in North Cotabato, then it is important to understand why, so that the government or NGOs could take steps to address them even while the broader peace process is in limbo.

The scrapping of the MOA was more than the usual one step back, but now more than ever, creative thinking about what to do on the margins is critical.

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