

FIGHTING FOR LAND AND IDENTITY

THE PERPETUAL STRUGGLE OF THE INDIGENOUS PEOPLES IN SOUTHWEST MINDANAO

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For decades, armed conflicts as well as deadly rivalries among clans and displacement have been a reality for the entire population of the Autonomous Region in Muslim Mindanao (ARMM)¹ on the southern Philippine island of Mindanao. “Enduring peace in Mindanao seen at last” or other headlines to that end could be read and heard in national as well as international media at the end of 2012, after the forging of the so-called Framework Agreement on the Bangsamoro (FAB) between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF). The FAB followed the 32nd exploratory peace talks between the GPH and MILF, and raised – yet again – high hopes that the violent conflict between the Moros (referring to the Muslims in the Philippines) and the government might finally be put to an end. The FAB is understood as a road map for establishing a new autonomous region, called the Bangsamoro,² which is planned to replace the current ARMM. However, a group that has been consistently overlooked when observing the peace process are the non-Islamised and also non-Christianised indigenous peoples (IPs, or Lumad³) living inside the ARMM. During the peace talks, the IPs have not once been invited to join in at the table during the discussions.

- 1 | A detailed list of the abbreviations is at the end of the article.
- 2 | While Moro is the word usually describing Muslims in the Philippines, the term Bangsa is the Moro word for homeland. Bangsamoro, thus, means Muslim homeland.
- 3 | *Lumad* is the Bisayan word for “indigenous” or “native”. It was adopted by a group of 15 out of the more than 18 Mindanao ethnic groups in their Cotabato Congress in June 1986 in order to distinguish them from the other Mindanaons, Moro or Christians.



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The Moros have been fighting the Philippine government for an independent Muslim state ever since the 1960s. More than 40 years of bloodshed and fighting saw three “all-out-wars” and left their marks on the region and its people. Five decades of separatist struggle in the ARMM have torn this part of the country, taking the lives of more than 160,000 people and causing the displacement of more than one million people over the years.

Actually, both the Moros as well as the non-Islamised indigenous communities in the region could be considered “indigenous” – as they both agree, they share common roots. Yet, over time and with the spreading of Islam in the region, their religious-cultural identities separated. Today, the Muslims are generally referred to as “Moro”, and when talking about the “indigenous peoples in the ARMM” one usually refers to the non-Islamised and also non-Christianised IPs, the Lumad.⁴ Especially for the IPs, it became significant to be recognised as distinct from their “Moro brothers”.⁵ This desire for acknowledgement is understandable considering that the IP population is frequently neglected when speaking about the conflict in Mindanao, adding to the fact that they are the most marginalised peoples in the archipelago. Overall in the Philippines, the indigenous peoples comprise about ten to twelve million, which accounts for about ten per cent of the Philippine population. Of these, an estimated half a million lives inside the ARMM, making up about 15 per cent of the ARMM’s population.⁶

The non-Islamised indigenous peoples in the ARMM are indeed a minority in the true sense of the word, meaning without recognition of their rights, without access to even the most basic social and health services and without

- 4 | The term Lumad as it is used throughout the article will refer to those who do not describe themselves as Muslim (Bangsamoro) or Christian.
- 5 | Although the IPs in the island provinces of the ARMM (such as the Samah or the Tausug tribes) are mostly Islamised, they do not consider themselves Bangsamoro either.
- 6 | According to the government census of 1 May 2010, the population of the ARMM totals 3,256,140. For reference see “ARMM – Autonomous Region in Muslim Mindanao”, National Statistical Coordination Board (NSCB), <http://nscb.gov.ph/activestats/psgc/regview.asp?region=15> (accessed 16 May 2013).

inclusion in political decision-making processes. While IPs elsewhere in the Philippines can legally rely (at least in principle) on the quite effective and responsive Indigenous Peoples Rights Act (IPRA) of 1997, the law was never applied in the ARMM due to its autonomous status. During the past 16 years of IPRA's existence, the non-Islamised IPs in the ARMM have not enjoyed the rights that were actually supposed to be granted to all indigenous peoples in the Philippines. Although even in other parts of the archipelago IPs lead their lives far below the poverty lines (even with IPRA in place), in the ARMM they are left completely lawless, invisible, underrepresented and neglected.

Since no reliable and complete household census was ever made among the IPs inside the ARMM, numbers of IP population are often inaccurate and seemingly even used to further marginalise them. There are reports, government sources included, that talk of a mere 60,000 IPs in the ARMM, while more reliable numbers estimate at least 500,000 IPs in the ARMM. During a survey undertaken in the scope of the IPDEV project, the gathered data immediately proved that the number is much higher than estimated so far.

In the ARMM provinces of Maguindanao and Lanao del Sur, the IPs remain among the most vulnerable members of society as they continue to lack access to land and land titles, culture-responsive basic education and the most basic social services. In short, they suffer social, economic and political exclusion. The IPs face disadvantages that deprive them of essential means for claiming their rights, exercising self-determination, and upholding the most crucial issue: their fundamental human right to their *Ancestral Domain*.

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THE IMPORTANCE OF LAND RIGHTS AND TERRITORIAL JURISDICTION FOR INDIGENOUS PEOPLES

The most populous indigenous tribes inside the ARMM today are the Teduray and the Lambangian tribe. In the past, many of them lived in the plains and hills of South-west Mindanao but due to population pressures, resettlement programs and conflicts with the Moros over their

respective *Ancestral Domains*, they had to move further into the mountainous hinterland. Over time, more and more of them were forced into giving up their traditional slash-and-burn methods of cultivation and shifted towards farming with plows. The rapid changes in their environment have completely altered their way of life. Their adaptation to agriculture has logically pulled them deeper into the market and cash economy, making them peasants. And those who were able to withstand the changes were forced to move even deeper into the mountains due to the spreading of logging and other economic interests.

Indigenous communities are mostly clan-sized, and in most cases dependent on swidden farms, hunting and gathering for their livelihood. Little by little individual communities ceased to be the masters in their own ancestral lands and of their own lives, which made them lose their self-determination, since territory is integral to their identity and forms the basis of their tribal self-governance. On top of this, their remote lifestyle offers little schooling and keeps

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them mostly isolated. Non-education leaves them at a huge disadvantage, placing them in a vicious cycle: non-education means illiteracy, which in turn makes people vulnerable to misguidance and deceit. At the same time, the lack of education results in a lack of knowledge about their rights or a lack of confidence to stand up for them.⁷

7 | Education on their rights is what is needed amongst the IPs in the ARMM. This is where the IPDEV project of Konrad-Adenauer-Stiftung in the Philippines comes in. The project, implemented together with KAS' Mindanao based partner Institute for Autonomy and Governance (IAG) and Mindanao based NGO DEVCON, is designed to gather cultural information and baseline data and, thus, facilitate the formulation of the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) as well as their inclusion in the local governments' planning instruments. The project institutes strategic campaigns that strengthen the IP's ability to exercise their collective rights in the ARMM and it capacitates the IPs with rights-based knowledge and skills aiming at increasing their active participation in local governance. And, in another component, it equips the IPs in the ARMM with knowledge and skills towards building sustainable livelihoods and on how to manage natural resources sustainably. The project, which is funded by the European Union and the German Federal Ministry for Economic Cooperation and Development (BMZ) through KAS, is designed for three years, from February 2012 until January 2015.



Teduray women at the IP Women's Summit in March 2013: Population pressures, resettlement programs and conflicts with the Moros have forced the Teduray to move further into the mountainous hinterlands. | Source: © IPDEV.



Teduray men performing a tribal ritual. Their remote lifestyle offers little schooling and keeps them mostly isolated. | Source: © IPDEV.

A cultural profiling and 100 per cent household survey conducted by the IPDEV project in early 2013 (the first of their kind) have revealed little known insights into the *Lumad's* way of life, their culture and their rituals. The survey data showed that the majority of the households (61 per cent) derived their income from farming, making it the main source of income for most. The adult members' skills were generally basic skills common to rural communities, such as carpentry or handicraft and weaving. Other sources of living are hunting wild animals, gathering rattan, wild fruits and herbal plants for medication. While another indigenous tribe in the ARMM, the Higaonon, even still practice nomadic farming. The Timuay Justice and Governance (TJG) is a system of government among the Teduray and the Lambangian tribes. The system is headed by a Timuay leader, who has the power and authority to settle cases and whose command is respected by the people. Collective decision or consensus is practiced by the leadership. With regard to schooling, about 28 per cent of Teduray households' school-aged children are not attending school and literacy levels in general are low among adults. When asked about their highest educational attainment, the majority said "elementary schooling", followed by the second most frequent response "none". Their homes are mostly (86 per cent) made of light housing materials, such as wood or bamboo. Without running water most households get their water from springs, rivers, rain sources or wells, which are not safe for drinking. For many the only access to medical assistance, are the health services provided by the *barangay*⁸ health station, but most health stations actually lack medical services, therefore many households do not consult health personnel for the treatment of family members. More than half (58 per cent) of the multi-member families derive a monthly income that ranges from 5,625 to 8,436 Philippine pesos,⁹ equivalent to 105 to 160

8 | Barangay is the smallest administrative division in the Philippines.

9 | As a comparison, according to the latest survey by the National Statistics Office in the Philippines conducted in 2009 a Filipino family earns a monthly average income of 17,167 pesos (about 316 euros). "A Filipino Family Earns an Average Annual Income of P206 Thousand in 2009 (Preliminary Results from the 2009 Family Income and Expenditure Survey)", National Statistics Office, Republic of the Philippines, 19 Nov 2010, <http://census.gov.ph/content/filipino-family-earns-average-annual-income-p206-thousand-2009-preliminary-results-2009> (accessed 4 Jun 2013).

euros), which naturally adds to their economic misery. With regards to land ownership, only a shockingly low 14 per cent of those engaged in farming claim to be land owners, most are merely occupants or claimants of the land they till. Another rather low number of 15 per cent of landowners covered by the project's survey say they have a Torrens Certificate, a land title certificate distributed by a government agency, while more than half (53 per cent) stated *Ancestral Domain* as proof of ownership of their landholdings. This basically means they filed as claimants but no land title has been given to them by the government yet.¹⁰ Overall, the survey was able to shed light on the IPs' economic situation and their economic activities have proven to be deeply influenced by external forces, such as traders and migrant settlers, who provide them with loans at rather high interest rates.



A Teduray Timuay during the IP Women's Summit in March 2013. The Timuay Justice and Governance (TJG) is a system of government among the Teduray and the Lambangian tribes. | Source: © IPDEV.

Especially land rights of the IPs in the ARMM are in desperate need of revision and recognition as they are only too often deceived into leaving the land they occupied for the longest time. And lack of land to them means lack of secure livelihood, since for the indigenous peoples, land is life. It is their source of food and medicine, their home,

10 | Most of these results were similar among the other tribes in the ARMM *barangays* covered by the project's survey.

burial grounds, recreation and their place of worship. To systematically remove them from their land is tantamount to annihilating their identity. Their whole worldview on land is different from general approaches to land owning. Their view on land utilisation is inextricably linked with their concept of use right. The deep contrast of this view on land property and use rights as well as the national government's system of land ownership has continuously forced the indigenous tribes to give up their land concept used for generations.

The present habitat of the Lumad is only a small fraction of their *Ancestral Domain*. Their occupation of the area dates back even before the advent of Islam in the Philippines around the 13th century. The Lumad have handed down their land ownership since time immemorial, and base their occupancy account and ancestral land claims on genealogy, proving that they have lived in the area for centuries.

The Teduray people have their own form of indigenous spirituality. Sacred places such as Mount Firis, which is located in the mountains of the Daguma Range, and the Brown Stone at its lower part are considered the center of their homeland. For the Teduray and the Lambangian it is a sacred place and forms part of their *Ancestral Domain* claim, as their history is rooted there. Mount Firis holds a revered history that has been handed down over the generations through oral tradition and is a site for pilgrimage and spiritual nourishment for these non-Islamised IP tribes.

For the Teduray and the Lambangian, Mount Firis is a sacred place and forms part of their *Ancestral Domain* claim, as their history is rooted there.

Their domain is located in a tug-of-war between two municipalities and has been the center of conflict for years. The most recent eruption of armed conflicts occurred in early August 2012, a clash between the Bangsamoro Islamic Freedom Fighters (BIFF) and the Armed Forces of the Philippines (AFP), which spread also into the hinterlands of South Upi, regarded as an IP municipality and densely populated by Teduray, Lambangian and segments of the Dulangan Manobo tribe. "They attacked our villages. The suffering of the residents here lasted for two weeks", says Sonny Matugas, the Village Chief of Hill 224. "Our

Muslim brothers want to get this land from us. This is one of the root causes of the problem. [...] They look down on our tribe, so they do whatever they want.”¹¹ The Office of the UN’s High Commissioner for Refugees in the southern Philippines estimated that this violent clash alone has displaced up to 45,000 people in the area.

Cycles of violence in the Mount Firis Complex recur and members of the Teduray and other tribes were repeatedly forced to flee their homeland. A recent, independent documentary on the situation of the Teduray in the ARMM shows the children of Hill 224 almost playfully demonstrating how, in the instance of attacks, they would seek refuge in small holes dug into the soil underneath their wooden houses.¹² Attacks on their villages by armed groups are not rare, killings are frequent, and displacement becomes more than too often a reality for the families. Living conditions, that have not been opulent to begin with, are devastatingly lowered during displacement, and especially food supply is drastically depleted. Displacement has become a permanent threat to the population in the ARMM. As the conflict is ongoing, displacement is ongoing.

Armed conflicts have caused internal displacement in the ARMM for more than 30 years, with peaks – especially for the IPs – in 1997, 2000, 2003 and 2008. In 2008 and 2009, fighting between the government and rebels of the MILF led to the internal displacement of at least 750,000 people, until the parties declared a ceasefire in July 2009. Yet, in 2011, counter-insurgency operations, sporadic episodes of violence caused by clan feuds as well as infighting within or between rebel groups forced around 100,000 people in the ARMM to flee their homes.¹³ Those who were able to return faced other grave problems such as limited access to

11 | Interview quoted from the documentary *Paksul*, made in 2012 by independent video journalist Ferdinandh Cabrera, shows the living situation of IPs in conflict areas in ARMM. The making of the video was logistically assisted by the IPDEV project and Cabrera himself graduated in Multimedia Journalism at the Konrad Adenauer Asian Center for Journalism at the Ateneo de Manila University, an institutional partner of KAS in the Philippines.

12 | Ibid.

13 | Internal Displacement Monitoring Centre, *Global Overview 2011. People internally displaced by conflict and violence*, SRO-Kundig, Geneva, Apr 2012, 91, <http://unhcr.org/50f95f7a9.html> (accessed 10 May 2013).

agricultural assets, education, health care services and to water and sanitation facilities. Having lost their household and productive assets and accumulated significant debts as a result of their displacement, most of them could not afford to replace lost livestock and tools or to buy essential agricultural items.¹⁴ In many cases, IPs who were forced to flee their area later returned to their homes only to find that in the meantime, their land was either titled to somebody else, turned into large-scale plantations or subdivided into municipalities – without any consultations with the IPs.



Indigenous women at a Teduray wedding: Spiritual and cultural traditions dramatically erode. | Quelle: © IPDEV.

But it is not only conflict that endangers the IPs in the ARMM. Especially private sector corporations take advantage of the confused land situation. Human rights violations by multinational corporations are not infrequent. Sometimes these, even together with the government, have a long record of repeatedly ignoring indigenous peoples' rights, especially with regards to mining, logging and large-scale plantation projects. The pull of foreign investment and the temptation of monetary gain have only too often resulted in widespread violation of indigenous peoples' lives and theft of their lands.

As a consequence, IP communities are eroded, or even broken apart because their territories have been developed, polluted, or permanently closed-off to them. After they

14 | Ibid.

were forced once before to move deeper into the mountainous areas and leave their initial *Ancestral Domains* in the plains and hills of the ARMM, even their new areas now become increasingly devastated and the survival of their cultures are dramatically threatened. Excluding the private sector from human rights obligations is a weakness of contemporary human rights and IP rights law that should be remedied, admittedly not only in the Philippines. Once IP communities lose control over their territories, or when their lands are compromised by outsiders, their health, livelihoods, and spiritual and cultural traditions dramatically deteriorate. The IPRA law, that was supposed to preclude exactly these developments, was not considered valid in the ARMM and was never adopted by the autonomous authorities under Muslim influence.

Even though the Philippine government has provided assistance to those displaced, especially during the 2008 to 2009 conflict, most of it was short-term emergency relief. Despite the fact that international organisations such as UNCHR, UNDP and the International Organisation for Migration have also provided much needed assistance to internally displaced persons, many have never received any kind of relief or support. There are reported cases, where whole communities had to flee their homes due to conflict and during the entire period of their displacement and despite the alerting of national and international agencies in the ARMM no assistance or relief has ever been received by them.

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It is mostly UN organisations such as UN Women, UNICEF and UNDP and recently also the EU that have begun to introduce IP-specific projects or programmes in the ARMM, but most international development agencies and organisations have been either mainly focussing on indigenous peoples elsewhere in the country, or on general infrastructural, environmental or educational issues in the ARMM – without specifically taking the IPs into account or focusing on them.

Since the situation is very complex, humanitarian relief through provision of food, medicines and shelter is highly important and desperately needed, but the issue cannot

be addressed in a merely temporary manner. The conflict can only be fully understood if analysed in relation to a development that is deep-rooted in history.

RESETTLEMENT PROGRAMS AND THEIR SHATTERING IMPACT

Not all inhabitants of the Philippine archipelago were subjugated to the Spanish crown during the Spanish colonial regime (1565 to 1898). Stated bluntly, communities at the time could roughly be divided into two broad groupings: those who were colonised, and those who were not, namely the Muslims of Mindanao and Sulu; the Igorot of the Cordillera (northern Philippines) and the tribal peoples. They all have successfully maintained their independent and self-governing status during the three centuries of Spanish rule in the archipelago.

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There is no doubt that the indigenous peoples of Mindanao have been living continuously without interruptions in their places of habitation until the end of the 19th century.

The Moros enjoyed the advantage of having been part of sultanates, which were de facto states exercising jurisdiction, that managed to resist Spanish colonisation. The Muslim principalities were considered the most developed communities in the entire archipelago, as they had reached the level of centrally organised life by as early as the 15th century.¹⁵

When the USA imposed their colonial power on the Philippines at the turn to the 20th century, they neither acknowledged the legitimate existence of the Republic of the Philippines nor the Maguindanao and Sulu sultanates which were states in their own right. It was not until the American colonial regime that land registration acts emerged, some of which are still enshrined in the Philippine Constitution of 1987. The state declared itself the sole owner of what is called state domain and reserves the right to classify it for

15 | Rudy B. Rodil, *The Minoritization of the Indigenous Communities of Mindanao and the Sulu Archipelago*, Alternative Forum for Research in Mindanao, Davao City, 1993, 35 et sqq., <http://de.scribd.com/doc/121775772/Rodil-1994-Minoritization-of-Indigenous-Communities-MindanaoSulu-pdf> (accessed 11 Jun 2013).

purposes of proper disposition to its citizens and to dispose of state domain or public lands. In 1903, the Philippine Commission enacted a law, which dispossessed indigenous leaders (*Datus* or chiefs) of their authority to dispose of lands within their respective jurisdictions. Hence, it became illegal for any indigenous leader to dispose of lands to any member of his community, regardless of the fact that this had been their practice since time immemorial.¹⁶

For years, any kind of upcoming laws and regulations left no room for the indigenous concept of private communal property and legislation did not recognise customary property rights. The laws passed contained discriminatory provisions such as the declaration of forest land and bodies of water (all of which are sources of daily food and other needs for the indigenous communities) as no longer indigenous territories. Instead, they have become state owned and could only be made use of with the consent of the government. The Torrens system was further reinforced by the provisions of the public land laws which were patently discriminatory against the indigenous communities.¹⁷

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Resettlement programs were initiated by the American colonial government as early as 1912, and were intensified during the Commonwealth period (1935 to 1946) until the post-World War years. This paved the way for an influx of Christian Filipinos from densely populated regions to migrate to the south. Settlers were given land as part of this internal migration process and resources in the south were systematically exploited. In addition to these formal programs, a considerable spontaneous influx of migrants from the Northern part of the Philippine Archipelago, who came on their own initiatives, could be seen. It is estimated that more people came this way than through organised channels.¹⁸

The resettlements programs in Mindanao were carved out in the heart of ancestral territories of the Moros as well as of the IPs. Moros and IPs alike saw their lands being

16 | Ibid., 29 et sqq.

17 | Ibid.

18 | Ibid., 39.

occupied by streams of settlers from other parts of the country. Both have experienced cycles of land grabbing and displacement and lost control over their land, although the Moros were still slightly better off than the Lumad in the sense that they were able to retain more territory by comparison. The resettlement process and the subsequent influx of Christians has turned the Moros into a minority in their own territory and caused them severe land loss of what they claimed as *Ancestral Domain*. But especially the indigenous communities found themselves squatters in their own lands and, in turn, the Moros occupied vast areas of their indigenous *Ancestral Domains*. The majority of the IPs, who were once the masters of their own lives, were now dispossessed, poor and landless. They have become a numerical minority in their ancient territory.

Imbalances in the population led to imbalances in the distribution of political power as well as of cultivable lands and other natural and economic resources. The following numbers show the increase in population in Mindanao, Sulu and Palawan: in 1903, censuses quantified the total number of inhabitants at 706,539 of which 39.3 per cent were Muslim, 22.1 per cent were Lumad and 38.69 per cent were "other", including Christians. The 1970 figures indicated that the region by then already had 6.8 million inhabitants, of which the Muslims accounted for a much lower 23.8 per cent, the Lumad totaled at a devastatingly low 6.4 per cent, while 69.7 per cent were "other", including Christians.¹⁹ Even though we know that

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censuses then did not cover the total of the Lumad these figures nevertheless reflect a huge increase in population which cannot be solely explained by natural growth. Instead, this development sheds light on the speed of the migration process, which deeply affected the balance of population. This demonstrates how such programs deeply disarranged the Lumad and Moro *Ancestral Domains* and how the settlers' acquisition of these ancestral lands eventually caused the loss of their livelihood, native ways of life, customary laws and institutions.

19 | Ibid., 104.

It seems indeed an ironic twist of history that it is the unconquered and uncolonised that were later to become the cultural minorities of the twentieth century, who in turn marginalise and discriminate other indigenous minorities around them. In this hostile environment the violence grew, especially between the Moros and the Christian immigrants and by 1972 a full-scale civil war began. The Moros have been fighting for their own homeland, a state as their Bangsamoro, ever since. And the IPs have been caught in between the two fronts.

THE ROOTS OF ARMED CONFLICTS IN THE 1960S AND 1970S

By the 1960s, the marginalisation and “minoritisation” of the Moros and the IPs in Mindanao was pronounced and apparent. The immigrating Christian settlers from other parts of the archipelago began to dominate social, political and economic life. By this time, social tensions and animosity between Christians and Muslims were peaking. Private armed groups were organised to protect and advance the settlers’ interests.

One incident particularly aggravated the brewing in Mindanao in the 1960s – the Jabidah massacre on 17 March 1968. 28 Muslim recruits who were trained clandestinely for a planned invasion of Sabah (on the island of Borneo, today Malaysia) were killed by Christian military commanders. The killing was prompted by resistance of the Muslim recruits to engage fellow Muslims in Sabah to armed encounters. The government then disavowed any invasion plan and claimed that the Muslim recruits mutinied because of inadequate pay. The Jabidah massacre rallied the Moros to rise against the Philippine government and soon the Moro revolutionary front, particularly the Moro National Liberation Front (MNLF), emerged. The core leadership of the MNLF was part of the youth arm which underwent military training in Malaysia.

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After the declaration of Martial Law by the dictatorial President Ferdinand Marcos in 1972 (until 1981), the armed conflict between the Philippine military and the MNLF through its military arm (Bangsa Moro Army, BMA)

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peaked and claimed the lives of approximately 120,000 people, while one million people lost their homes. This development deepened the divides between Christians, Muslims and indigenous groups. Philippine constabulary and military troops were aligned with Christian armed groups against the MNLF, creating a situation where civilians were dragged into the armed conflict and even further exacerbating the fragile relations between Christians, Muslims and the indigenous peoples. The MNLF, in waging war against the Philippine government, called for the establishment of an independent Bangsa Moro state in the southern Philippines, which highlighted the distinct identity, history and social and political life of the Moro people apart from the Christian majority Filipinos and the non-Islamised indigenous peoples. Unlike the Moro people, who had a political elite and an organised army in the MNLF, the non-Islamised indigenous peoples were consequently left even further marginalised and disempowered amidst the power play and war.

ATTEMPTS TO SUSTAIN THE PEACE PROCESS IN THE 1970S

In 1976, the Tripoli Agreement between the government and the MNLF granted autonomy to 13 provinces and nine cities in southwest Mindanao, which according to the MNLF has been historically part of the political territory of the Moro Sultanates. However, the indigenous peoples were not properly consulted during the process. The issue of dispossession of ancestral lands was not addressed, which means the Agreement did not recognise that land issues were (and still are) at the very heart of the conflict in the area. In the end, the peace process collapsed at the time, since the MNLF strongly protested the unilateral implementation of the Tripoli Agreement by the government.

Only after the end of the devastating dictatorship of Ferdinand Marcos in the seventies with the People Power Revolution in 1986, the newly elected government reopened negotiations with the MNLF. But the new President Córazón Aquino could not afford to embark on bold and risky initiatives for the Mindanao peace process. Instead, she remanded the Moro question to a Constitutional

Commission she appointed to draft a new constitution. In 1987, the new constitution, including a provision for the creation of the so-called Autonomous Regions in Muslim Mindanao and the Cordilleras in the northern main island of Luzon, was overwhelmingly ratified by the Filipino people. For the first time, autonomy for the Moro minority has been enshrined in the country's basic law.

Interestingly, section 20 of Article X of the Constitution vests all powers over *Ancestral Domain* and natural resources in the legislature of the ARMM. For the very first time ever, there was an official recognition that the long-ongoing disputes over land and natural resources were one of the main causes of the long-standing armed rebellion. Also for the first time, the Autonomous Region theoretically had the power to craft a system where *Ancestral Domain* claims by all indigenous peoples could be resolved. Doing so, however, has never been on top of the ARMM's priority list.

Little by little, the Moros became more and more split in their views and became increasingly disunited amongst themselves. The MNLF became a deeply divided organisation, and especially Chairman Nur Misuari, who consistently maintained the position that the government has not fully complied with its obligations, polarised its members. A splinter group of the MNLF is the Moro Islamic Liberation Front (MILF) that demanded the establishment of an independent Islamic state in the southern Philippines, consistently rejecting the idea of mere autonomy in the ARMM to resolve the grievances of the Moro people. But also during the peace negotiations, that have been going on since 1997, the non-Islamised IPs have not been consulted, and their views and opinions were not considered a necessary inclusive part of decision-making.

During the peace negotiations the non-Islamised IPs have not been consulted, and their views and opinions were not considered a necessary inclusive part of decision-making.

In August 2008, the negotiating panels of the national government and the MILF have initialled the Memorandum of Agreement on Ancestral Domain (MOA-AD), which recognised it as a birthright of all Moros (and all indigenous peoples) of Mindanao to identify themselves and to be accepted as Bangsamoros. The MOA-AD affirms that the *Ancestral Domain* of the Bangsamoro does not form part of

the public domain but encompasses ancestral, communal, and customary lands, maritime, fluvial and alluvial domains as well as all natural resources therein that have inured or vested ancestral rights on the basis of native titles. The fact that the non-Islamised IPs do not consider themselves Bangsamoro, yet again, was completely ignored by those at the negotiating tables.

But the MOA-AD was never implemented as its signing was stopped by the Philippine Supreme Court which ruled that the process and terms of the MOA-AD violated the Constitution and that the process by which the MOA-AD was crafted did not undergo public consultations as required by the Constitution. With respect to the powers and rights of the Bangsamoro over their *Ancestral Domain*, the Court declared that a mere agreement cannot vest this since a national law, the Indigenous People's Rights Act (IPRA), provides for the procedure of delineating *Ancestral Domain* claims by the indigenous peoples in the country. Clearly, the Court did not appreciate that the *Ancestral Domain* claims of the Bangsamoro is a historical and political claim which is distinct from the *Ancestral Domain* claims of other indigenous groups.

It seems almost ironic, how long and hard the Moros have been fighting for the acknowledgement of the inherent rights of the Bangsamoro to their ancestral lands, while they have continuously neglected the IPs' rights to theirs.

Lumad leaders are quite right to stress that the Bangsamoro are not the only group in Mindanao with claims to self-determination. It seems almost ironic, how long and hard the Moros have been fighting for the acknowledgement of the inherent rights of

the Bangsamoro to their ancestral lands, while they have continuously neglected the IPs' rights to theirs. The IPs' situation is a blind spot in the socio-legal sense where the protection and promotion of rights of non-Islamised indigenous peoples in the ARMM are concerned. Despite existing legal frameworks they are left at a disadvantage and unequal before the law, even a law specifically designed for their rights' protection: the Indigenous Peoples Rights Act (IPRA) of 1997.

THE IPRA – A GENERAL GUARANTY OF RIGHTS FOR ALL INDIGENOUS PEOPLES?

The passing of the IPRA on 29 October 1997 raised hopes among the IPs all over the Philippines. In the agreement, the concept of *Ancestral Domain* rights was recognised as the fundamental right of indigenous peoples in the Philippines. Native Title ceased to be regarded as legal fiction and became the operational term to claim traditional homelands by the country's 110 ethnic groups.²⁰ The law aimed to prevent the long-ongoing discrimination of the IPs in the ARMM from continuing.

The National Commission for Indigenous Peoples (NCIP) was created with the task to protect and promote the interest and well-being of the IPs regarding their beliefs, customs, traditions and institutions. Yet, NCIP is far from achieving this goal as IPRA's implementation remains flawed. Social discrimination, economic marginalisation and political disempowerment remain major challenges for the IPs as they continue to be the most disadvantaged peoples representing the poorest of the poor and the most vulnerable sector.

Already by 2005, *Ancestral Domain* claims had been submitted to the National Commission for Indigenous Peoples, the largest of which involves a unified claim of three IP groups (Teduray, Lambangian, Dulangan Manobo) accounting for more than 206,000 hectares of *Ancestral Domain* lands inside the ARMM. However for the longest time IPRA was said to be not applicable in the ARMM. The IPRA law itself provides the possibility that the ARMM shall draft its own act governing the rights of the IPs within the ARMM. While an equivalent, namely the Tribal Peoples Rights Act, was introduced in 2008, it remained only a policy declaration lacking Implementing Rules and Regulations (IRR) to become operational. With this, the ARMM law does not contain provision for the delineation and titling of *Ancestral Domain*.

20 | Elenea Joaquin Damaso, "Honoring Mamalo: Turning A Paradox Into A Paradigm Shift – Recognition of Non-Islamised Indigenous Peoples' Rights in the ARMM", in: *Upholding the Indigenous Peoples' Rights to Self-Determination*, Institute for Autonomy and Governance, Autonomy & Peace Review, Cotabato City, 2011, 11.

On top of this, the very institution assigned with the protection of IP rights has not set up an office in the ARMM until today. Instead, an intermediate organisation was formed (the Office of the Southern Cultural Communities) and put in charge for delineation activities of IP *Ancestral Domain* lands. However, the belief that IPRA and the scope of NCIP did not apply in ARMM as well as unclear division of responsibility between NCIP, OSCC and the ARMM government have left the *Ancestral Domain* claims of the IPs in the ARMM untouched, unprocessed and ignored for years.

This is also partly due to the enormously bureaucratic and complicated procedure of land titling with overlapping systems and responsibilities of the different institutions involved. The IPs' *Ancestral Domain* has been subjected to numerous and differing land tenure systems over the years. The situation is often clouded by the fact that the IPs lack legal documents to prove their land ownership, that original land markings have been lost over time, or simply because illiteracy debars them from complying with the bureaucratic requirements, leaving them highly vulnerable to land theft.

The majority of *barangays* are governed by Moros. Out of all 116 ARMM municipalities, the number of municipal mayors that are IPs can be counted on one hand.

The disadvantageous situation of the Lumad becomes even more visible when looking at their representation in local and regional government units. Within the IPDEV project area, which comprises *barangays* with high IP population, only 36 per cent of the *barangay* captains actually are themselves IPs. The majority of *barangays* are governed by Moros. Their underrepresentation becomes even more obvious when it comes to the next higher government level in the ARMM: out of all 116 ARMM municipalities, the number of municipal mayors that are IPs can be counted on one hand.

RECENT BREAKTHROUGHS IN THE STRUGGLE FOR IP RIGHTS IN THE ARMM

In 2012, for the first time in more than 20 years of the ARMM's existence, an Assemblyman representing the indigenous peoples of the ARMM has become a member of the 27-member Regional Legislative Assembly (RLA). Assemblyman Mokudef is the first ever IP representative

to any kind of regional decision-making body. Also in 2012, the ARMM Regional Governor appointed an IP as one of three deputy governors. The position of Deputy Governor for Indigenous Peoples, financed by the ARMM government, was created and filled with an IP, but lack of sufficient funding for staff and actions leave his scope of powers limited.

On 25 October 2012, another milestone: the Implementing Rules and Regulations of the Tribal Peoples Rights Act were finally drafted and ready to be signed. This was made possible through the continuous efforts of the IPDEV project team together with indigenous peoples' organisations,²¹ who advocate and support the Lumad's struggle in building their peaceful and developed communities based on their economic, political and cultural belief and principles and who contribute to the strengthening of a harmonious relationship among the tribes, peoples and sectors. They formed an IP Technical Working Group that successfully pushed the Office of Southern Cultural Communities to draft, finalise and publish the Implementing Rules and Regulations in November 2012.

In January 2013, the RLA of the ARMM and Regional Governor Hataman declared that the Solicitor General's Office found no legal impediments in the implementation of the IPRA in the ARMM and that no policy conflict keeps the National Commission for Indigenous Peoples from implementing the IPRA in the ARMM after all. Because of such erroneous readings of the IPRA and other legal acts, the IPs in the ARMM have been deprived of the rights to assert their collective ownership over their *Ancestral Domain* for decades. NCIP is now said to be in the midst of planning the set-up of an office in Maguindanao, which in turn would pave the way for delineation activities and the processing of *Ancestral Domain* claims. When exactly this will happen cannot be said at this point. But for the sake of the protection of the IPs traditional way of life, one can only hope it will be sooner rather than later.

21 | Such as the Timuay Justice and Governance (TJG), the Lumad Development Center Inc (LDCl), the Teduray, Lambangian and Dulangan Manobo Ancestral Domain Claimants (TLAD-MADC), the Organization of Teduray-Lambangian Conference (OTLAC), the Teduray Lambangian Women's Organization Inc (TLWOI) among others.

The continuing peace negotiations between the GPH and the MILF led to the signing of the Framework Agreement on the Bangsamoro (FAB) on 15 October 2012. The FAB is another transition in the quest for meaningful autonomy and democracy for the Moro people. It is a product of the long and protracted peace talks between the government and the MILF and builds on the successes and lessons learned from the failures of past agreements and negotiations as well as from the experiences of the ARMM. It envisions the creation of a new autonomous political entity, the Bangsamoro, as the structure for the self-governance of the Moro people. The FAB envisages a democratic system for the new entity where basic rights for all inhabitants of the Bangsamoro are guaranteed – the right to life, freedom and religion, privacy, freedom of speech, to express political opinion and democratically political aspiration, the right to seek constitutional change, rights of women to political participation, right to domicile, equal opportunity and non-discrimination, right to establish cultural and religious associations, religious freedom, ethnic and sectarian harassment and due process of law.²²

The FAB vows to respect the indigenous peoples' rights and seeks to take the customary rights and traditions of the indigenous peoples into consideration in the formulation of the Bangsamoro's justice system.

With regard to IP rights in the new political entity, the FAB specifically mentions the IPs in three sections, which – in itself – is a breakthrough for the indigenous communities in the ARMM. The FAB vows to respect

the indigenous peoples' rights and seeks to take the customary rights and traditions of the indigenous peoples into consideration in the formulation of the Bangsamoro's justice system, including the recognition of indigenous processes as alternative modes of dispute resolution.

Yet, despite the very loud and celebratory announcement of the signing of the FAB last year, the solutions to three of the most crucial questions (power sharing, wealth sharing and transitional arrangements/modalities) have been delayed and held off by declaring that these will be threshed out in the annexes to the FAB. To date – eight months after the signing of the FAB – these have still neither been published nor signed.

22 | See "Framework Agreement on the Bangsamoro. 15th October 2012", <http://opapp.gov.ph/sites/default/files/Framework%20Agreement%20on%20the%20Bangsamoro.pdf> (accessed 10 May 2013).

Democratically questionable and upsetting for the IPs is the fact that the FAB states that the members of the Transition Commission (TC), the body in charge for drafting the Bangsamoro Basic Law, shall be composed of 15 members, all of whom are supposed to be Bangsamoro, meaning Muslim. The blunt exclusiveness of this precondition becomes clear once one considers that neither the Christian minorities nor the non-Islamised IPs in the mainly Muslim ARMM consider themselves Bangsamoro. Basically, the pre-condition that the Moros gave to members of the minorities in the ARMM was either to declare themselves as Bangsamoro or to be left out of this decisive process. When Froilyn Mendoza, a Teduray woman who has been very actively working towards the recognition of the IPs' rights in the ARMM for years, was proposed as a member of the TC by the Philippine government, numerous consultations were conducted amongst the IPs. After all, to them the crucial question was whether they should "deceive" their own identity as Lumad, in order to be able to see a non-Islamised IP as a member of the TC and with this to finally make their voices heard. They decided to compromise in order to finally be included in the drafting of the new political entity, thus proving their political farsightedness. With this, for the first time ever, a non-Islamised IP is part of a decision-preparing body. With IP representation in the TC, they hope for positive influences on the inclusion of IP rights in the future Bangsamoro.

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Even though no IPs were involved in the drafting of the FAB, for the first time ever, *Ancestral Domain*, self-governance, justice and human rights, and cultural identity and how these will be incorporated into the Bangsamoro Basic Law were points raised during the recently-conducted Regional Consultative Assembly for IPs on the FAB on 12 January 2013. The fact that they were invited to directly participate in such a consultation, was a new development they appreciated and that should become a role model during any future decision-preparing processes.

For the peace process to sustainably work, both parties must ensure its inclusiveness. Especially since the roots for conflict in the ARMM are so old and complex, it is of paramount importance that the Philippine Government and

the MILF avoid coming up with a simple quick fix to the questions in the three annexes. It is important to directly address the remaining differences, especially the land title problems or redistribution, because as long as these core issues are not tackled, the peace process remains fragile.

So far, there is no peace in the ARMM. Lasting peace in Mindanao can only truly be achieved if President Benigno Aquino advocates the Bangsamoro and the Basic Law also in Manila, most importantly in the Philippine Congress. Leaving the entire process up to the members of the Transition Commission and the MILF will not be enough to reduce the deeply-entrenched anti-Bangsamoro prejudices at the very core of the Philippine state. All parties involved must realise that if this process succeeds, it would not only mean enduring peace in Mindanao but it could also have a tremendously positive impact on structural reforms in the Philippines as a whole. After all, an efficiently functioning Bangsamoro could become a regional success story and thus an impulse for further decentralisation of the Philippine state and development of much stronger and more powerful regions.



The IP Regional Consultative Assembly in January 2013 for the first time addressed *Ancestral Domain*, self-governance, justice and human rights, and cultural identity. | Source: © iWATCH.

It is, however, absolutely crucial to ensure that the non-Islamised IPs will not become even more discriminated, without rights and neglected within the new Muslim political entity, but that the Bangsamoro instead proves to apply

the policy of inclusiveness and equal rights for all. Reforms that ensure IP representation at local and regional level as well as actions towards protecting the IP's livelihood security must become priorities for the future Bangsamoro, in order for it to truly become what the FAB envisages: a citizen-focused society where communities displaced by conflict are to be returned to conditions where they can achieve their desired quality of life, to include the pursuit of sustainable livelihoods and political participation within a peaceful and deliberative society.

Acronyms

ARMM	Autonomous Region in Muslim Mindanao
BMA	Bangsa Moro Army
FAB	Framework Agreement on the Bangsamoro
GPH	Government of the Philippines
IP	non-Christianised, non-Islamised indigenous peoples
IPRA	Indigenous Peoples' Rights Act
IRR	Implementing Rules and Regulations
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement on Ancestral Domain
NCIP	National Commission for Indigenous Peoples
OSCC	Office of the Southern Cultural Communities
RLA	Regional Legislative Assembly
TC	Transition Commission
TJG	Timuay Justice and Governance