

Clearing the Pathways to Peace: Law, Policy, and the Mindanao Conflict

*Mikaela Francine D. Lagarde**

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I. LESSONS FROM THE MOA-AD

In 2008, the Supreme Court struck down the Memorandum of Agreement on the Ancestral Domain (MOA-AD),¹ the first government attempt

* '12 J.D., Ateneo de Manila University School of Law. The Author works as a Consultant for the Policy Unit at the Office of the Presidential Adviser on the Peace Process. She handles conflict-related concerns on human rights, international humanitarian law, and public international law, among others. She is also a member of the Bangsamoro Basic Law Peace Room Composite Team and of the Administrative Order No. 35 Inter-Agency Committee-Technical Working Group

towards a peaceful settlement with the largest Muslim rebel group, the Moro Islamic Liberation Front (MILF).² According to *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,³ the MOA-AD is unconstitutional because, first, its underlying concept offers the creation of a state within a state;⁴ second, it guaranteed an amendment of the Constitution;⁵ and third, it lacked public consultations.⁶

(IAC-TWG) on Extra-Legal Killings, Enforced Disappearances, Torture, and Other Grave Human Rights Violations.

Cite as 59 ATENEO L.J. 1141 (2015).

1. See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001 (An Agreement Between the Government of the Philippines (GPH) and the Moro Islamic Libreation Front (MILF) Regarding the Bangsamoro), available at http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_080805_Memorandum%20on%20the%20ancestral%20domains.pdf (last accessed Feb. 17, 2015) [hereinafter MOA-AD].
2. See Kanaha Sabapathy, After decades of conflict Philippines rebel group Moro Islamic Liberation Front has signed a peace treaty, available at www.abc.net.au/news/2014-03-27/philippines-rebel-group-signs-peace-treaty/5350686 (last accessed Feb. 17, 2015).
3. *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402 (2008).
4. *Id.* at 517.
5. The MOA-AD establishes an “associative relationship” between the [c]entral [g]overnment and the Bangsamoro Juridical Entity (BJE), implying that the associative entity, the BJE, is a sub-[s]tate well on its way to independence. This notwithstanding, the Supreme Court recognized such a solution as viable, declaring that

[t]he sovereign people may, if it so desired, go to the extent of giving up a portion of its own territory to the [Moros] for the sake of peace, for it can change the Constitution in any way it wants, so long as the change is not inconsistent with ... [j]us [c]ogens.

Id. at 518.

The problem then lies in the fact that the Philippine government willingly guaranteed amendments to the legal framework. That in itself was sufficient to constitute grave abuse of discretion. It amounted to an “usurpation of the constituent powers vested only in Congress, a Constitutional Convention, or the people themselves through the process of initiative.” The Supreme Court emphasized that respondents may “not pre[-]empt [the people] in that

Thus, picking up from the lessons of the MOA-AD, the Government of the Philippines (GPH) under President Benigno S. Aquino III resumed the negotiations for a peace agreement that would bring final and enduring peace in Mindanao.⁷ On 27 March 2014, the GPH and the MILF signed the historic Comprehensive Agreement on the Bangsamoro (CAB)⁸ — which is

decision.” That is to say, the sovereign Filipino people must first give their imprimatur to any proposed constitutional change. *Id.* at 517–18.

6. *Id.* at 519–21.
7. See Bong Lozada, *Military backs Bangsamoro law to end Mindanao conflict*, PHIL. DAILY INQ., Sep. 10, 2014, available at <http://newsinfo.inquirer.net/636824/military-backs-bangsamoro-law-to-end-mindanao-conflict> (last accessed Feb. 17, 2015).
8. An article from the Philippine Daily Inquirer summarizes the essence of the Comprehensive Agreement on the Bangsamoro —

The CAB is a five-page, 12-point text document representing the final peace agreement between the [GPH] and the [MILF]. It also reiterates the two parties’ commitment to the following agreements or documents:

- [1.] The Framework Agreement on the Bangsamoro [] [(signed 12 October 2012)], which outlines the ‘political settlement’ between the GPH and the MILF and the process of transition from the Autonomous Region on Muslim Mindanao to a new Bangsamoro autonomous political entity[;]
- [2.] The Four Annexes and the Addendum to the Framework Agreement on the Bangsamoro:
 - a. Annex on Transitional Modalities and Arrangements [(signed 27 February 2013)], which establishes the transitional process for the establishment of the Bangsamoro. It details the creation of a transition commission, a Bangsamoro Basic Law, and a Bangsamoro Transition Authority[;]
 - b. Annex on Revenue Generation and Wealth Sharing (signed 13 July 2013), which enumerates the sources of wealth creation and financial assistance for the new entity[;]
 - c. Annex on Power Sharing [(signed 8 December 2013)], which discusses intergovernmental relations of the [c]entral [g]overnment, the Bangsamoro [g]overnment, and the local government units under the Bangsamoro[;]
 - d. Annex on Normalization [(signed 25 January 2014)], which paves the way for the laying down of weapons of MILF members and their transition to civilian life. Normalization is the process through which the communities affected by the

a consolidation of 12 documents agreed upon by the GPH and the MILF⁹ — in high hopes of bringing an end to the conflict that has ravaged war-torn Mindanao for nearly five decades.¹⁰ Concluded after 17 years of negotiation, the CAB lays down the groundwork for the creation of an autonomous Bangsamoro political entity, attaching importance to the unique history of the Bangsamoro people and their aspirations as a distinct community.¹¹ The

conflict in Mindanao can return to peaceful life and pursue sustainable livelihood[; and]

- e. Addendum on the Bangsamoro Waters and Zones of Joint Cooperation [(signed 25 January 2014)], which details the scope of waters under the territorial jurisdiction of the Bangsamoro (12 nautical miles from the coast) and Zones of Joint Cooperation or bodies of water (Sulu Sea and Moro Gulf) within the territory of the Philippines but not within the Bangsamoro.

[3.] The Ceasefire Agreement of 1997 signed by the GPH and the MILF[;]

[4.] The Agreement on Peace signed in Tripoli in 2001, laying down the agenda for the peace talks[; and]

[5.] The Declaration of Continuity of Negotiation signed in June 2010, which picked up the pieces from the failed [MOA-AD].

See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, *Comprehensive Agreement on the Bangsamoro (A Consolidation of Past Agreements Between the GPH and the MILF on the Bangsamoro)*, available at <http://www.gov.ph/downloads/2014/03mar/20140327-Comprehensive-Agreement-on-the-Bangsamoro.pdf> (last accessed Feb. 17, 2015) [hereinafter *Comprehensive Agreement on the Bangsamoro*] & Kristine Angeli Sabillo, *What is the Comprehensive Agreement on the Bangsamoro?*, PHIL. DAILY INQ., Mar. 26, 2014, available at <http://newsinfo.inquirer.net/589245/what-is-the-comprehensive-agreement-on-the-bangsamoro> (last accessed Feb. 17, 2015).

- 9. *Comprehensive Agreement on the Bangsamoro*, *supra* note 8, at 1-2.
- 10. See Floyd Whaley, *Philippine Rebel Group Agrees to Peace Accord to End Violence in South*, N.Y. TIMES, Oct. 7, 2012, available at www.nytimes.com/2012/10/08/world/asia/manila-and-rebel-group-take-step-toward-peace-plan.html?_r=0 (last accessed Feb. 17, 2015).
- 11. See Saligan, *The Framework Agreement on the Bangsamoro (FAB)*, available at <http://www.saligan.org/index.php/component/content/article/92-the-framework-agreement-on-the-bangsamoro-fab.html> (last accessed Feb. 17, 2015).

CAB is anticipated to be “the final political settlement” of the armed conflict in Mindanao.¹²

In comparison with the MOA-AD, the CAB takes on a positive development by recognizing and adhering to the constitutional process. Paragraph 7 of the Framework Agreement on “Transition and Implementation” emphasizes that the Basic Law for the Bangsamoro must emanate from Congress, certified as an urgent bill by the President. Moreover, the CAB does not commit the Parties to work for charter change. The turn of phrase — from a guarantee to amend the Constitution in the MOA-AD — to that of a mere “right to seek constitutional change by peaceful and legitimate means”¹³ in the Framework Agreement on the Bangsamoro (FAB), as consolidated in the CAB — is a welcoming step. Nevertheless, this does not preclude the Bangsamoro Transition Commission (BTC) from working on “proposals to amend the Philippine Constitution for the purpose of accommodating and entrenching in the [C]onstitution the agreements of the [p]arties whenever necessary.”¹⁴

One of the criticisms hurled against the CAB is that it purportedly abolishes the Autonomous Region of Muslim Mindanao (ARMM), unilaterally creating a Bangsamoro government in its stead.¹⁵ Some view the CAB as detracting from the previous peace agreements the GPH has

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12. Office of the Presidential Adviser on the Peace Process (OPAPP), Bangsamoro Law to benefit all — solons, *available at* <http://www.opapp.gov.ph/milf/news/bangsamoro-law-benefit-all-solons#sthash.nXxgRGOOr.dpu> (last accessed Feb. 17, 2015).
 13. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Framework Agreement on the Bangsamoro (A Framework Agreement Between the Philippines and the MILF as Regards the Establishment of the Bangsamoro, Among Others) pt. VI, ¶ 1 (f), *available at* http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_121015_FrameworkAgreementBangsamoro.pdf (last accessed Feb. 17, 2015) [hereinafter Framework Agreement on the Bangsamoro].
 14. *Id.* pt. VII, ¶ 4 (b). The Comprehensive Agreement on the Bangsamoro nevertheless allows the Bangsamoro Transition Commission (BTC) to “work on proposals to amend the Philippine Constitution for the purpose of accommodating and entrenching in the [C]onstitution the agreements of the Parties whenever necessary.” *Id.*
 15. See Patricio Mangubat, GRP-MILF Framework, a step towards the right path, *available at* www.newphilrevolution.com/2012/10/grp-milf-framework-step-towards-right.html (last accessed Feb. 17, 2015).

signed,¹⁶ particularly the 1976 Tripoli Agreement¹⁷ and the 1996 Final Peace Agreement.¹⁸ Concluded between the GPH and another armed group, the Moro National Liberation Front (MNLF), these prior peace deals have been embodied in the Constitution¹⁹ and in the ARMM Organic Act.²⁰ They have since breathed life into the Regional Government of the ARMM.²¹

However, rather than setting aside the ARMM, the CAB actually builds on the gains of the previous peace agreements, particularly the 1996 Final Peace Agreement, which implements the 1976 Tripoli Agreement, and the

16. *Id.*

17. Government of the Republic of the Philippines & the Moro National Liberation Front, The Tripoli Agreement (An Agreement Between the GPH and the MNLF With the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference And the Secretary General of the OIC), *available at* <http://pcdspo.gov.ph/downloads/2012/10/Tripoli-Agreement-December-23-1976.pdf> (last accessed Feb. 17, 2015) [hereinafter 1976 Tripoli Agreement].

18. Government of the Republic of the Philippines & the Moro National Liberation Front, 1996 Peace Agreement with the Moro National Liberation Front, (An Agreement on the Implementation of the 1976 Tripoli Agreement Between the GPH and the Moro National Liberation Front (MNLF) With the Participation of the Organization of Islamic Conference (OIC) Ministerial Committee of the Six And the Secretary General of the OIC), *available at* <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/phil16.pdf> (last accessed Feb. 17, 2015) [hereinafter 1996 Final Peace Agreement].

19. PHIL. CONST. art. X, §§ 1, 15-20.

20. Republic Act (R.A.) No. 6734 governs the creation and operation of the ARMM, which, in a plebiscite on 17 November 1989, encompassed Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi. An amendatory law, R.A. No. 9054, strengthened R.A. No. 6734, the Organic Act creating the ARMM. *See* An Act Providing for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989) & An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled “An Act Providing for the Autonomous Region in Muslim Mindanao,” Republic Act No. 9054 (2001).

21. The ARMM is “responsible for good governance and development of all constituent units within the Autonomous Region consistent with the declared constitutional policy on regional and local autonomy, as well as decentralization, without diminishing the powers and functions already enjoyed by the local government units in the region.” Department of Budget and Management, Autonomous Region in Muslim Mindanao (A Paper Describing the Budget of ARMM in the Fiscal Years 2010-2012), *available at* <http://www.dbm.gov.ph/wp-content/OPCCB/OPIF2012/ARMM/armm.pdf> (last accessed Feb. 17, 2015).

lessons from the ARMM.²² The CAB specifically provides that any proposed constitutional change must be done “without derogating from any prior peace agreements.”²³ Thus, “[s]upplementary to the CAB are the various agreements, guidelines, terms of reference, and joint statements duly signed and acknowledged by the Parties in the course of the negotiations between the two parties beginning in 1997.”²⁴ Moreover, the CAB opens its doors to the possible inclusion, in the proposed Bangsamoro Basic Law (BBL),²⁵ of the specific powers contained in other peace agreements and in the ARMM Organic Acts, as well as the recommendations from the review process of the 1996 Final Peace Agreement.²⁶

22. Kimberly Jane Tan, OIC wants peace pacts with MILF, MNLF linked, *available at* <http://www.gmanetwork.com/news/story/366548/news/nation/oic-wants-peace-pacts-with-milf-mnlf-linked> (last accessed Feb. 17, 2015).

23. Framework Agreement on the Bangsamoro, *supra* note 13, pt. VII, ¶ 4 (b).

24. Soliman M. Santos, Jr., *Bangsamoro Basic Law: A Step Forward on a Longer Road to Peace*, AUTONOMY & PEACE REV., Special Issue, at 101 (2014) [hereinafter Santos, Jr., *Bangsamoro Basic Law*]. The CAB consists of the following:

- (1) Agreement for the General Cessation of Hostilities dated 18 July 1997;
- (2) General Framework of Agreement of Intent dated 27 August 1998;
- (3) Agreement on the General Framework for the Resumption of Peace Talk dated 24 March 2001;
- (4) Tripoli Agreement on Peace dated 22 June 2001;
- (5) Declaration of Continuity for Peace Negotiation dated 03 June 2010; and
- (6) Decision Points on Principles as of April 2012 dated 24 April 2004.

See also Framework Agreement on the *Bangsamoro*, *supra* note 13, part VII, ¶ 4 (b).

25. The BBL is the law that will implement the comprehensive peace agreement. See Mags Z. Maglana, *Studying the Bangsamoro Basic Law*, *available at* <http://www.sunstar.com.ph/davao/opinion/2014/09/21/studying-bangsamoro-basic-law-366837> (last accessed Feb. 17, 2015).

26. See *generally* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Power Sharing (Annex to the Framework Agreement on the Bangsamoro), *available at* http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_131308_AnnexPowerSharing.pdf (last accessed Feb. 17, 2015).

Another challenge that contributed to the failure of the MOA-AD was its lack of public consultation and disclosure.²⁷ The Supreme Court held that the contents of the MOA-AD are a “matter of paramount public concern involving public interest in the highest order;”²⁸ as such, it is covered by the people’s right to information.²⁹ This is especially true as the MOA-AD encompasses the “sovereignty and territorial integrity of the [s]tate, which directly affects the lives of the public at large.”³⁰ Thus, if any peace deal wants to pass the test of constitutionality, there must be public consultation and information dissemination — from negotiation to implementation.³¹ In the case of the CAB, only the Supreme Court can legally settle whether the GPH has satisfactorily achieved this constitutional requirement.

As of this writing, the proposed BBL³² is still being reviewed by Congress, and the CAB remains presumably valid unless declared otherwise by the Court. Should a challenge be made, the Author would accord due respect to the Supreme Court’s decision on the matter. Discussions on whether the CAB or the proposed BBL is unconstitutional are well-put and

27. *Province of North Cotabato*, 568 SCRA at 473.

28. *Id.* at 519.

29. On matters of public concern, Article III, Section 7 of the Constitution guarantees the public’s right of access to and to demand information. The Constitution also provides for the public’s right to receive information, even if not so demanded, on the basis of the so-called right to disclosure in Section 28 of Article II. Corollary to such rights is the right to public consultation, as enshrined in Sections 2 (c), 26, and 27 of the Local Government Code of 1991, through which the public is provided with a feedback mechanism on issues that directly affect them. *See* PHIL. CONST. art. III, § 7 & art. II, § 28; & An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, §§ 2 (c), 26, & 27.

30. *Province of North Cotabato*, 568 SCRA at 410.

31. *Chavez v. Public Estates Authority*, 384 SCRA 152, 184 (2002).

32. *See* An Act Providing for the Basic Law for the Bangsamoro and Abolishing the Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao,” and Republic Act No. 6734, Entitled “An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao,” and for Other Purposes, H.B. No. 4994, 16th Cong., 2d Reg. Sess; (2014). *See also* An Act Providing for the Basic Law for the Bangsamoro and Abolishing the Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao,” and Republic Act No. 6734, Entitled “An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao,” and for Other Purposes, S.B. No. 2408, 16th Cong., 2d Reg. Sess; (2014).

necessary for a healthy participative democracy. In doing so, however, one must keep sight of the ultimate goal of the peace deal — the cessation of hostilities. This goal can only be achieved in the context of one question: What started the *Moro* revolt?

II. THE LAND OF UNFULFILLED PROMISES

Although touted as the “Land of Promise”³³ with its beautiful and abundant natural resources,³⁴ Mindanao has seen grinding poverty, political powerlessness of its inhabitants, violence, and lawlessness in its remote or surrounding areas.³⁵ Currently, 10 of the poorest provinces in the country are in Mindanao, with Lanao del Norte leading the pack.³⁶ As of 2006, 3,847 barangays in Mindanao were reported to be in armed conflict.³⁷ This situation worsens the state of underdevelopment in the region,³⁸ which translates to lack of access to economic opportunities, infrastructure, and

33. Rufa Cagoco-Guiam, *Retrospect and Prospects: Toward a Peaceful Mindanao (Part One)*, available at <http://cpcabrisbane.org/Kasama/1996/V10n3/Retrospect.htm> (last accessed Feb. 17, 2015) [hereinafter Cagoco-Guiam, Part One].

34. Ben Emata, *The Land of Promise*, available at www.sunstar.com.ph/cagayan-de-oro/opinion/2013/04/02/emata-land-promise-275528 (last accessed Feb. 17, 2015).

35. Cagoco-Guiam, Part One, *supra* note 33.

36. Lanao del Norte leads the pack with 67.3% poverty incidence. Aside from Lanao del Norte; Maguindanao, Zamboanga del Norte, Saranggani, North Cotabato, Bukidnon, Lanao del Norte, Camiguin, Sultan Kudarat, and Sulu also made the list of the 16 poorest provinces. See Senate of the Philippines, *Mindanao has 10 of 16 Poorest Provinces in the Region*, available at https://www.senate.gov.ph/press_release/2014/0605_aquino1.asp (last accessed Feb. 17, 2015).

37. NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), *MINDANAO STRATEGIC DEVELOPMENT FRAMEWORK: 2010-2020 12* (2010).

38. Arsenio M. Balisacan, Socioeconomic Planning Secretary and Director-General, National Economic Development Authority (NEDA), *Midterm Update of the Philippine Development Plan 2011-2016, Message During the Philippine Economic Briefing at the Philippine International Convention Center, Pasay City* (Mar. 18, 2014) (transcript available at www.neda.gov.ph/?p=2715) (last accessed Feb. 17, 2015).

basic services.³⁹ In turn, this lack of access results to social inequity, which is also a cause of the unresolved conflict in Mindanao.⁴⁰ The intricate interconnectedness of armed conflict, poverty, and social inequity, thus, comes full circle.

More startling is the fact that the roots of the conflict go even deeper than this vicious cycle. The conflict was brought to the fore by an oppressive past — a combination of legal, systemic, and institutionalized marginalization of the Bangsamoro people in their homeland.⁴¹ The bloody history of the Philippines' second largest island has certainly wreaked havoc on people's lives — from the arrival of the Spanish conquistadores, up to the post-colonial period and, arguably, until now.⁴²

This Article aims to shed light on the history of the *Moro* struggle for self-determination and governance — the beginning of armed violence in Mindanao. It primarily discusses the *vertical conflict* between the state and the *Moro* rebel groups, and briefly touches upon the *horizontal conflict* or that which is among feuding clans in Mindanao. The Author fervently hopes that, by knowing the context of the Mindanao conflict, one can fully understand the armed struggle and, with that, discover workable solutions in bringing forth a culture of peace.

III. WHO IS THE BANGSAMORO?

Filipinos adhering to Islam are predominant in the provinces of Maguindanao, Lanao del Sur, Basilan, Sulu, and Tawi-Tawi, as well as some municipalities of North Cotabato, Lanao del Norte, Davao del Sur, South Cotabato, Zamboanga del Sur, Zamboanga Sibugay, and Palawan.⁴³ In the Philippines, they are called “*Moros*” or “*Muslims*” — words used interchangeably to refer to at least 13 ethnolinguistic groups⁴⁴ that follow

39. Jesus F. Llanto, *Mindanao Still Poorest Island in Nearly A Decade*, available at www.abs-cbnnews.com/special-report/03/07/08/mindanao-still-poorest-island-nearly-decade-0 (last accessed Feb. 17, 2015).

40. “Social inequities” and “peace problems” are cited as the main reasons for poverty in Mindanao. See generally, NEDA, *supra* note 37.

41. Cagoco-Guiam, Part One, *supra* note 33.

42. *Id.*

43. See Jamail A. Kamlian, *Who are the Moro people?*, PHIL. DAILY INQ., Oct. 20 2012, available at opinion.inquirer.net/39098/who-are-the-moro-people (last accessed Feb. 17, 2015).

44. These 13 ethnolinguistic groups are primarily located in Mindanao, Sulu, and Palawan. *Id.*

Allah's teachings, as articulated in the Qu'ran.⁴⁵ The terms, however, have a specific meaning — “Muslim” speaks of a universal religious identity,⁴⁶ while “*Moro*” denotes a distinct political identity belonging to the Muslim natives in southern Philippines.⁴⁷ Originally, “*Moro*”⁴⁸ was the Islamic Filipino equivalent of “*Indio*,” a derogatory label by which the Spanish called the Christianized native Filipinos.⁴⁹

In recent years, a trend has emerged among the *Moros* to use this pejorative term or its equivalent, *Bangsamoro* — *Bangsa* meaning “nation”⁵⁰ — to refer to themselves, in recognition of their being distinct from the majority of Filipinos, as well as their “common history of fierce resistance against foreign domination and Christian proselytization.”⁵¹ Various Muslim militant organizations, such as the MNLF, the MILF, the *Bangsa Moro* Liberation Organization (BMLO), and the *Bangsamoro Islamic Freedom Fighters* (BIFF),⁵² apply the term *Bangsamoro* to all *Moros*, *Lumads* (highlanders), and other native inhabitants of Mindanao, Sulu, and adjacent

45. The three largest and politically dominant are the *Maguindanaon* (people of the flooded plains) of the Cotabato provinces (Maguindanao, Sultan Kudarat, North Cotabato, and South Cotabato); the *Maranaw* (people of the lake) of the two Lanao provinces; and the *Tausug* (people of the current) of the Sulu archipelago. The remaining 10 are the *Yakan*, *Sama*, *Badjaw*, *Kalagan*, *Sangil*, *Iranun* or *Ilanun*, *Palawani*, *Melebugnon*, *Kalibogon*, and *Jama Mapun*. There is also a growing number of Muslim converts from various ethnolinguistic groups all over the Philippines. See generally Macapado A. Muslim and Rufa Cagoco-Guiam, *Mindanao: Land of Promise*, in *COMPROMISING ON AUTONOMY: MINDANAO IN TRANSITION TO* (Mara Stankovitch ed., 1999).

46. *Id.* at 15.

47. *Id.*

48. The Spanish rulers used the word *Moro* to refer to all inhabitants of Mindanao, Sulu, and Palawan, believing that they all belonged to the Islamic faith. See Kamlian, *supra* note 43.

49. Muslim & Cagoco-Guiam, *supra* note 45, at 15.

50. Liberty Contessa L. Catbagan & Puraida L. Tibli, *Visualizing Bangsamoro, Imagining Change*, in *MEANING-MAKING IN MINDANAO* 3 (2013).

51. Cagoco-Guiam, Part One, *supra* note 33.

52. The BIFF is an MILF breakaway group that publicly pledged allegiance to the Independent State of Iraq and Syria, an Islamic jihadist group. PNA/Sunnex, BIFF now a terrorist group, available at www.sunstar.com.ph/breaking-news/2014/08/17/afp-biff-now-terrorist-group-360184 (last accessed Feb. 17, 2015).

islands including Palawan.⁵³ Such definition was carried on in the MOA-AD.⁵⁴ The Supreme Court in *Province of North Cotabato*, however, raised concerns regarding the use of this term.

Paragraph 1 on Concepts and Principles of the MOA-AD provides for the definition of “Bangsamoro” —

It is the birthright of all *Moros* and all [i]ndigenous peoples of Mindanao to identify themselves and be accepted as Bangsamoros. The Bangsamoro people refers 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 or colonization and their descendants whether mixed or of full native blood. Spouses and their descendants are classified as Bangsamoro. The freedom of choice of the indigenous people shall be respected.⁵⁵

In using the term “Bangsamoro,” the MOA-AD lumps together the identities of the Bangsamoro and the other indigenous peoples living in Mindanao. This sharply contrasts from what is found in the ARMM Organic Acts, which clearly distinguishes between Bangsamoro people and tribal peoples.⁵⁶ Moreover, as stated by Supreme Court Justice Antonio T. Carpio in his separate concurring opinion,⁵⁷ the MOA-AD definition of Bangsamoro

erases by a mere declaration the identities, culture, customs, traditions[,] and beliefs of 18 separate and distinct indigenous groups in Mindanao. The ‘freedom of choice’ given to the [Lumads] is an empty formality because *officially from birth they are already identified as Bangsamoros*. The [Lumads] may freely practice their indigenous customs, traditions[,] and beliefs, but they are still identified and known as Bangsamoros under the authority of the [Bangsamoro Juridical Entity].⁵⁸

Article II, Section 1 of the proposed BBL⁵⁹ adopts the definition almost entirely from the MOA-AD, albeit with a slight variation. In the MOA-AD, both ascription (attribution by others), and self-ascription (attribution by self) must be had, to wit — “[i]t is the birthright of all [Moros] and all [i]ndigenous peoples of Mindanao to identify themselves [by self-ascription]

53. Muslim & Cagoco-Guiam, *supra* note 45, at 15.

54. See generally MOA-AD, *supra* note 1.

55. *Id.* at 1.

56. See R.A. No. 9054, art. X, § 3 (a) & (b).

57. *Province of North Cotabato*, 568 SCRA at 523-62 (J. Carpio, separate concurring opinion).

58. *Id.* at 544 (emphasis supplied).

59. See H.B. No. 4994, art. II, § 1 & S.B. No. 2408, art. II, § 1.

and be accepted [by ascription] as Bangsamoros.”⁶⁰ In contrast, in the proposed BBL, it is provided that the Bangsamoro people “shall have a right to identify themselves as Bangsamoro by ascription *or* self-ascription.”⁶¹ That is to say, the Christians and *Lumads* may also be considered as Bangsamoros through the opinion and determination of the majority culture and the rest of the individual’s culture (ascription);⁶² or through their own determination of this shared group identity (self-ascription).⁶³ The identity of the Bangsamoros may thus blur with those of the Christians and the *Lumads*.

60. MOA-AD, *supra* note 1, at 2 (emphasis supplied).

61. H.B. No. 4994, art. II, § 1 states that the original inhabitants of Mindanao and the Sulu archipelago, and their descendants, shall have a right to identify themselves as Bangsamoro by ascription *or* self-ascription. On the other hand, S.B. No. 2408, art. II, § 1 defines indigenous peoples as referring to a group of people or homogenous societies identified by self-ascription *and* ascription by others. Compare H.B. No. 4994, art. II, § 1 & S.B. No. 2408, art. II, § 1 with An Act to Recognize, Protect[,] and Promote the Rights of Indigenous Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples’ Rights Act of 1997], Republic Act No. 8371, § 3 (h) (1997) (emphasis supplied).

62. The process is also called ascription. See Michal Dudek, *Should There Be an Obligation to Recognize an Individual’s Ascription to a Group? On the Margins of the ‘Right to Exit’ Debate*, in TOWARDS RECOGNITION OF MINORITY GROUPS 105 (Marek Zirk-Sadowski & Bartosz Wojciechowski eds., 2014) available at www.academia.edu/1506392/Should_there_be_the_obligation_of_individuals_group_ascription_recognition_On_the_margins_of_right_to_exit_debate_DRAFT_ (last accessed Feb. 17, 2015).

63. Andrew J. Pierce argues that

unlike cultural groups, which can be understood as depending on the conscious, collective intentionality of their individual members, ... oppressed groups are non-intentional, or ‘ascriptive’ — formed and maintained by external forces[.]

...

[O]ppression is a kind of *group* harm, irreducible to the individual harms experienced by group members, [and thus] group rights aimed at remediating such harms are also irreducible to the individual rights of group members. ... [Hence, it is argued that] groups possess a right to self-ascription, understood as a right to determine the meaning and extent of group membership. Oppression is the paradigmatic violation of this right.

In view of the inherent difficulties in using the term “Bangsamoro;” for purposes of this Article, the Author shall use the word “*Moro*” in its place. This shall refer to the autochthonous (aboriginal or indigenous) Muslim Filipinos who pre-date the Spanish conquerors, as well as their Islamic descendants, all of whom share a distinct culture and history. The non-*Moro* indigenous peoples, the original inhabitants of Mindanao who make up 18 tribes, shall be described as “*Lumads*,”⁶⁴ while the Christianized natives shall be called “Christians.”

IV. TRACING THE ROOTS OF THE BANGSAMORO CONFLICT

The arrival of Islam in the Philippines pre-dates that of Christianity. In 1310, Muslim traders, missionaries, mystics, or *Sufis*, travelled from the Arabian Peninsula to Central Asia overland;⁶⁵ they then went to India, China, and Southeast Asia by sea until they reached southern Philippines, introducing Islam to the natives therein.⁶⁶ After establishing itself in Mindanao and the Sulu archipelago, as well as its adjacent islands including Palawan, Islam started influencing the inhabitants of Visayas and Luzon.⁶⁷ The new religion transformed the political, economic, legal, and social structures in the Philippines, particularly in Mindanao, where the sultanates ruled as independent and sovereign states⁶⁸ beginning in Sulu in the 14th Century.⁶⁹

Andrew J. Pierce, Identity, Oppression, and Group Rights, at 3–5 (May 2010) (unpublished Ph.D. dissertation, Loyola University Chicago) (on file with Loyola University Library, Loyola University Chicago).

64. Their ancestral domains are encompassed in 17 provinces and 14 cities of Mindanao. See Ofelia Durante, A Lesson on Clan Conflict Resolution in the Philippines, available at cpcabrisbane.org/Kasama/2005/V19n3/OfeliaDurante.htm (last accessed Feb. 17, 2015).

65. The Philippine archipelago is strategically positioned in Southeast Asia that it naturally became part of the trade route of the ancient world. See generally Paula D. Knack, *Legal frameworks and land issues in Muslim Mindanao*, in LAND AND POST-CONFLICT PEACEBUILDING 456 (Jon Unruh & Rhodri Williams eds., 2013) & The Bulwagan Foundation Trust, The Rajahnate of Cebu, available at <http://thebulwaganfoundation.wordpress.com/2010/09/01/the-rajahnate-of-cebu> (last accessed Feb. 17, 2015).

66. Knack, *supra* note 65, at 456.

67. Brendan Koerner, How Islam Got to the Philippines and what the Sultan of Sulu has to do with it, available at www.slate.com/articles/news_and_politics/explainer/2005/01/how_islam_got_to_the_philippines.html (last accessed Feb. 17, 2015).

68. Knack, *supra* note 65, at 456.

69. PATRICIO N. ABINALES & DONNA J. AMOROSO, STATE AND SOCIETY IN THE PHILIPPINES 44 (2005).

A. The Cross, the Regalian Doctrine, and the Sewing of Mutual Distrust

In 1521, the expansion of Islam ceased when Ferdinand Magellan landed in the Philippines, mistaking it for the Moluccas Islands (also known as the Spice Islands).⁷⁰ To keep their rein on the population, the Spaniards christianized the indigenous people⁷¹ — starting in Mazaua (sometimes called Limasawa), the location of the first Catholic mass in the Philippines;⁷² to the Kingdom of Sugbo or Cebu, with the conversion of Muslim chieftain Rajah Humabon;⁷³ up to Dapitan Kingdom or Bohol,⁷⁴ ruled by Rajah Sikatuna, who had a blood compact⁷⁵ with Spanish conqueror Miguel Lopez de Legazpi.⁷⁶

After securing alliances with or forcibly taking various indigenous kingdoms and nations,⁷⁷ the next major Spanish expedition under Legazpi went on to conquer the Islamic Kingdom of May Nilad (Manila).⁷⁸ Months

70. Knack, *supra* note 65, at 456. See also History, Apr. 27, 1521: Magellan killed in the Philippines, available at www.history.com/this-day-in-history/magellan-killed-in-the-philippines (last accessed Feb. 17, 2015).

71. Knack, *supra* note 65, at 456.

72. See TEODORO A. AGONCILLO, INTRODUCTION TO FILIPINO HISTORY 35 (1974).

73. See generally Royal Sulu, Sultanate of Sulu, “The Unconquered Kingdom,” available at <http://www.royalsulu.com/history.html> (last accessed Feb. 17, 2015).

74. Derived from the word *Bo-ol*, Bohol is a district in the City of Tagbilaran, where off its waters was located the seat of the powerful Dapitan Kingdom. See Tagbilaran, History, available at <http://www.tagbilaran.gov.ph/profile/history/> (last accessed Feb. 17, 2015).

75. The pact is considered the first international treaty of friendship between the Philippines and a foreign country. Filomeno V. Aguilar, Jr., *The Pacto de Sangre in the Late Nineteenth-Century Nationalist Emplotment of Philippine History*, 58 PHIL. STUD. 79, 83 (2010). See Ambeth R. Ocampo, *Bohol and the blood compact*, PHIL. DAILY INQ., Oct. 18, 2013, available at <http://opinion.inquirer.net/63541/bohol-and-the-blood-compact> (last accessed Feb. 17, 2015).

76. See Aguilar, Jr., *supra* note 75, at 82.

77. Excluding the Muslim sultanates in the Sulu archipelago and Mindanao, most communities in the Philippines were “fairly small without a great deal of centralized authority,” making them easy to conquer. Susan Russell, Christianity in the Philippines, available at <http://www.seasite.niu.edu/crossroads/russell/christianity.htm> (last accessed Feb. 17, 2015).

78. Pre-European Luzon was part of the Sultanate of Brunei, after Sultan Bolkiah invaded the region in 1485. See generally Abdul Malik Omar, Golden Age of

of warfare ensued until the three *rajahs* — the aging Rajah Matanda and the crown prince, Rajah Sulaiman III, of the Kingdom of May Nilad, as well as Lakan Dula of the Kingdom of Tondo — in the Pasig River delta fell against the Spanish forces.⁷⁹ In 1565, the Philippines became a formal colony. Six years later, the colonial capital was established in Manila⁸⁰ to serve both as a military naval base in the Pacific, as well as an important stopover point in the Spanish galleon trade from China to Mexico, establishing the Manila-Acapulco Galleon Trade.⁸¹

Following the Christianization of Luzon, Visayas, and some parts of Mindanao, such as Zamboanga, Spain successfully introduced a unified government⁸² and a new legal system.⁸³ However, “outside the administrative and political structures imposed by the national government, there was no over-all political authority embracing all of the [*Moro*] groups.”⁸⁴ During that time, the Christian natives came to be known as “Filipinos,”⁸⁵ while the Muslim indigenous from southern Philippines were “*Moros*.”⁸⁶ The pejorative term came from the “savage-looking” and “blood-hungry”⁸⁷ Moors of Morocco — Spain’s Muslim invaders for 700 years.⁸⁸

Brunei Darussalam: Story of Sultan Bolkiah the 5th, *available at* <http://amotimes.com/2011/12/29/golden-age-of-brunei-darussalam-story-of-sultan-bolkiah-the-5th> (last accessed Feb. 17, 2015). *See also* G.E. Gerini, *The Nagarakretagama List of Countries on the Indo-Chinese Mainland (Circa 1380 A.D.)*, 37 J. ROYAL ASIATIC SOC’Y OF GREAT BRITAIN AND IRELAND 485 (1905).

79. VALENTIN T. SITOY, JR., A HISTORY OF CHRISTIANITY IN THE PHILIPPINES: THE INITIAL ENCOUNTER 29 (1985). Note that, when Miguel Lopez de Legazpi, successor of Magellan, came to the Philippines, Muslim kingdoms were already well established in Batangas, Pampanga, Mindoro, Panay, Catanduanes, Cebu, Bohol, Samar, Manila, Palawan, and Mindanao. *See* MARIANO A. HENSON, THE PROVINCE OF PAMPANGA AND ITS TOWNS, (A.D. 1300-1955) WITH THE GENEALOGY OF THE RULERS OF CENTRAL LUZON 163-68 (1955).

80. Knack, *supra* note 65, at 456.

81. Joanna Hecht, The Manila Galleon Trade, *available at* http://www.metmuseum.org/toah/hd/mgtr/hd_mgtr.htm (last accessed Feb. 17, 2015).

82. Knack, *supra* note 65, at 456-57.

83. *Id.*

84. Durante, *supra* note 64.

85. Knack, *supra* note 65, at 457.

86. Cagoco-Guiam, Part One, *supra* note 33.

87. *Id.*

88. The Spaniards, believing that all inhabitants of Mindanao belong to the Muslim faith, associated the *Moro* with disparaging labels, such as “pirates,” “traitors,”

Among the fundamental laws that Spain introduced was the Regalian Doctrine, or *jura regalia*, which conferred on the Spanish Crown ownership over all lands not registered as private property.⁸⁹ According to *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,⁹⁰ “[b]y fiction of law, the King was regarded as the original proprietor of all lands, [] the true and only source of title, and from him all lands were held. The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest.”⁹¹

The Regalian Doctrine gave birth to the *encomienda* system.⁹² Through a decree from the Spanish king, Legazpi distributed lands to loyal Spanish subjects, such as conquistadors, soldiers, officials, or friars.⁹³ The receiver of the grant, the *encomendero*, could then exact gold, labor, or a large share of produce as tributes from the natives.⁹⁴ Originally meant to cover only unsettled lands, most of the grants encroached even on the settled areas.⁹⁵ Notably, “[t]he lands of Mindanao and Sulu were not covered by the *encomienda* system and other Spanish land tenurial arrangements imposed in the Visayas and Luzon.”⁹⁶ Despite its incompatibility with the existing cultures in the Philippines, the Regalian Doctrine has lived on in the present Constitution.⁹⁷ Article XII of the Organic Act decrees state ownership of all

“*juramentado*,” “enslavers,” “cruel,” and “uncivilized.” Kamlian, *supra* note 43. See also THOMAS J. CRAUGHWELL, *HOW THE BARBARIAN INVASIONS SHAPED THE MODERN WORLD* 188 (2008).

89. Knack, *supra* note 65, at 457.

90. *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 421 SCRA 148, 185 (2004).

91. *Id.*

92. Knack, *supra* note 65, at 457.

93. Aileen Guzman & Laura Schmitt, *Putting Development in Perspective: Colonial and Neocolonial Dynamics in the Philippines*, in *MAKING WORLD DEVELOPMENT WORK: SPECIFIC ALTERNATIVES TO NEOCLASSICAL ECONOMIC THEORY* 164 (Gregoire Leclerc & Charles A.S. Hall ed., 2007).

94. Knack, *supra* note 65, at 457.

95. It has been found that “[b]y the end of the Spanish colonial period, the lands owned by the friars totaled some 171,000 hectares.” Florence Marie P. Milan, *The Politics, Landowners’ Resistance and Peasants’ Struggle for Genuine Land Reform in the Philippines*, at 19 (September 2006) (unpublished Masteral thesis, University of Hohenheim) (on file with the Author) (citing DENNIS ROTH, *THE FRIAR ESTATES IN THE PHILIPPINES* (1977)) & JAMES PUTZEL, *A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES* (1992).

96. Cagoco-Guiam, Part One, *supra* note 33.

97. PHIL. CONST. art. XII, § 2. This provides that —

natural resources, except for agricultural lands, with the power to explore, develop, and utilize these resources.⁹⁸

From 1691 onwards to 1898, the “fiercely independent”⁹⁹ *Moros* in Mindanao successfully resisted the Spanish incursion into the sultanates¹⁰⁰ and recovered many Muslim territories controlled by Spain.¹⁰¹ The *Moro*

[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least [60%] of whose capital is owned by such citizens. Such agreements may be for a period not exceeding [25] years, renewable for not more than [25] years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within [30] days from its execution.

PHIL. CONST. art. XII, § 2.

98. See Knack, *supra* note 65, at 469.

99. Encyclopaedia Britannica, Moro, available at <http://www.britannica.com/EBchecked/topic/392579/Moro> (last accessed Feb. 17, 2015).

100. Cagoco-Guiam, Part One, *supra* note 33.

101. See Royal Sulu, *supra* note 73.

warriors, “fierce, loyal[,] and unequalled,”¹⁰² fought valiantly to throw out their invaders. Spain could not subdue the sultanates in Mindanao as the latter had a “more advanced social structure”¹⁰³ than the communities in Luzon and Visayas.¹⁰⁴ In response to the foreign occupation, the sultanates attacked the Spanish territories, notably the coastal lands occupied by the Christian Filipinos.¹⁰⁵ Thus planted were the seeds of conflict and mistrust between the *Moros* and the Christians.¹⁰⁶

On 12 June 1898, the Filipino revolutionaries in the North declared independence from Spain.¹⁰⁷ The recently-established First Philippine Republic,¹⁰⁸ however, was short-lived, owing to the arrival of the American colonizers.¹⁰⁹ Losing in the Spanish-American War in another part of the world,¹¹⁰ Spain ceded the Philippines to the United States (U.S.) for \$20 million,¹¹¹ as set out in the 1898 Treaty of Paris.¹¹² The treaty demanded

102. *Id.*

103. Knack, *supra* note note 65, at 456.

104. Notably,

[u]nder the sultanates, the [*Moros*] were unified under one leadership, one command[,] and one God. Islam served not only as a unifying thread for their political organization but also as the ideological foundation to effectively resist foreign intrusions. The non-Islamic populations, on the other hand, were scattered in barangays that were independent from each other, thus offering only sporadic and disunited resistance against the Spanish invaders. Because of this, they would be easily conquered by the Spanish colonizers.

Kamlan, *supra* note 43.

105. See Knack, *supra* note 65, at 457.

106. *Id.*

107. See LEONARDO R. SILOS, THE POWER OF THE LEADER: MIND AND MEANING IN LEADERSHIP 208 (2003).

108. This Republic was governed by the 1897 Biak-na-Bato Constitution. See generally Corpus Juris, 1987 Biac-na-Bato Constitution, available at <http://www.thecorpusjuris.com/laws/constitutions/item/1897-biac-na-bato-constitution.html> (last accessed Feb. 17, 2015).

109. See SILOS, *supra* note 107, at 208.

110. The Spanish-American War (1898) began as a result of American interference in the Cuban War of Independence. See generally THOMAS D. SCHOONOVER, UNCLE SAM’S WAR OF 1898 AND THE ORIGINS OF GLOBALIZATION 77 (2003).

111. See generally DONALD H. DYAL, HISTORICAL DICTIONARY OF THE SPANISH AMERICAN WAR 258 (1996).

Americans ownership and control over the expansive lands in the Philippines¹¹³ — including the islands of Mindanao and Sulu — which Spain had never completely subjugated and therefore had no right to cede.¹¹⁴ This prompted Sultan Jamalul Kiram II and 57 prominent Sulu Muslim leaders to later petition the U.S. for the independence of the Sulu sultanate,¹¹⁵ but it was an attempt in vain.¹¹⁶

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112. The Treaty of Paris formally marked the end of the Spanish–American War. It also granted America “its first overseas empire,” signalling its rise to global power. See *generally* History, Dec. 10, 1898: Treaty of Paris ends Spanish–American War, *available at* www.history.com/this-day-in-history/treaty-of-paris-ends-spanish-american-war (last accessed Feb. 17, 2015). See also Treaty of Peace Between the United States and Spain, Dec. 10, 1898, 30 Stat. 1754.
113. Lakshmi Iyer & Noel Maurer, The Cost of Property Rights: Establishing Institutions on the Philippine Frontier Under American Rule, 1898–1918 (A Working Paper Submitted to the Harvard Business School) 14, *available at* www.hbs.edu/faculty/Publication%20Files/09-023.pdf (last accessed Feb. 17, 2015).
114. A cable from former U.S. President William McKinley instructed — “to accept merely Luzon, leaving the rest of the islands subject to Spanish rule, or to be the subject of future contention, cannot be justified[.] The cessation must be the whole archipelago or none. The latter is wholly inadmissible, and the former must therefore be required.” LEON WOLFF, *LITTLE BROWN BROTHER: HOW THE UNITED STATES PURCHASED AND PACIFIED THE PHILIPPINE ISLANDS AT THE CENTURY’S TURN 169–70* (2006). See Knack, *supra* note 65, at 457.
115. Michael Vincent P. Caceres, *Americanizing the Sulu Sultanate: Fragrance/Nightmare of U.S. Foreign Policy (circa 1898)*, 9 JPAIR MULTIDISCIPLINARY RES. 153, 157–59 (2012).
116. Despite the fact that “[t]he Americans were concerned about the legitimacy of their sovereignty over the [Moro] country, particularly the Sulu sultanate,” developments eventually led to American subjugation of the Sulu sultanate, but not strictly through military conquest. Instead,

[o]n [20 August 1899], General John C. Bates and Sultan Jamalul Kiram II of Sulu signed the Kiram–Bates Treaty. In it, the [U.S.] was recognized as the sovereign power over the Sulu [a]rchipelago, and in turn recognized the rights and dignity of the sultan and the *datus* (chieftains of noble descent).

...

While the Philippine–American War ended in 1902, members of the Katipunan, a revolutionary secessionist organization, continued to battle the Americans. ... [However,] as soon as U.S. forces began to win against the Filipino revolutionaries, they proceeded with the conquest of Mindanao. The [Moros] fought until [] they succumbed to the superior force of the Americans [in 1913].

Knack, *supra* note 65, at 457–58.

Aware that their claim of sovereignty over Mindanao and the Sulu archipelago was tenuous at best, the U.S. entered into a peace treaty with Sultan Kiram in 1899.¹¹⁷ The Kiram-Bates Treaty promised to uphold the rights and dignity of the sultanate.¹¹⁸ It enabled the U.S. to effectively invade and occupy the *Moro* lands,¹¹⁹ while concentrating its forces against the Filipino revolutionaries in the North.¹²⁰

During the Philippine-American War of 1898-1902,¹²¹ the Filipino revolutionaries battled with at least 70,000 American troops dispatched to pacify the Philippines.¹²² In 1902, the revolution was crushed, albeit periodic uprisings and insurrections ensued.¹²³ The U.S. next turned its attention to the Mindanao and Sulu archipelago. It then reneged on its peace agreement with the *Moros* and launched an all-out attack which lasted for 13 years¹²⁴ and finally led to the *Moros*' defeat.¹²⁵ In 1915, Governor-General Frank Carpenter unilaterally abrogated the Kiram-Bates Treaty and placed in its stead the Carpenter Agreement, which effectively "[extinguished] all claims of the Sultan to any degree of temporal sovereignty."¹²⁶ From having *de jure* and *de facto* sovereignty, the Sultan was reduced to a "mere spiritual and religious head of the [*Moro*] people."¹²⁷

117. *Id.*

118. See Madge Kho, Jolo — Chronology of Moro Resistance, available at www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/jolomuslim.htm (last accessed Feb. 17, 2015).

119. See Jun Anave, The Socio-Political Dimension of the Mindanao Conflict, available at <http://www.daga.org.hk/res/dagainfo/dii10.htm> (last accessed Feb. 17, 2015).

120. See Kho, *supra* note 118.

121. See Knack, *supra* note 65, at 457.

122. Frank L. Andrews, The Philippine Insurrection (1899-1902): Development of the U.S. Army's Counterinsurgency Policy, at 68 (August 2002) (unpublished Masteral thesis, Louisiana State University and Agricultural Mechanical College) (on file with the Author).

123. U.S. Department of State Office of the Historian, Milestones: 1899-1913: The Philippine-American War 1899-1902, available at <https://history.state.gov/milestones/1899-1913/war> (last accessed Feb. 17, 2015).

124. See Kho, *supra* note 118.

125. *Id.*

126. *Id.*

127. *Id.*

To quell any dissent, the U.S. colonial government used a Christian-dominated police force against the *Moros*.¹²⁸ Moreover, to the “undesirables” and troublemakers in Luzon and Visayas, the Americans gave resettlement programs, which entitled Christian migrants to larger tracts of land in the *Moro* territories.¹²⁹ The emigration to Mindanao not only helped subdue anti-American sentiments; it likewise deprived the *Moros* and the *Lumads* of their ancestral lands.¹³⁰ In a typical divide-and-conquer strategy, the Americans took advantage of the long-standing hostility between the *Moros* and the Christians¹³¹ by making one fight against the other.¹³²

B. U.S. Legalizes Land Grabbing in Mindanao

Prior to the arrival of the foreign invaders, the *Moros* practiced the customary law of *adat*, or the belief in non-absolute ownership of land.¹³³ They also upheld *waqaf*, referring to trust property,¹³⁴ or the Islamic principle that all of the lands and creation belong to Allah, and that human beings only have stewardship thereof.¹³⁵ Such belief-system permeated their daily pre-colonial lives.

The concept of private property did not exist in the *Moro* culture.¹³⁶ Traditionally, tribal members regard the communally-owned¹³⁷ ancestral lands as *pusaka*, or referring to heirloom or ancestral property, inheriting and holding them only in usufruct.¹³⁸ The sultan, *datu*, or *rajah* exercised the “supreme stewardship of the lands or territories” within one’s effective

128. Cagoco-Guiam, Part One, *supra* note 33.

129. *Id.*

130. Anave, *supra* note 119.

131. Cagoco-Guiam, Part One, *supra* note 33.

132. Knack, *supra* note 65, at 457.

133. Asiri J. Abubakar, *Muslim Philippines: With Reference to the Sulus, Muslim-Christian Contradictions, and the Mindanao Crisis*, 11 ASIAN STUD. J. 112, 124 (1973).

134. See generally Lualhati M. Abreu, *Ancestral Domain — The Core Issue*, in THE MORO READER: HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE 60–62 (Bobby M. Tuazon ed., 2008).

135. See Cagoco-Guiam, Part One, *supra* note 33.

136. See Myrthena L. Fianza, *Contesting Land and Identity in the Periphery: The Moro Indigenous People of Southern Philippines*, available at https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/949/Contesting_Land.pdf?sequence=1 (last accessed Feb. 17, 2015).

137. Knack, *supra* note 65, at 458.

138. See Abreu, *supra* note 134.

control, or in relation to the right to use,¹³⁹ but had no right to dispose of the same.¹⁴⁰ Thus, the Spanish concept of Regalian Doctrine¹⁴¹ and the American-decreed Torrens title¹⁴² were foreign concepts of land ownership for the natives.¹⁴³ Accustomed to *adat*, many resisted from, or did not bother, registering their lands.¹⁴⁴ This would have dire consequences for them, as the state, the private individuals, or the corporations would later lay claims to all lands not registered as private property.¹⁴⁵

Various U.S.-enacted land legislations solidified American hegemony in the country.¹⁴⁶ Implemented in Muslim-dominated areas, these land laws impinged on the territories of the sultanates and other indigenous groups, leaving them as mere “resident strangers” in their own homeland.¹⁴⁷ The *Moros* and the *Lumads* were at a disadvantage, as they were unaccustomed to the “legal procedures necessary to acquire title.”¹⁴⁸

Under the Land Registration Act of 1902,¹⁴⁹ the comprehensive registration of land titles through the Torrens system became the conclusive evidence of land ownership.¹⁵⁰ This law gave birth to other modes of legalized grabbing of *Moro* lands,¹⁵¹ particularly those pertaining to the

139. See Cagoco-Guiam, Part One, *supra* note 33.

140. See Abreu, *supra* note 134, at 60.

141. This refers to state ownership of all alienable lands. See Knack, *supra* note 65, at 456.

142. The Torrens title system is an extensive land-titling program under the Land Registration Act of 1902. See An Act to Provide for the Adjudication and Registration of Titles to Lands in the Philippine Islands [The Land Registration Act], Act No. 496 (1902). See also Iyer and Maurer, *supra* note 112.

143. See Cagoco-Guiam, Part One, *supra* note 33.

144. *Id.*

145. See generally Knack, *supra* note 65.

146. See Cagoco-Guiam, Part One, *supra* note 33.

147. *Id.*

148. This was the comment made by Dwight F. Davis in 1935. He served as Governor-General of the Philippines from 1929 to 1932. See Kho, *supra* note 118.

149. See generally The Land Registration Act.

150. *Id.* § 38. See also Knack, *supra* note 65, at 458.

151. See Macabangkit B. Lanto, *The gov't-MILF peace pact: a Moro perspective*, PHIL. DAILY INQ., Mar. 26, 2014, available at <http://opinion.inquirer.net/72957/the-govt-milf-peace-pact-a-moro-perspective> (last accessed Feb. 17, 2015).

“declaration of public land, mining, cadastral surveys, creation of agricultural colonies, procedures for private acquisition of alienable and disposable public land, and land settlements.”¹⁵² For example, Act No. 718 of 1903¹⁵³ effectively voided the property rights and feudal titles of the traditional leaders by decreeing null and void the land grants made by them;¹⁵⁴ Act No. 926 of 1903¹⁵⁵ declared unregistered lands to be in the public domain and open for homestead; and the Public Land Act of 1919¹⁵⁶ awarded more homesteads to Christians than Muslims.¹⁵⁷ As a result of the various land laws imposed by the colonial government, a number of *rido*¹⁵⁸ cases broke out,

152. Knack, *supra* note 65, at 458.

153. An Act Making Void Land Grants From Moro Sultans or Dattos or From Chiefs of Non-Christian Tribes When Made Without Governmental Authority or Consent, Act No. 718 (1903).

154. *Id.* § 1.

155. An Act Proscribing Rules and Regulations Governing the Homesteading, Selling, and Leasing of Portions of the Public Domain of the Philippine Islands, Prescribing Terms and Conditions to Enable Persons to Perfect for the Issuance of Patents Without Compensation to Certain Native Settlers Upon the Public Lands, Providing for the Establishment of Town Sites and Sales of Lots Therein, and Providing for a Hearing and Decision by the Court of Land Registration of all Applications for the Completion and Confirmation of all Imperfect and Incomplete Spanish Concessions and Grants in Said Islands, as Authorized by Sections Thirteen, Fourteen and Fifteen of the Act of Congress of July First Nineteen Hundred and Two, Entitled “An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes,” Act. No. 926 (1903). *See also* Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 170 (2000). In *Cruz*, it was opined that the Public Land Act “operated on the assumption that title to public lands in the Philippine Islands remained in the government, and that the government’s title to public land sprung from the Treaty of Paris and other subsequent treaties between Spain and the United States.” *Id.*

156. To Amend and Compile the Laws Relative to Lands of the Public Domain, and for Other Purposes [The Public Land Act of 1919], Act No. 2874 (1919).

157. Knack, *supra* note 65, at 458.

158. “*Rido*” or a clan war is a “traditional way to exacting justice on perceived oppression and smearing of one’s *maratabat* — the self-esteem, pride, honor, and dignity of person. *Rido* can last for generations until all warring sides are at par with one another, with the conflict having been amicably settled — or one side had gained dominance over the [other].” *See* Abreu, *supra* note 134, at 66 & Datu Lidasan, Mussolini Sinsuat, Tasila, Maratabat and Sabah: Chain, Honor and Common Humanity, *available at* www.addu.edu.ph/news-articles/tarsila-maratabat-and-sabah-chain-honor-and-common-humanity (last accessed Feb. 17, 2015).

some of which continue even until today.¹⁵⁹ The table below summarizes the key features of the various land laws of the colonial government:

Laws	Description
Act No. 496 (1902) ¹⁶⁰	It provides for the registration, in writing, of all lands occupied by any person, group, or corporation. ¹⁶¹
Philippine Organic Act (1902) ¹⁶²	It declares that all public lands are free and open to exploitation, exploration, occupation, and purchase even by Americans. ¹⁶³
Act No. 718 (1903) ¹⁶⁴	It provides for the nullification of land grants by traditional leaders, i.e., sultans, <i>datu</i> s, or leaders of non-Christian indigenous groups, if given without government authority. ¹⁶⁵
Act No. 926 (1903) ¹⁶⁶	It declares that all lands not registered under Act No. 496 are deemed public and open for homestead, sale, and leasehold. As a result, it favors homesteaders and corporations to the prejudice of the <i>Moros</i> and <i>Lumads</i> . ¹⁶⁷

159. Abreu, *supra* note 134, at 23.

160. *See generally* The Land Registration Act.

161. *See generally* The Land Registration Act, §§ 19 & 21.

162. An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes [Philippine Organic Act of 1902], 32 Stat. 691 (1902).

163. *Id.* at 697.

164. *See generally* Act No. 718.

165. *See generally* Act No. 718. *See* Minerva Chaloping-March, The Trail of a Mining Law: 'Resource Nationalism' in the Philippines (A Paper Delivered at the Conference on Mining and Mining Policy in the Pacific: History, Challenges, and Perspectives) 3, available at <http://nouvelle-caledonie.ird.fr/content/download/41888/318831/version/1/file/Chaloping-March.pdf> (last accessed Feb. 12, 2015).

166. *See generally* Act. No. 926.

167. *See generally* Act. No. 926. *See also* Chaloping-March, *supra* note 165, at 3 & Knack, *supra* note 65, at 458.

Cadastral Act (1913) ¹⁶⁸	It provides for the imposition of cadastral surveys for land titling purposes, which facilitated the acquisition of new landholdings. ¹⁶⁹
Act No. 2254 ¹⁷⁰ (1913)	It provides for the creation of “agricultural colonies” in Mindanao and Sulu, and allows Christians to hold up to 16 hectares of land, and only eight hectares for the <i>Moros</i> . This encouraged Filipino migrants from the North to settle in the public lands in Mindanao and Sulu. ¹⁷¹
Public Land Act (1919) ¹⁷²	It allows Christians to own up to 24 hectares of land; while the <i>Moros</i> — who had to have these titled by themselves are given only up to 10 hectares. This law superseded Act No. 926. ¹⁷³
Commonwealth Act No. 141 (1936) ¹⁷⁴	It declares that all ancestral lands belonged to the public domain. This amended the Public Land Act of 1919. ¹⁷⁵
Commonwealth Act No. 441 (1939) ¹⁷⁶	It creates the National Land Settlement Administration (NLSA). Through the NLSA, lands in Mindanao were granted to those who finished military trainings, tenant farmers, and farmers from congested areas. ¹⁷⁷

168. Cadastral Act [Cadastral Act], Act No. 2259 (1913). See Sonny Melencio, *The Moro Question*, available at <http://links.org.au/node/115> (last accessed Feb. 12, 2015) & Randy David, *Who Owns Sulu?*, PHIL. DAILY INQ., Feb. 23, 2013, available at <http://opinion.inquirer.net/47495/who-owns-sulu> (last accessed Feb. 12, 2015).

169. See generally Cadastral Act. See also Melencio, *supra* note 168 & David, *supra* note 168.

170. The Agricultural Colony Act, Act. No. 2254 (1913). See United States Philippine Commission, *Report of the Philippine Commission to the Secretary of War (1900–1915)*, available at <https://archive.org/details/reportofphilounit> (last accessed Feb. 12, 2015). See also, David, *supra* note 168.

171. See Melencio, *supra* note 168.

172. See generally The Public Land Act of 1919.

173. See Melencio, *supra* note 168.

174. An Act to Amend and Compile the Laws Relative to Lands of the Public Domain [The Public Land Act of 1936], Commonwealth Act No. 141 (1936).

175. See Melencio, *supra* note 168.

176. An Act Creating the National Land Settlement Administration, Commonwealth Act No. 441 (1939).

177. See Melencio, *supra* note 168.

Generally, under homestead, land distribution laws, and resettlement policies,¹⁷⁸ many Christians from Luzon and Visayas settled in Mindanao, acquiring ownership and control of the land, tilling the land themselves, or hiring workers under land tenure agreements. Meanwhile, large-scale producers of cash crops obtained vast tracts of land for their commercial plantations.¹⁷⁹ These resettlement programs further marginalized the *Moros* and the *Lumads*, paving the way for the eruption of violent conflicts in the South.¹⁸⁰ The inhabitants of Mindanao, Sulu, and Palawan were once comprised of about 75% *Moros*; however, their numbers soon dwindled to a mere 18% due to the arrival of emigrant settlers from Luzon and Visayas.¹⁸¹

Rich in resources, the southern Philippines also attracted U.S.-based transnational corporations.¹⁸² The Americans worked around land laws to broaden and entrench their business interests in the country. The “good graces” of the U.S. governor of the *Moro* province permitted American cattle ranchers to exceed land limitations,¹⁸³ while the establishment of agricultural colonies disposed of the need to amend land laws.¹⁸⁴

To illustrate, the colonial government was able to facilitate the expansion of its agribusiness giant, Del Monte Pineapple, by establishing an agricultural colony in Bukidnon, with as much as 14,000 hectares set aside as pineapple plantation.¹⁸⁵ This skirted the ceiling (1,024 hectares) on the

178. See Zainudin S. Malang, *Examining the Nexus Between Philippine Constitutionalism and the Mindanao Conflict*, available at <http://minhrac.ph/examining-the-nexus-between-philippineconstitutionalism-and-the-mindanao-conflict> (last accessed Feb. 12, 2015). See also Eric Gutierrez & Saturnino Borrás, Jr., *The Moro Conflict: Landlessness and Misdirected State Policies*, 8 POL’Y STUD. 1, 8 (2004).

179. See Gutierrez & Borrás, *supra* note 178, at 9.

180. See Knack, *supra* note 65, at 458.

181. HUMAN DEVELOPMENT NETWORK, 2005 PHILIPPINE DEVELOPMENT REPORT 29 (2005).

182. Alongside the massive migration of Christians was the entry of American firms that capitalized on the region’s economic potential. It is said that between 1900 and 1920, about 46 U.S. firms were established in Zamboanga and Sulu. Agricultural colonies were also said to have been established in Cotabato, Davao, Lanao, and Agusan by 1930. See Anave, *supra* note 119. See also Gutierrez & Borrás, *supra* note 178, at 9.

183. Putzel, *supra* note 95, at 54–55.

184. See Gutierrez & Borrás, *supra* note 178, at 10.

185. Milan, *supra* note 95, at 23.

landholdings set by the Philippine Bill of 1902.¹⁸⁶ Other U.S. corporations, such as Weyerhaeuser,¹⁸⁷ B.F. Goodrich, Goodyear, and Dole, were likewise able to make their way to Mindanao, occupying vast areas of fertile land to cultivate their timber or agricultural yields.¹⁸⁸ The table below summarily shows the shifts in landholding limits for Christians and non-Christians during the American occupation:

Year	Homesteaders or Christians	<i>Moros</i>	Corporations
1902 ¹⁸⁹	16 hectares	(no provision)	1,024 hectares
1919 ¹⁹⁰	24 hectares	10 hectares	1,024 hectares
1936 ¹⁹¹	16 hectares	4 hectares	1,024 hectares

All these U.S.-imposed laws and policies, alongside the military pacification campaigns against the *Moros* (1903-1914), effectively led to the land-grabbing of untitled lands and the displacement of the natives¹⁹² by big businesses.¹⁹³ This trend, as well as the skirting of land rules to suit the interests of those in power, persisted even during the Japanese occupation¹⁹⁴ and beyond.¹⁹⁵

186. For individuals, the limit was at 16 hectares although this was later amended to 100 hectares, while corporations have the limit of 1,024 hectares. See Philippine Organic Act of 1902, § 15. Putzel, *supra* note 95, at 52.

187. This included logging concessions of 72,000 hectares of virgin forest in Cotabato. See Abreu, *supra* note 134, at 25.

188. See Kho, *supra* note 118.

189. See Philippine Organic Act of 1902.

190. See The Public Land Act of 1919.

191. See The Public Land Act of 1936.

192. See Abreu, *supra* note 134, at 23.

193. See Gutierrez & Borrás, *supra* note 178, at 9.

194. It has been reported, for instance, that the “Japanese controlled approximately 140,000 acres of prime agricultural land in Davao, resulting in their nearly complete domination of the export of abaca in Davao.” FREDERICK L. WERNSTEDT & JOSEPH EARLE SPENCER, *THE PHILIPPINE ISLAND WORLD: A PHYSICAL, CULTURAL, AND REGIONAL GEOGRAPHY* 530 (1967).

195. See generally Randolph David, et al., *Transnational Corporations and the Philippine Banana Export Industry*, in *POLITICAL ECONOMY OF PHILIPPINE COMMODITIES* 1-134 (1983).

When the 1935 Constitutional Convention was convened,¹⁹⁶ about 120 *Moro datus* of Lanao petitioned then U.S. President Theodore Roosevelt for the creation of their own state.¹⁹⁷ They opposed the inclusion of Mindanao and Sulu within an independent Philippines and, through the Dansalan Declaration,¹⁹⁸ stated as follows —

[W]e do not want to be included in the Philippines, for once an independent Philippines is launched, there would be trouble between us and the Filipinos because, from time immemorial, these two peoples have not lived harmoniously together. Our public land must not be given to people other than the [*Moros*].¹⁹⁹

Their plea fell on deaf ears. To add fuel to the fire, the Philippine Commonwealth, the first associated state of the U.S.,²⁰⁰ still carried on with its plans for the economic development of Mindanao.²⁰¹ Former Philippine President Manuel L. Quezon defended such policy,²⁰² claiming that “[u]nless we fully opened up, protected and settled, and thus made use of this great,

196. This was held in accordance with the Hare-Hawes-Cutting Act, which provided for U.S. decolonization of the Philippines after a 10-year Commonwealth period. See *generally* An Act to Enable the People of the Philippine Islands to Adopt a Constitution and Form a Government for the Philippine Islands to Provide for the Independence of the Same, and for Other Purposes, 47 Stat. 761 (1933). See also Quennie Ann K. Palafox, The Constitution of the Philippine Commonwealth, available at <http://nhcp.gov.ph/the-constitution-of-the-philippine-commonwealth> (last accessed Feb. 17, 2015).

197. See Knack, *supra* note 65, at 459.

198. Peter Kreuzer & Rainer Werning, *The Zig-Zag Path from War to Peace: Renouncing Pacification in Favor of Nation-Building*, in VOICES FROM MORO LAND: PERSPECTIVE FROM STAKEHOLDERS AND OBSERVERS ON THE CONFLICT IN THE SOUTHERN PHILIPPINES xi (Peter Kreuzer & Rainer Werning eds., 2007). See also Knack, *supra* note 65, at 459.

199. Knack, *supra* note 65, at 459.

200. See World Heritage Encyclopedia, Freely Associated States, available at http://www.worldheritage.org/articles/Freely_associated_states (last accessed Feb. 17, 2015).

201. Knack, *supra* note 65, at 459.

202. See Malang, *supra* note 178.

rich, only partly developed island, some other nation might ... try to move in and make it their own.”²⁰³

C. Beyond the Second World War: The Bangsamoro in an Independent Philippines

At the outbreak of World War II, during the Japanese subjugation of the country, the Commonwealth Government went into exile for three years from 1942 to 1945.²⁰⁴ Fighting for their homeland, many Filipinos took up arms and became members of the anti-Japanese group, Hukbo ng Bayan Laban sa Hapon (Hukbalahap), largely consisting of peasant guerrillas.²⁰⁵ After the defeat of the Axis forces, the U.S. resumed administration of the country. In 1946, the Philippines became independent of the U.S., the islands were bequeathed to Filipino rule (despite the *Moro* plea), and the Philippine nation-state was born.²⁰⁶

Apprehension among many *Moros* surrounded the birth of the new nation-state.²⁰⁷ The Philippine nation-state eventually established a national identity based on core Christian Filipino values.²⁰⁸ This did not arise from the country’s own indigenous political evolution, but from a fusion of “colonially imposed ideals and concepts.”²⁰⁹ As this nation-building unfolded, it conflicted with the identities of certain communities and, as a result, these latter identities were sidelined in the socio-economic and political priorities of the new nation-state.²¹⁰

Meanwhile, in Luzon and Visayas, the Hukbalahap evolved into an armed communist²¹¹ and anti-government resistance movement, changing

203. Manuel L. Quezon III, *Repulsion and Colonization*, available at <http://www.quezon.ph/1996/07/28/repulsion-and-colonization/comment-page-1> (last accessed Feb. 17, 2015).

204. See generally *Philippine History, The Philippine Commonwealth Era*, available at <http://www.philippine-history.org/philippine-commonwealth.htm> (last accessed Feb. 17, 2015).

205. EVA-LOTTA E. HEDMAN & JOHN T. SIDEL, *PHILIPPINE POLITICS AND SOCIETY IN THE TWENTIETH CENTURY: COLONIAL LEGACIES, POST-COLONIAL TRAJECTORIES* 22 (2000).

206. See *Cagoco-Guam, Part One*, *supra* note 33.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. The Hukbalahap, as an armed communist group, was supported by the Communist Party of the Philippines (CPP). See generally HEDMAN & SIDEL, *supra* note 205, at 22.

their group's name to Hukbong Mapagpalayang Bayan.²¹² Pressing for "land for the landless,"²¹³ they took the lead in stirring up peasant unrest in Luzon and Visayas. To suppress what eventually became known as the "Huk Rebellion,"²¹⁴ the Philippine government instituted economic reforms which, unfortunately, resulted to an intensified policy of mass migration to Mindanao.²¹⁵

Under former President Ramon F. Magsaysay, several resettlement programs, such as the Economic Development Corps (EDCOR), became part of his "peace initiative with returning Huk rebels."²¹⁶ Among others, the EDCOR sought to re-settle former insurgents who had surrendered²¹⁷ and were qualified under the program, giving them lands to farm on.²¹⁸ The first EDCOR project, the Arevalo EDCOR Farm, was established on 16,000 hectares of land in Kapatagan Valley, Lanao del Norte.²¹⁹ Soon, applicants surpassed the number of available lots, resulting to another EDCOR site.²²⁰ Former President Magsaysay's economic policies and military victories virtually ended the Huk Rebellion.²²¹ Unfortunately, it brought in another

212. The Hukbalahap was reconstituted as the armed wing of the CPP, changing its official name to Hukbong Mapagpalayang Bayan (HMB) or People's Liberation Army. See generally ALFREDO B. SAULO, COMMUNISM IN THE PHILIPPINES: AN INTRODUCTION, 44 (1990).

213. BENEDICT J. KERKVIET, THE HUK REBELLION: A STUDY OF PEASANT REVOLT IN THE PHILIPPINES 227 (2002).

214. *Id.*

215. *Id.* at 239.

216. *Id.* See also Ramon Magsaysay Award Foundation, The Life and Times of Ramon Magsaysay, available at <http://www.rmaf.org.ph/Ramon-Magsaysay/timeline.htm> (last accessed Feb. 17, 2015).

217. The former insurgents who had surrendered are called "rebel returnees." See Alexander D. Lopez, *Rebel returnees receive gov't assistance*, MANILA BULL., Oct. 9, 2014, available at <http://www.mb.com.ph/rebel-returnees-receive-govt-assistance/> (last accessed Feb. 17, 2015).

218. KERKVIET, *supra* note 213, at 239.

219. CHARLES LLOYD GARRETTSON III & HUBERT H. HUMPHREY, THE POLITICS OF JOY 319 (1993).

220. ROBERT R. SMITH, THE HUKBALAHAP INSURGENCY: ECONOMIC, POLITICAL AND MILITARY FACTORS 109 (1963).

221. See JEFF GOODWIN, NO OTHER WAY OUT 119 (2001).

problem — the steady influx of new migrants from the northern and central parts of the Philippines to the *Moroland*.²²²

Thus, in the eyes of the *Moros*, the Philippines under Filipino rule has “not fundamentally and radically” altered the deeply-entrenched system that has made Mindanao a “land of unfulfilled promises,” particularly for the *Moros* and the *Lumads*.²²³ This heralded the rise of “social movements perceiving a common enemy in a [s]tate,” one which could not attend to the “centuries-old plight of Muslim, *Lumad*, and [the poor and landless] Christian masses seeking social justice and rights as Filipinos.”²²⁴

D. Savage Killings Under the One-Man Rule

While the history of the *Moro* insurrection in Mindanao dates back centuries ago, “the proximate cause of the current Islamist-inspired movement” can be traced directly to the 1968 Jabidah Massacre,²²⁵ which happened during the rule of former President Ferdinand E. Marcos.²²⁶ Responding to a territorial dispute with the Federation of Malaysia, former President Marcos initiated Oplan Merdeka or Operation Freedom,²²⁷ a covert mission to reclaim Sabah from Malaysia and annex it to the Philippines.²²⁸ The plan involved training young Tausug and Sama recruits from Sulu and Tawi-Tawi, ostensibly to

222. KERKVLiet, *supra* note 213, at 239-40.

223. SAMUEL TAN, *THE MUSLIM SOUTH AND BEYOND* 50 (2010).

224. *Id.*

225. Mark Snakenberg, *The Bangsamoro Insurgency: An International History*, available at smallwarsjournal.com/jrnl/art/the-bangsamoro-insurgency-an-international-history (last accessed Feb. 17, 2015).

226. *Id.*

227. Oplan Merdeka was the military solution of the Marcos Administration to the Sabah question. The plan involved the training of

a special commando unit [—] named Jabidah [—] that would create havoc in Sabah. The situation would force the Philippine government to either take full control of the island or the residents would by themselves decide to secede from Malaysia. Many Filipinos from Sulu, Tawi-Tawi, and parts of Mindanao had migrated to Sabah. Oplan Merdeka was banking on this large community to turn the tide in favor of secession.

Marites D. Vitug & Glenda M. Gloria, *Jabidah and Merdeka: The inside story*, available at www.rappler.com/newsbreak/24025-jabidah-massacre-merdeka-sabah (last accessed Feb. 17, 2015).

228. See Paul F. Whitman, *The Corregidor Massacre — 1968*, available at corregidor.org/heritage_battalion/jabidah.html (last accessed Feb. 17, 2015).

make them part of an elite unit in the Armed Forces of the Philippines.²²⁹ Their commando unit was named “Jabidah.”²³⁰

On 30 December 1967, the recruits boarded a Philippine Navy vessel for a “specialized training” in Corregidor.²³¹ They, however, discovered their true mission — “fighting their Muslim brothers in Sabah” and “possibly killing their own Tausug and Sama relatives living there.”²³² As the Muslim trainees refused to carry out the mission, at least 28 of them were killed by government forces.²³³ This sparked a chain of events, both within and outside the Philippines, which ultimately led to a full-scale armed *Moro* resistance.²³⁴

Within the Philippines, the Jabidah massacre inspired widespread student protests, activism, and even radicalism.²³⁵ An outraged Nur Misuari, born Nurallaji Pinang Misuari,²³⁶ a professor at the University of the Philippines and himself a Tausug-Sama from Sulu, founded the MNLF in 1969.²³⁷ Many young *Moros* began to demand for *Moro* secession²³⁸ — “their grievances included discrimination against [*Moros*], poverty, and inequality due to marginalization of *Moros* caused by Christian migrants in Mindanao.”²³⁹

229. *Id.*

230. *Id.*

231. *Id.*

232. Rafael R. Gomez, et al., *Schriftenreihe des Asienhauses, Peaceful Conflict Transformation: Civil Society Responses to the Conflict in Mindanao*, 3 FOCUS ASIEN 1, 11 (2001).

233. ABUZA ZACHARY, *MILITANT ISLAM IN SOUTHEAST ASIA* 37-38 (2003).

234. Snakenberg, *supra* note 225.

235. Abreu, *supra* note 134, at 26.

236. Nur Misuari “began his campaign for better treatment of the people of Mindanao by the Manila government through the Mindanao Independence Movement (MIM) in the 1970s, an advocacy group, which later became the armed group, [MNLF].” *The World’s Most Influential Muslims*, Nur Misuari, available at themuslim500.com/profile/nur-misuari (last accessed Feb. 17, 2015).

237. Agence France-Presse, *Muslim history in Southern Philippines*, available at <http://www.interaksyon.com/article/83640/chronology--muslim-history-in-southern-philippines> (last accessed Feb. 17, 2015).

238. See generally Mely Caballero-Anthony, *Revisiting the Bangsamoro Struggle: Contested Identities and Elusive Peace*, 3 ASIAN SEC. 141 (2007).

239. Knack, *supra* note 65, at 460.

Outside the Philippines, an angered Sabah Chief Minister Tun Mustapha started supplying the *Moro* insurgents with Libyan arms to fight the GPH.²⁴⁰ Mustapha hoped that this will compel the Philippines to leave behind its claim to Sabah.²⁴¹ The defeat of Egypt, Jordan, and Syria against Israel in the 1967 Arab-Israeli War also brought the attention of the Organisation of Islamic Cooperation (OIC)²⁴² to the *Moro* struggle. At that time, the OIC was consciously seeking out “pan-Islamic causes to support” in response to what it deemed as “Western hostility to Islam.”²⁴³ It has since backed the MNLF.²⁴⁴

Under former President Marcos, things took a turn for the worse. Land conflicts “escalated on mainland Mindanao, taking on a deeper religious overtone” as the *Ilagas*²⁴⁵ were used by the Army (Philippine Constabulary or PC)²⁴⁶ as a militia force against the *Moros*.²⁴⁷ This resulted in the massacre of innocent *Moro* civilians in Manili, Carmen, North Cotabato, Tacub, Magsaysay, and Lanao del Sur. It also galvanized the seething emotions among the *Moros* in the second half of 1971.²⁴⁸ The Jabidah and Ilaga-PC massacres brought many *Moro* leaders rallying together for a common cause in spite of their political differences.²⁴⁹ Some took to peaceful protests, while others sought for more violent means.

240. Zachary, *supra* note 233, at 38.

241. Marc Jayson Cayabyab, WikiLeaks: Libya used Sabah to arm PHL Moro rebels in 1970s, *available at* www.gmanetwork.com/news/story/303584/news/nation/wikileaks-libya-used-sabah-to-arm-phl-moro-rebels-in-1970s (last accessed Feb. 17, 2015).

242. The OIC was formerly known as the Organization of the Islamic Conference. The OIC is “the second largest inter-governmental organization after the United Nations, and has membership of 57 states spread over four continents.” Organisation of Islamic Cooperation, About OIC, *available at* http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en (last accessed Feb. 17, 2015).

243. Snakenberg, *supra* note 225.

244. *Id.*

245. Armed religious cults are colloquially called *Ilagas*. See Universität Mannheim, Documentation for *Ilagas*, *available at* <http://www.sowi.uni-mannheim.de/militias-public/data/pgag/175/evidence/> (last accessed Feb. 17, 2015).

246. In the 1960s, former President Diosdado P. Macapagal confirmed that “the *Ilaga* is supported and armed by the authorities.” Abreu, *supra* note 134, at 25.

247. John Unson, *Anti-Moro group resurfaces in NCotabatao*, PHIL. STAR, Sep. 28, 2013, *available at* www.philstar.com/nation/2013/09/28/1239187/anti-moro-group-resurfaces-ncotabato (last accessed Feb. 17, 2015).

248. Abreu, *supra* note 134, at 25.

249. *Id.* at 26.

V. THE THREAT OF SECESSIONISM AND THE GOVERNMENT'S RESPONSE

With funding from Malaysia and Libya, the MNLF prepared to commence full-scale operations.²⁵⁰ It became the first *Moro* revolutionary group, borne at the heels of a “growing Islamic consciousness among Filipino Muslims,”²⁵¹ which presented a serious military threat to the post-colonial state.²⁵² The MNLF was perceived as sharing the *Moro* sentiment of “national oppression in the hands of a Christian-dominated Philippine government.”²⁵³

Secular rather than Islamic in orientation, the MNLF's vision was to reclaim the Bangsamoro land, which had been “unjustifiably annexed by the Philippine state.”²⁵⁴ They sought to establish a separate nation-state of “MINSUPALA” — composed of Mindanao, Sulu, and Palawan — and aspired for the right to govern themselves.²⁵⁵

A. *Creating RAGs: Marcos' Self-Styled Autonomy*

After former President Marcos declared Martial Law,²⁵⁶ the government went out in full force against the MNLF.²⁵⁷ The war carried on until the

250. Zachary, *supra* note 233, at 38. See also KRISTINA GAERLAN & MARA STANKOVITCH, *REBELS, WARLORDS, AND ULAMA* xiv (2000).

251. T. J. S. GEORGE, *REVOLT IN MINDANAO* 84 (1980).

252. JONGSEOK WOO, *SECURITY THREATS AND THE MILITARY'S DOMESTIC POLITICAL ROLE: A COMPARATIVE STUDY OF SOUTH KOREA, TAIWAN, THE PHILIPPINES, AND INDONESIA* 93 (2007).

253. Rufa Cagoco-Guiam, *Retrospect and Prospects: Toward a Peaceful Mindanao (Part Two)*, available at <http://cpcabrisbane.org/Kasama/1996/V10n4/Mindanao.htm> (last accessed Feb. 17, 2015) [hereinafter Cagoco-Guiam, Part Two].

254. Rizal G. Buendia, *The Politics of Ethnicity and Moro Secessionism in the Philippines (A Working Paper for the Asia Research Centre and Murdoch University)* 7, available at http://www.murdoch.edu.au/Research-capabilities/Asia-Research-Centre/_document/working-papers/wp146.pdf (last accessed Feb. 17, 2015).

255. Abreu, *supra* note 134, at 17.

256. See The Official Gazette, *Declaration of Martial Law*, available at <http://www.gov.ph/featured/declaration-of-martial-law> (last accessed Feb. 17, 2015).

257. Michael L. Tan, *Muslims, martial law*, PHIL. DAILY INQ., Sep. 17, 2013, available at opinion.inquirer.net/61357/muslims-martial-law (last accessed Feb. 17, 2015).

1976 Tripoli Agreement was signed on December 1976.²⁵⁸ Sponsored by the OIC and negotiated under the auspices of Libyan Prime Minister Muammar Gaddafi in Tripoli, Libya, the first peace deal allowed for the establishment of an autonomous region in the 13 provinces²⁵⁹ and nine cities in southern Philippines, i.e., the identified “areas of the autonomy.”²⁶⁰ This autonomous region would be subject to “constitutional processes”²⁶¹ and established “within the realm of sovereignty and territorial integrity of the Republic of the Philippines.”²⁶²

To implement the 1976 Tripoli Agreement, former President Marcos issued Proclamation No. 1628, declaring autonomy in 13 provinces in southern Philippines.²⁶³ Installing his own version of autonomy, former President Marcos created two regional autonomous governments (RAGs)²⁶⁴ — instead of one, the number agreed upon with the MNLF.²⁶⁵ The RAGs were established in Region IX, based in Zamboanga City, and Region XII, based in Cotabato City.²⁶⁶ As a consequence, the MNLF boycotted the

258. 1976 Tripoli Agreement, *supra* note 17. *See also* Cagoco-Guiam, Part Two, *supra* note 253.

259. Cagoco-Guiam, Part Two, *supra* note 253. The 13 provinces are as follows: (1) Basilan; (2) Sulu; (3) Tawi-Tawi; (4) Zamboanga del Sur; (5) Zamboanga del Norte; (6) North Cotabato; (7) Maguindanao; (8) Sultan Kudarat; (9) Lanao del Norte; (10) Lanao del Sur; (11) Davao del Sur; (12) South Cotabato; and (13) Palawan. *Id.*

260. *Id.* It has to be noted that “[i]n April 1978, a referendum was held to determine whether those in the 13 provinces elect to join the proposed autonomous government. Davao del Sur, South Cotabato[,] and Palawan refused to join, while the other nine provinces made up the autonomous government at that time.” *Id.*

261. 1976 Tripoli Agreement, *supra* note 17.

262. *Id.*

263. *See* Office of the President (OP), Declaring Autonomy In Southern Philippines, Proclamation No. 1628, (1977).

264. Astrid S. Tuminez, The Past is Always Present: The Moros of Mindanao and the Quest for Peace (Working Paper Series No. 99, City University of Hong Kong) 8, available at http://www.niu.edu/cseas/current_initiatives/pylp/PastIsAlwaysPresent_Tuminez.pdf (last accessed Feb. 17, 2015). *See also* Carolyn O. Arguillas, From RAG to ARMM to NAPE: A Backgrounder, available at <http://mindanews.com/peaceprocess/special-reports/2012/04/from-rag-to-armm-to-nape-a-backgrounder-1> (last accessed Feb. 17, 2015) [hereinafter Arguillas, Backgrounder].

265. 1976 Tripoli Agreement, *supra* note 17.

266. Arguillas, Backgrounder, *supra* note 264.

plebiscite, decrying one-sidedness on the part of the government.²⁶⁷ Owing to the lack of a clear guideline for the implementation of the 1976 Tripoli Agreement, the fighting continued on the ground.²⁶⁸ Peace remained elusive.

Soon, however, cracks within the MNLF leadership also began to show. Within their ranks, the MNLF commanders saw differences in political opinion and inter-ethnic rivalries²⁶⁹ as one of the cause of the group's first major rift in 1977.²⁷⁰ Vice-Chairman Salamat Hashim from Maguindanao cut ties with the Tausug-dominated MNLF²⁷¹ and established his own Maguindanao-led faction — the MILF.²⁷² The breakaway faction's name was intended to highlight the group's Islamic orientation.²⁷³ Other breakaway groups such as the MNLF-Reformist Group also came into being.²⁷⁴ They, however, garnered little support²⁷⁵ and eventually perished along with the surrender, or death, of their top commanders.²⁷⁶

267. Carolyn O. Arguillas, *The Bangsamoro Dream (3): 21 Years of ARMM, 32 Years of Autonomy Experimentation*, available at <http://www.mindanews.com/special-reports/2011/09/10/the-bangsamoro-dream-21-years-of-armm-32-years-of-autonomy-experimentation/> (last accessed Feb. 17, 2015).

268. Arguillas, *Backgrounder*, *supra* note 264.

269. Cagoco-Guiam, Part Two, *supra* note 253.

270. PETER CHALK, ET AL., *THE EVOLVING TERRORIST THREAT TO SOUTHEAST ASIA: A NET ASSESSMENT* 37 (2009).

271. Rommel C. Balaoi, 'Radical Muslim terrorism' in the Philippines, in *A HANDBOOK OF TERRORISM AND INSURGENCY IN SOUTHEAST ASIA* 200 (Andrew T.H. Tan ed., 2007).

272. *Id.*

273. MOSHE YEGAR, *BETWEEN INTEGRATION AND SECESSION: THE MUSLIM COMMUNITIES OF THE SOUTHERN PHILIPPINES, THAILAND, AND WESTERN BURMA/MYANMAR* 311 (2002).

274. Cagoco-Guiam, Part Two, *supra* note 253.

275. CESAR ADIB MAJUL, *THE CONTEMPORARY MUSLIM MOVEMENT IN THE PHILIPPINES* 88 (1985).

276. See Soliman M. Santos, Jr., *Evolution of the Armed Conflict on the Moro Front, A Background* (A Paper Submitted to the Human Development Network Foundation, Inc. for the 2005 Philippine Human Development Report) 6, available at hdn.org.ph/wp-content/uploads/2005_PHDR/2005%20Evolution_Moro_Conflict.pdf (last accessed Feb. 17, 2015). See also Lambert Ramirez & Teddy Lopez, *From Bullets to Ballots: Toward a Political Party*

B. The New Constitutional Mandate of Autonomy

Guided by the Constitution, democracy returned to the country under former President Corazon C. Aquino.²⁷⁷ She worked to restore the peace by reaching out to the MNLF.²⁷⁸ Recognizing the need for a “full and lasting peace,” Former President Aquino signed Administrative Order No. 30²⁷⁹ on 11 August 1987.²⁸⁰ This created the Office of the Peace Commissioner (OPC),²⁸¹ the predecessor of the Office of the Presidential Adviser on the Peace Process (OPAPP),²⁸² the government agency mandated to assist the President in coordinating and implementing all components of the comprehensive peace process.²⁸³ Moreover, a new round of peace talks took place.²⁸⁴ These brought forth the creation of a new structure of autonomous governance in Muslim Mindanao,²⁸⁵ as now institutionalized in the Constitution.²⁸⁶ The RAGs were abolished and replaced with the ARMM.²⁸⁷

Two sections of Article X of the Constitution deals with national sovereignty and the autonomous region, to wit:

System and the Role of demokraXXIa, *available at* peacebuilding.asia/from-bullets-to-ballots-in-bangsamoro-toward-a-political-party-system-and-the-role-of-demokraxxia-2/ (last accessed Feb. 17, 2015).

277. *See generally* Presidential Management Staff, *The Aquino Management of the Presidency: Power to the Regions (A Narrative on the Actions Taken by Former President Corazon C. Aquino towards Decentralization, as published by the Office of the President)*, *available at* <http://malacanang.gov.ph/wp-content/uploads/PowerToTheRegions.pdf> (last accessed Feb. 17, 2015).

278. *Id.*

279. OP, *Defining the Systematic Approach and the Administrative Framework for the Government’s Peace Efforts*, Administrative Order (A.O.) No. 30, Series of 1987 [A.O. No. 30, s. 1987] (Aug. 11, 1987).

280. *See* OPAPP, *Citizen’s Charter (A Brief History of OPAPP and the Peace Process)* 5, *available at* <http://opapp.gov.ph/sites/default/files/CitizensCharter.pdf> (last accessed Feb. 17, 2015) [OPAPP, *Citizen’s Charter*].

281. *Id.*

282. OP, *Defining the Approach and Administrative Structure for Government’s Comprehensive Peace Efforts*, Executive Order (E.O.) No. 125, Series of 1993 [E.O. No. 125] (Sep. 15, 1993).

283. *See* OPAPP, *Citizen’s Charter*, *supra* note 280, at 7.

284. Arguillas, *Backgrounder*, *supra* note 264.

285. Cagoco-Guiam, *Part Two*, *supra* note 253.

286. PHIL. CONST. art. X, §§ 1 & 15.

287. Arguillas, *Backgrounder*, *supra* note 264.

287. *Id.*

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be an Autonomous Region in Muslim Mindanao and the Cordilleras as hereinafter provided.

...

Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.²⁸⁸

In *Kida v. Senate*,²⁸⁹ Justice Carpio's separate opinion²⁹⁰ put into context the autonomous region under the Constitution. Describing it as a solution to the Bangsamoro problem, he pointed out that

[o]ne has to see the problem in the Muslim South in the larger canvass of the Filipino Muslims' centuries-old struggle for self-determination. The Muslim problem in southern Mindanao is rooted on the Philippine [s]tate's failure to craft solutions sensitive to the Filipino Muslims' 'common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics.' The framers of the 1987 Constitution, for the first time, recognized these causes and devised a solution by mandating the creation of an autonomous region in Muslim Mindanao, a political accommodation radically vesting [s]tate powers to the region, save those withheld by the Constitution and national laws[.] It is the solemn duty of this Court to uphold the genuine autonomy of the ARMM as crafted by the framers and enshrined in the Constitution. Otherwise, our Muslim brothers in the South who justifiably seek genuine autonomy for their region would find no peaceful solution under the Constitution.²⁹¹

Under former President Aquino's leadership, R.A. No. 6734 (First Organic Act of the ARMM)²⁹² was enacted to serve as the manual of operations of the ARMM.²⁹³ In accordance with the 1976 Tripoli

288. PHIL. CONST. art. X, §§ 1 & 15.

289. *Kida v. Senate of the Philippines*, 659 SCRA 270 (2011).

290. *Id.* at 329-68 (J. Carpio, dissenting opinion).

291. *Id.* at 365.

292. *See* R.A. No. 6734.

293. Knack, *supra* note 65, at 461. It provided, among others, that "[t]he executive branch is headed by a regional governor and vice-governor; the Regional

Agreement,²⁹⁴ the First Organic Act of the ARMM was submitted for ratification to the inhabitants of the proposed 13 provinces and nine cities.²⁹⁵ The MNLF, however, called for a boycott of the plebiscite, again objecting to the unilateral implementation of the autonomy provisions. Four provinces voted for inclusion in the ARMM, namely, Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi.²⁹⁶ Despite these landmark changes, violence in Mindanao persisted.²⁹⁷

C. Ramos' Final Peace Agreement with MNLF

Former President Fidel V. Ramos pressed on for further negotiations with the MNLF.²⁹⁸ Seeing peace as a key factor in economic development, former President Ramos struck a peace accord between the GPH and the MNLF in Jakarta, Republic of Indonesia.²⁹⁹ Considered as “the most comprehensive attempt to end this violence,” the 1996 Final Peace Agreement (FPA) aimed to address the unsettled issues on autonomy, as well as to expand and strengthen the ARMM.³⁰⁰ The FPA, which formally refers to the 1976 Tripoli Agreement, was expressed into law through R.A. No. 9054 (Second Organic Act of the ARMM),³⁰¹ amending the First Organic Act of the ARMM. The ARMM eventually grew to include Marawi City

Legislative Assembly is the policy-making body; and for its judiciary, an appellate court was created to oversee the Shari’ah courts in the ARMM, whose jurisdiction is limited to personal and family relations among Muslim residents.”
Id.

294. The Supreme Court described the Tripoli Agreement as not superior to the First Organic Act, which is a congressional enactment and a later law. *See Abbas v. Comelec*, 179 SCRA 287, 294 (1989).

295. *See also* Knack, *supra* note 65, at 461.

296. Ramirez & Lopez, *supra* note 276. In 1986, former President Aquino appointed a commission to draft a new constitution that provided for autonomy in Muslim Mindanao. In 1987, the MNLF requested to suspend the autonomy provisions in the draft constitution, but former President Aquino refused and the people ratified the Constitution in February. Talks between the GPH and the MNLF broke down, as the government continued to implement the newly-ratified Constitution despite the objection of the MNLF. *See* OPAPP, *Timeline of the GPH-MNLF Peace Process*, available at <http://www.opapp.gov.ph/media/inforgraphic/timeline-gph-mnlf-peace-process-o> (last accessed Feb. 17, 2015).

297. *See* Cagoco-Guiam, Part Two, *supra* note 253.

298. Santos, Jr., *supra* note 276, at 7.

299. *Id.*

300. Sukarno D. Tanggol, *Democratization, Governance, and Poverty Alleviation in the Autonomous Region in Muslim Mindanao*, 49 PHIL. J. PUB. ADM. 40, 40–58 (2005).

301. *See* R.A. No. 9054.

and the province of Basilan, except Isabela City of that latter province. Hence, “[f]rom bullets to ballots,”³⁰² the people of Muslim Mindanao prepared to elect and seat the unopposed MNLF Chairman Misuari as Regional Governor of ARMM.³⁰³

With the MNLF finally at peace with the government, the GPH turned its attention to the MILF.³⁰⁴ The MILF sought for a “more significant role for Shari’ah law” and demanded that the “government address the issue of land distribution.”³⁰⁵ Part of its major grievances is the continued socio-economic underdevelopment in the region and discrimination against the people who live therein, particularly in the Sulu archipelago.³⁰⁶

D. Solutions Contemplated: Erap’s All-Out War and Arroyo’s MOA-AD

In 2000, instead of brokering peace like his predecessors, former President Joseph E. Estrada launched an all-out war.³⁰⁷ After his ouster in 2001, former President Gloria M. Macapagal-Arroyo agreed on a ceasefire with the MILF.³⁰⁸ During her time, the MOA-AD was crafted to amend and further expand the Second Organic Act of the ARMM, as well as to recognize the *Moros’* right to their ancestral lands.³⁰⁹

It was not a walk in the park as the MOA-AD met rabid resistance.³¹⁰ Oppositors claimed that the proposed expanded ARMM encroached on “many non-[*Moro*] indigenous people’s ancestral domains,” including those of the sultanates and the [*Lumads*].³¹¹ Moreover, due to differences in religious beliefs, the predominantly Catholic provinces contiguous to or

302. Ramirez & Lopez, *supra* note 276.

303. *Id.* See also Royal Sulu, Short History of the Moro National Liberation Front (MNLF), available at http://www.royalsulu.com/index.php?option=com_content&view=article&id=29&Itemid=29 (last accessed Feb. 17, 2015).

304. Knack, *supra* note 65, at 461.

305. *Id.*

306. *Id.* at 459.

307. *Id.* at 462.

308. *Id.*

309. *Id.* at 466.

310. Inquirer Research, *What Went Before: The Proposed MoA-AD*, PHIL. DAILY INQ., Oct. 9, 2012, available at <http://newsinfo.inquirer.net/285604/what-went-before-the-proposed-moa-ad> (last accessed Feb. 17, 2015).

311. See Knack, *supra* note 65, at 466.

surrounding the ARMM voiced out their desire to be excluded from the autonomous region.³¹² It bears stressing that many of the proposed included areas had already twice voted down their possible inclusion in the ARMM.³¹³

Aiming to address the long standing conflict, the MOA-AD is one of the three aspects — Security, Rehabilitation, and Ancestral Domain — of its mother framework, the 2001 Tripoli Agreement on Peace.³¹⁴ The MOA-AD, however, was struck down before it was even signed.³¹⁵ It contained a planned homeland for Muslim Mindanao,³¹⁶ giving the Bangsamoro people territorial rights³¹⁷ over their ancestral domain³¹⁸ and ancestral land. This

312. *Id.*

313. Amando Doronila, *Self-inflicted dismemberment*, PHIL. DAILY INQ., Aug. 8, 2008, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20080808-153334/Self-inflicted-dismemberment> (last accessed Feb. 17, 2015).

314. See 1976 Tripoli Agreement, *supra* note 17.

315. Knack, *supra* note 65, at 466.

316. MOA-AD, *supra* note 1, at 2.

317. MOA-AD, *supra* note 1, at 6. Paragraph 2 of the Resources section of the MOA-AD provides that —

The Bangsamoro people through their appropriate juridical entity shall, among others, exercise power or authority over the natural resources within its territorial jurisdiction:

- a) To explore, exploit, use, or utilize and develop their ancestral domain and ancestral lands within their territorial jurisdiction, inclusive of their right of occupation, possession, conservation, and exploitation of all natural resources found therein;
- b) To conserve and protect the human and natural environment for their sustainable and beneficial enjoyment and their posterity;
- c) To utilize, develop, and exploit its natural resources found in their ancestral domain or may enter into a joint development, utilization, and exploitation of natural resources, specifically on strategic minerals, designed as commons or shared resources, which is tied up to the final setting of appropriate institution;
- d) To revoke or grant forest concessions, timber license, contracts, or agreements in the utilization and exploitation of natural resources designated as commons or shared resources, mechanisms for economic cooperation with respect to strategic minerals, falling within the territorial jurisdiction of the Bangsamoro [J]uridical [E]ntity;
- e) To enact agrarian laws and programs suitable to the special circumstances of the Bangsamoro people prevailing in their ancestral lands within the established territorial boundaries of the

provision of the MOA-AD is akin to the concepts of native title and ancestral lands or domains under R.A. No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997 (IPRA),³¹⁹ to wit—

Section 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

...

L. Native Title — refers to *pre-conquest rights to lands and domains* which, as far back as memory reaches, have been held under a claim of private ownership by [Indigenous Cultural Communities [or] Indigenous Peoples (ICCs or IPs)], have never been public lands, and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

...

Section 4. Concept of Ancestral Lands [or] Domains. — Ancestral lands [or] domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs [or] IPs possess, occupy[,] and use[,] and to which they have *claims of ownership*.³²⁰

Similar to the abovementioned IPRA provisions, the MOA-AD sought to vest in the Bangsamoro people exclusive ownership of the Bangsamoro

Bangsamoro homeland and ancestral territory is within the competence of the Bangsamoro [J]uridical [E]ntity; and

- f) To use such natural resources and wealth to reinforce their economic self-sufficiency.

Id.

318. Knack, *supra* note 65, at 464. See also Al Jacinto, Manila Resumes Peace Talks with MILF, *available at* www.arabnews.com/node/304908 (last accessed Feb. 17, 2015).

319. An Act to Recognize, Protect and Promote the Rights of Indigenous Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples' Rights Act of 1997], Republic Act No. 8371 (1997).

320. *Id.* (emphasis supplied). See also Sedfrey M. Candelaria, Comparative Analysis of the Memorandum of Agreement on the Ancestral Domain (MoA-AD) Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001 and Framework Agreement on the Bangsamoro (Paper Delivered on the Occasion of the Chief Justice Artemio V. Panganiban Professorial Chair on Liberty and Prosperity 2d Lecture Series) 17, *available at* http://teehankeeruleoflaw.org/uploads/files/comparative-analysis_moa-ad-and-fab.pdf (last accessed Feb. 17, 2015).

homeland “by virtue of their prior rights of occupation,” which “had inhered in them as sizeable bodies of people, delimited by their ancestors since time immemorial, and being the first politically organized dominant occupants.”³²¹ Their ancestral domain was likewise considered not part of the public domain.³²²

The MOA-AD, in paragraph 3 of the Concepts and Principles, defines ancestral domain and ancestral land as

those held under *claim of ownership*, occupied or possessed, by themselves or through the ancestors of the Bangsamoro people, communally or individually[,] *since time immemorial* continuously to the present, except when prevented by war, civil disturbance, force majeure, or other forms of possible usurpation or displacement by force, deceit, stealth, or as a consequence of government project or any other voluntary dealings entered into by the government and private individuals, corporate entities[,] or institutions.³²³

Under Paragraph 4 of the Concepts and Principles of the MOA-AD, it provides that “the ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights and resources, as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people.”³²⁴ Building the groundwork for the Bangsamoro homeland was geared towards addressing “the Bangsamoro people’s humanitarian and economic needs as well as their political aspirations.”³²⁵ All these are legally analogous to the declared state policy under IPRA,³²⁶ to wit —

Section 2. Declaration of State Policies. — The State shall recognize and promote all the rights of [ICCs or IPs] hereunder enumerated within the framework of the Constitution:

...

b) The State shall protect the rights of ICCs [or] IPs to their ancestral domains to ensure their economic, social[,] and cultural well-being[,] and shall recognize the applicability of customary laws governing property

321. MOA-AD, *supra* note 1, at 2.

322. *Id.* The MOA-AD provides that “[b]oth Parties acknowledge that ancestral domain 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 title.” *Id.*

323. *Id.* (emphasis supplied).

324. *Id.*

325. *Id.*

326. *See* Candelaria, *supra* note 320, at 20.

rights or relations in determining the ownership and extent of ancestral domain;

...

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests[,] and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.³²⁷

Thus, in recognizing a “historical injustice committed centuries ago” against the *Moros* who were unjustifiably displaced from their lands, the MOA-AD echoed the IPRA to provide legal support for the establishment of the Bangsamoro homeland.³²⁸ While noble in purpose, this carries broad corollaries.³²⁹ It begs several questions, to wit —

If [*Moros*] as original inhabitants are indigenous to Mindanao, what about the [*Lumads*] [who predated the coming of Islam] and who were also original inhabitants of the region and some of whom, like the *Moros*, were displaced by warlords and by conflict between the government and other armed groups? Are all original inhabitants [native *Moros* and non-*Moros*] of other regions also to be considered indigenous people and, as such, entitled to ancestral domain claims under IPRA?³³⁰

The Constitution classifies the indigenous peoples as Indigenous Cultural Communities (ICCs).³³¹ The IPRA, on the other hand, adopts the term Indigenous Peoples (IPs) to refer to the 110 ethno-linguistic groups in the Philippines formally recognized as such.³³² These IPs are mostly found in

327. The Indigenous Peoples’ Rights Act of 1997, § 2.

328. Knack, *supra* note 65, at 465.

329. *Id.*

330. Knack, *supra* note 65, at 466.

331. See PHIL. CONST. art. II, § 22; art. VI, § 5 (2); art. XIII, § 6; art. XIV, § 17; & art. XVI, § 12.

332. See generally United Nations Development Programme (UNDP), Indigenous Peoples in the Philippines (A Guide to Indigenous Peoples in the Philippines Produced by the UNDP), available at <http://www.ph.undp.org/content/dam/philippines/docs/Governance/fastFacts6%20-%20Indigenous%20Peoples%20in%20the%20Philippines%20rev%201.5.pdf> (last accessed Feb. 17, 2015).

Mindanao, northern Luzon, and some groups in Visayas.³³³ Not included in the list of indigenous peoples are the *Moros* or *Bangsamoros*.³³⁴ In addition, the National Commission of Indigenous Peoples (NCIP),³³⁵ i.e., the government agency primarily responsible for IP concerns including the issuance of titles over their ancestral domains, is of the view that the question has not been settled.³³⁶ Whether the *Moros* per se, and not the indigenous group to which they may concurrently belong — such as *Teduray*, *Lambangian*, or *Dulangan Manobo*³³⁷ — should be considered indigenous people is unclear and needs further study.³³⁸ This notwithstanding, it was pointed out that the MOA-AD sought to subsume the identity of all indigenous peoples of Mindanao under the *Bangsamoro* identity.³³⁹ Such has been criticized as an attempt of forced assimilation of the indigenous people by the *Moro* people, at a time when these indigenous formal identities have already been secured by the IPRA.³⁴⁰

Seemingly anchored on the idea of the *Bangsamoros* as indigenous peoples, the MOA-AD gave the *Bangsamoro* Juridical Entity (BJE) authority and jurisdiction over the disputed ancestral domain and ancestral lands.³⁴¹ The *Bangsamoro* homeland was recognized as exclusively owned by the *Bangsamoro* people and not forming part of the public domain.³⁴² This negated the Regalian Doctrine as embodied in the Constitution. Article XII,

333. Among these IPs, 61% are found in Mindanao, 33% in northern Luzon, particularly in the Cordillera Administrative Region, and some groups in Visayas. *Id.*

334. See Habitat International Coalition, Philippines: The Impact of Exclusion on the Moro Peace Process, available at <http://www.hic-net.org/articles.php?pid=2280> (last accessed Feb. 17, 2015).

335. The Indigenous Peoples' Rights Act of 1997, ch. VII, § 38.

336. Knack, *supra* note 65, at 466.

337. Asian Centre for Human Rights, Philippines: The impact of exclusion on the Moro peace process, available at <http://www.achrweb.org/Review/2008/221-08.html> (last accessed Feb. 17, 2015).

338. See generally Evelyn J. Caballero, Basis of Conflict in ARMM in Relation to Land and Resources (A Paper Written for International Development's Philippine Environmental Governance Project), available at http://pdf.usaid.gov/pdf_docs/Pnadb804.pdf (last accessed Feb. 17, 2015).

339. Asian Centre for Human Rights, *supra* note 337.

340. *Id.*

341. MOA-AD, *supra* note 1, at 2.

342. *Id.*

Section 2 thereof provides for state ownership of all lands of the public domain and of all natural resources in the Philippines.³⁴³

With not enough public support, and more importantly, for failing the test of constitutionality, the MOA-AD met an early demise.³⁴⁴ As has been discussed, the Supreme Court declared it unconstitutional for three main reasons, to wit:

- (1) Lacking in public consultations, especially with the indigenous communities;³⁴⁵
- (2) Making the BJE a sub-state (as indicated by its “associative relationship” with the GPH);³⁴⁶ and
- (3) Guaranteeing constitutional amendments.³⁴⁷

E. The “Failed Experiment,” the CAB, and the Draft BBL

Despite the setbacks, the peace talks with the MILF continued under incumbent President Aquino III.³⁴⁸ Believing that Mindanao “deserves a clean slate” and that the ARMM is a “failed experiment,”³⁴⁹ President Aquino III led the initiatives for the adoption of a peace agreement that will end the decades-long armed conflict.³⁵⁰ The ARMM was criticized as an “adjunct of the Manila government,”³⁵¹ especially as it is still heavily dependent on the national budget.³⁵² The Bangsamoro political entity,

343. See PHIL. CONST. art. XII, § 2.

344. Knack, *supra* note 65, at 466.

345. *Province of North Cotabato*, 568 SCRA at 519-21.

346. *Id.* at 499.

347. *Id.* at 509.

348. Ramirez & Lopez, *supra* note 276.

349. It was opined that the ARMM “failed to function as an autonomous government, partly because of inherent constraints and partly because of its own inability to exercise autonomy within its jurisdictions.” Jacques Bertrand, *Autonomy and Nationalist Demands in Southeast Asia*, in POLITICAL AUTONOMY AND DIVIDED SOCIETIES: IMAGINING DEMOCRACY ALTERNATIVES IN COMPLEX SETTINGS 209 (Alain G. Gagnon & Michael Keating eds., 2012).

350. Amita O. Legaspi, Palace calls ARMM a ‘failed experiment,’ *available at* www.gmanetwork.com/news/story/213067/news/nation/palace-calls-armm-a-failed-experiment (last accessed Feb. 17, 2015).

351. Ramirez & Lopez, *supra* note 276.

352. Bertrand, *supra* note 349, at 209.

substituting for the ARMM, is envisioned to have more political and fiscal autonomy,³⁵³ which “[redefines] and [restructures] the totality of relationship between the Bangsamoro and the Philippine state into one that would allow the Bangsamoro people to have a government of their own.”³⁵⁴

Thus, under the FAB, the new political entity is to be given broader self-sufficiency and self-governance. The FAB establishes a Bangsamoro region with its own parliamentary form of government.³⁵⁵ It enumerates the principles and processes that were later negotiated, which are now contained in Annexes that form part of the FAB. Collectively, the FAB and the Annexes³⁵⁶ make up the CAB.³⁵⁷ Once passed by Congress and ratified through a plebiscite by the residents in the proposed core territory,³⁵⁸ the statutory expression of the CAB — in the form of the proposed BBL — will repeal the ARMM Organic Act.³⁵⁹

VI. WAYS FORWARD: ACHIEVING PEACE THROUGH PEACE

The Philippines is rife with patterns of armed resistance.³⁶⁰ Throughout history, the Filipinos have fought wars not of their own making, but were all aimed at recovering the “strong attachments to the land of their birth and existence.”³⁶¹ Land is crucial to the identity, culture, and livelihood of a

353. Institute for Autonomy and Governance (IAG), Konrad Adenauer Stiftung (KAS), and Centrist Democracy Political Institute (CDPI), *available at* <http://www.iag.org.ph/index.php/blog/783-bblwatch-q-a-with-congressman-rufus-rodriguez> (last accessed Feb. 17, 2015).

354. Joyce Pangco Panares, *Peace talks fail to resolve pending issues*, MANILA STAND. TODAY, Aug. 27, 2013, *available at* <http://www.manilastandardtoday.com/2013/08/27/peace-talks-fail-to-resolve-pending-issues> (last accessed Feb. 17, 2015).

355. Framework Agreement on the Bangsamoro, *supra* note 12, pt. 1, ¶ 2. This particular paragraph provides that, “[t]he government of the Bangsamoro shall have a ministerial form.” *Id.*

356. These are the Annexes on Normalization; Transitional Arrangements and Modalities; Revenue Generation and Wealth Sharing; and Power Sharing. Also included is the Addendum on Bangsamoro Waters and Zones of Joint Cooperation. *See* Sabillo, *supra* note 8.

357. *Id.*

358. Hannah Torregoza, *Senate targets Bangsamoro law approval by 2015*, MANILA BULL., Dec. 21, 2014, *available at* <http://www.mb.com.ph/senate-targets-bangsamoro-law-approval-by-2015> (last accessed Feb. 17, 2015).

359. *Id.*

360. *See generally* TAN, *supra* note 223.

361. *Id.* at 18.

people.³⁶² Freedom within one's territory, or "personal freedom," and freedom to practice one's culture and traditions, or "social freedom," are part of the "ancient liberties," rooted in territory and culture, which the natives have unceasingly fought for.³⁶³

Colonial rule has certainly changed the demographic makeup in southern Philippines.³⁶⁴ For centuries, various land laws and policies imposed by foreign invaders have displaced the different ethno-linguistic groups living in Mindanao — *Moros* and *Lumads* alike.³⁶⁵ This was unwittingly continued during the post-colonial rule, where government-backed migration policies paid the price for nipping the Huk Rebellion in the bud.³⁶⁶ This situation is aggravated by deep-seated prejudices that spawned against the *Moro* inhabitants aggravates the situation.³⁶⁷ They were called "uncivilized," "cruel," and "suicidal killers," or colloquially, "*juramentados*," among others.³⁶⁸ As a result, the original settlers, with their own unique history, continued to be marginalized in society.³⁶⁹

The drive to search for one's lost liberties has led the Bangsamoro separatists to cause a revolutionary struggle in response to the loss of their political sovereignty, ancestral land, and economic resources.³⁷⁰ The "*pag-ibig sa tinubuang bayan*," as Andres C. Bonifacio would call it, has propelled the Filipino Muslim's yearning for the Bangsamoro homeland, and the cultural communities' desire to defend their ancestral lands.³⁷¹ This trend will continue unless comprehensive peace is installed in Mindanao.

Breaking the cycle of violence is, therefore, not an easy task. For decades, the *Moro* struggle has caused inconceivable suffering especially to

362. Knack, *supra* note 65, at 470.

363. TAN, *supra* note 223, at 18.

364. Temario C. Rivera, *The Struggle of the Muslim People in the Southern Philippines: Independence or Autonomy?*, in THE MORO READER HISTORY AND CONTEMPORARY STRUGGLES OF THE BANGSAMORO PEOPLE (Bobby M. Tuazon ed., 2008).

365. *Id.*

366. Ramon Magsaysay Award Foundation, *supra* note 216.

367. Kamlian, *supra* note 43.

368. *Id.*

369. See Muslim & Cagoco-Guiam, *supra* note 45.

370. PETER GOWING, MUSLIM FILIPINOS—HERITAGE AND HORIZON 164-98 (1979).

371. TAN, *supra* note 223, at 18.

the innocent civilians caught in the crossfire. The human and economic costs of the Mindanao armed conflict thus calls for an alternative to war.

From 1970–1996, nearly 120,000 people have been killed in the same span of time, the GPH spent ₱73 billion in combat expenses battling with the MNLF. The economic losses from 1970–2001 already amounted to ₱640 billion in terms of damage to businesses and properties, as well as potential investments and businesses had there been peace.³⁷² The problem is exacerbated by the fact that a huge part of the population in Mindanao is now Christian, and “the expansion of the ARMM is a sensitive, even explosive[,] political issue.”³⁷³ For these reasons, and in spite of all the challenges, collapsing the barriers to peace remains imperative.

The Constitution declares as a state policy that “[t]he Philippines renounces war as an instrument of national policy ... and adheres to the policy of peace[.]”³⁷⁴ It likewise aspires “to build a just and humane society” and establish “a regime of truth, justice, freedom, love, equality[,] and peace.”³⁷⁵

Accordingly, almost all of the past Philippine presidents since the enactment of the Constitution have sought to establish peace through peaceful means. The peace process is essentially a “political process” aiming to resolve conflicts using non-violence.³⁷⁶ It is a “mixture of politics, diplomacy, changing relationships, negotiation, mediation, and dialogue in both official and unofficial arenas.”³⁷⁷ Thus, one cannot begin to discuss the subject without looking at the underlying state policies, legislation, and even historical context that have interplayed throughout the centuries.

372. See Salvatore Schiavo-Campo and Mary Judd, *The Mindanao Conflict in the Philippines: Roots, Costs and Potential Peace Dividend* (Social Development Papers on Conflict Prevention and Reconstruction), available at http://siteresources.worldbank.org/INTCPR/214578-1111996036679/20482477/WP24_Web.pdf (last accessed Feb. 17, 2015) & Human Development Network, *Philippine Human Development Report 2005* (A Report Published in Cooperation with the United Nations Development Programme) at viii, available at http://hdr.undp.org/sites/default/files/philippines_2005_en.pdf (last accessed Feb. 17, 2015).

373. Knack, *supra* note 65, at 470.

374. PHIL. CONST. art. II, § 2.

375. PHIL. CONST. pmbl.

376. See Harold H. Saunders, *Pre negotiation and Circum-negotiation: Arenas of the Multilevel Peace Process*, in *TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT* 483 (Chester Crocker, et al. eds., 2001).

377. *Id.*

The peace process can learn from the following lessons, though not the least bit exhaustive or comprehensive, which can support peace-building in Mindanao.³⁷⁸

A. Exploring Constitutional Possibilities

The Constitution, particularly the provisions on national territory,³⁷⁹ patrimony,³⁸⁰ and economy,³⁸¹ should not be a limiting factor in bringing peace to Mindanao. While neither secessionism nor the creation of a sub-state is constitutional, one can look at other solutions that fall short of these demands, yet still fit within the flexibilities of the Constitution — and, at the same time, meet the political agreement of the Parties.

For instance, Congress may expand the autonomy of the ARMM through the creation of a ministerial or parliamentary system of government. According to Professor Abhoud Syed M. Lingga, member of the MILF Peace Panel, the collegial nature of the parliamentary system — where all ministers (including the Prime Minister) “talk as equals” — “is more efficient and closer to Muslim practices and traditions.”³⁸² This system is considered as “more akin to the best practices of participatory governance of the old [s]ultanates, *Moro* liberation fronts, and [] indigenous communities.”³⁸³ In a parliamentary system, the “ruling political party/parties in the Parliament must meet the expectations of the people and the members of the Parliament[;] otherwise[,] a vote of no-confidence against the government of the day can dissolve the government and the Parliament, and a new parliamentary election shall be held.”³⁸⁴ Having a parliamentary system

378. See Cagoco–Guiam, Part Two, *supra* note 253.

379. See PHIL. CONST. art. I.

380. See PHIL. CONST. art. XII.

381. See PHIL. CONST. art. XII.

382. Note that the ministers get their mandate from the people who elected them, unlike in a presidential form of government, where the cabinet secretaries only follow the appointing President’s orders. Institute for Autonomy and Governance (IAG), 25 *Takeaways from the IAG BBL Talkshop Series*, in AUTONOMY & PEACE REV., Special Issue, at 19 (2014).

383. BANGSAMORO TRANSITION COMMISSION (BTC), PRIMER OF THE PROPOSED BANGSAMORO BASIC LAW 17 (2014).

384. *Id.* at 21. See also H.B. No. 4994 & S.B. No. 2408, art. 7, § 34.

within a presidential form of government, as contained in the proposed BBL,³⁸⁵ is legally defensible.

The Constitution provides that the Philippines shall be a “democratic and republican State,”³⁸⁶ one where political authority is derived from the people and not from a hereditary head of state like a monarch. A parliamentary system fulfills this criterion, as “all government authority emanates from [the sovereign people].”³⁸⁷

The proposed BBL states that the political system of the Bangsamoro government is “democratic, allowing its people to freely participate in the political processes within its territory.”³⁸⁸ Moreover, the Bangsamoro government seeks to adopt an electoral system “which shall allow democratic participation, encourage formation of genuinely principled political parties, and ensure accountability.”³⁸⁹ Under the proposed new Bangsamoro autonomous region, the parliament members are to be directly elected by the Bangsamoro people. These parliament members will, in turn, elect the head of the executive, i.e., the Chief Minister, from among those duly elected parliament members.³⁹⁰ This way, as the Office of the President explains, “eligible citizens participate, directly or indirectly, in the election of their representatives in government.”³⁹¹

385. See generally H.B. No. 4994 & S.B. No. 2408.

386. See PHIL. CONST. art. II, § 1. See also PHIL. CONST. art. VII, § 1; & arts. VI, VII, & VIII.

387. PHIL. CONST. art. II, § 1. This Section provides that “[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” PHIL. CONST. art. II, § 1.

388. H.B. No. 4994, art. IV, § 2 & S.B. No. 2408, art. IV, § 2.

389. H.B. No. 4994, art. IV, § 3 & S.B. No. 2408, art. IV, § 3.

390. See H.B. No. 4994, art. VII, § 3 & S.B. No. 2408, art. VII, § 3. These Sections similarly provide —

Section 3. Executive Authority. — The executive function and authority shall be exercised by the Cabinet, which shall be headed by a Chief Minister. The Chief Minister who heads the ministerial government of the Bangsamoro shall be elected by a majority vote of the Parliament from among its members.

The Chief Minister shall appoint the Deputy Chief Minister from among the Members of Parliament[;] and the members of the Cabinet, majority of whom shall also come from the Parliament.

H.B. No. 4994, art. VII, § 3 & S.B. No. 2408, art. VII, § 3.

391. OP, Frequently Asked Questions on the draft Bangsamoro Basic Law, available at <http://www.opapp.gov.ph/milf/news/frequently-asked-questions-draft->

Likewise, the Constitution allows Congress to determine the appropriate government structures of the autonomous regions.³⁹² Article X, Section 1 of the Constitution creates an autonomous region in Muslim Mindanao,³⁹³ and Article X, Section 18 empowers Congress to “define the basic structure of government for the region, consisting of the executive department and legislative assembly, elective and representative of the [people’s] constituent political units.”³⁹⁴ Such mandate is consistent with the principles of devolution and autonomy.³⁹⁵ Stated otherwise, the Constitution does not prescribe a specific type of government in the autonomous region; the only requirement is that it shall consist of the executive and legislative departments whose leaders are to be elected by the people.

In a parliamentary form of government,³⁹⁶ both the executive and the legislative are elective and representative of the people, thus fulfilling the constitutional requirement.³⁹⁷ Finally, at the helm of such autonomous region is still the President of the Republic of the Philippines, as the proposed BBL expressly provides that the new political entity forms part of the country.³⁹⁸ Likewise, the President shall continue “to exercise general

bangsamoro-basic-law#sthash.XcPEP1S9.dpuf (last accessed Feb. 17, 2015) [hereinafter OP, *Bangsamoro* FAQ].

392. *Id.*

393. PHIL. CONST. art. X, § 1. This Section provides that “[t]here shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.” PHIL. CONST. art. X, § 1.

394. PHIL. CONST. art. X, § 18.

395. PHIL. CONST. art. X, § 1. *See also* PHIL. CONST. art. II, § 25. This Section provides that “[t]he State shall ensure the autonomy of local governments.” PHIL. CONST. art. II, § 25.

396. Presidential Adviser on the Peace Process Teresita Q. Deles explains that, “[w]e agreed that the form of government [in the Bangsamoro] will be ministerial. It is more like a parliamentary form, unlike the present government which is being elected by residents there[.]” Maila Ager, ‘*Ministerial*’ form of gov’t set for Bangsamoro territory in peace deal, PHIL. DAILY INQ., Oct. 8, 2012, available at <http://newsinfo.inquirer.net/285242/ministerial-form-of-govt-set-for-bangsamoro-territory-in-peace-deal> (last accessed Feb. 17, 2015).

397. PHIL. CONST. art. X, § 18.

398. H.B. No. 4994, art. III & S.B. No. 2408, art. III. These Articles provide that “[t]he Bangsamoro territory shall remain a part of the Philippines.” *Id.*

supervision over the Bangsamoro [g]overnment to ensure that laws are faithfully executed.”³⁹⁹

These legal and historical foundations justify the creation of a Bangsamoro government, with its ministerial form of government, within a presidential Philippine state. For the first time in Philippine history, such alternative solution to the Bangsamoro conflict is being made.

Aside from providing for the basic structure of government, the proposed BBL also enables the Bangsamoro to “pursue its economic, social, and cultural development.”⁴⁰⁰ In addition, the new political entity is to be given the “highest form of fiscal autonomy to enhance the economic, self-sufficiency, and genuine development” in the autonomous region.⁴⁰¹

Muslim Filipinos in Mindanao have suffered from political powerlessness, poverty, and endless violence. Despite having their own political structures that pre-date the birth of the Philippine state, the *datus*, *rajahs*, and sultanates have seen their sovereignty snatched from them by foreign powers. For centuries, they have struggled to get it back, and many continue to do so. Thus, the GPH is given two choices: hold its ground and continue the bloodshed and the cycle of violence, hoping that killing a Muslim will kill the idea of self-governance; or choose the path of peace and actually give them the chance for self-governance. As things stand, the MILF has already agreed to give up its demand for secession in favor of genuine autonomy.⁴⁰² Concededly, the autonomous government is the “only possible highest degree of self-determination that can be validly established under the existing Constitution.”⁴⁰³

399. H.B. No. 4994, art. VI, § 3 & S.B. No. 2408, art. VI, § 3.

400. BTC, *supra* note 383, at 9.

401. *Id.*

402. According to BTC Commissioner Said Sheik, the *Moro* liberation fronts have been trying, for more than 40 years, to attain the highest form of self-determination. However, the MILF is willing to concede to a “tremendously watered down” right to self-determination. For the sake of peace and order, the MILF has accepted the “minimal genuine autonomy” as found in the proposed BBL. Said Sheik, BTC Commissioner, Public Consultation on the BBL at Celadon Pension House, San Miguel Village, Brgy. Palao, Iligan City (Oct. 16, 2014).

403. Zainal Dimaukom Kulidtod, *The Pains of the Comprehensive Agreement on the Bangsamoro*, AUTONOMY & PEACE REV., Special Issue, at 189 (2014) (citing PHIL. CONST. art. X, § 15).

It must be borne in mind that, in brokering for peace, the GPH grants the new political entity only the right to internal self-determination,⁴⁰⁴ which is different from the right to a separate state, i.e., external self-determination.⁴⁰⁵ Thus far, no provisions in the BBL can be used as a basis to secede or declare independence.⁴⁰⁶ The MILF Peace Panel likewise posits that the provision on self-governance in the proposed BBL “does not talk about any political action[,]” but only of the exercise to “pursue economic, social, and cultural development,” as is stated in the proposed BBL.⁴⁰⁷

Indeed, under the Constitution, the grant of autonomy must not amount to secession or the creation of a state within a state.⁴⁰⁸ Caution must be taken to ensure that an entity is not conferred the status of a state under the 1933 Montevideo Convention on the Rights and Duties of States,⁴⁰⁹ to wit: (1) a permanent population; (2) a defined territory; (3) a government; and (4) sovereignty or the capacity to enter into relations with other states.⁴¹⁰ Otherwise, any agreement or legal instrument containing this would fall flat in the face of a legal challenge before the Supreme Court.

In any event, should a proposal entail amending or revising the Constitution,⁴¹¹ no guarantees must be made on either side, and the Parties

404. See JAMES R. CRAWFORD, *THE CREATION OF A STATE IN INTERNATIONAL LAW* 211-12 (1979).

405. Wilfrido V. Villacorta, Member of the 1986 Constitutional Commission and Former Philippine Ambassador to the ASEAN, Position Paper Presented During the Public Hearing on the Bangsamoro Basic Law (Nov. 18, 2014) (transcript available at <http://www.opapp.gov.ph/milf/news/position-paper-dr-wilfrido-villacorta-public-hearing-bbl-18-november-2014> (last accessed Feb. 17, 2015)).

406. IAG, *supra* note 382, at 21.

407. *Id.* (citing H.B. No. 4994, art. IV, § 1 & S.B. No. 2408, art. IV, § 1).

408. PHIL. CONST. art. X, § 15. This Section states that the autonomous region must be “within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.” PHIL. CONST. art. X, § 15.

409. Montevideo Convention on the Rights and Duties of States, *opened for signature* Dec. 26, 1933, 165 L.N.T.S. 19 [hereinafter 1933 Montevideo Convention].

410. *Province of North Cotabato*, 568 SCRA at 482.

411. On this point, the Separate Opinion of former Supreme Court Justice Minita V. Chico-Nazario is instructive:

It must be noted that the Constitution has been in force for three decades now, yet, peace in Mindanao still remained to be elusive

must know that there is a constitutional process to be followed. The constituent powers of Congress, a Constitutional Convention, and the people in the constitutional amendment process⁴¹² must thus be respected, as the result of this plebiscite is reflective of the sovereign will of the Filipino People.⁴¹³

B. Public Consultations

Any peace process could fail without public consultations at the national and local levels.⁴¹⁴ The Bangsamoro political entity must be the outcome of an inclusive and participatory consultation with all stakeholders, such as the MILF, MNLF, ARMM, Muslim and Christian communities, IPs, and traditional leaders (including the sultanates and other royal houses).⁴¹⁵ Otherwise, marginalizing one group could have dire consequences for the peace process — one small misstep may burst into a series of violent struggles.

This is what the siege in Zamboanga in 2013 has shown. Claiming to have been marginalized with the signing of the CAB, a disgruntled breakaway faction of the MNLF waged a week-long bloody siege in Zamboanga City, a non-ARMM core territory.⁴¹⁶ Thus, aside from it being a constitutional requirement,⁴¹⁷ having consultations with the people,

under its present terms. There is the possibility that the solution to the peace problem in the [s]outhern Philippines lies beyond the present Constitution. Exploring this possibility and considering the necessary amendment of the Constitution are not per se unconstitutional[.]

Id., at 660.

412. PHIL. CONST. art. XVII. See also Knack, *supra* note 65, at 470 & Santos, Jr., *Bangsamoro Basic Law*, *supra* note 24, at 105.

413. PHIL. CONST. pmbl. It is stated therein that, “[w]e, the sovereign Filipino people ... do ordain and promulgate this Constitution.” PHIL. CONST. pmbl.

414. See LOCAL GOVERNMENT CODE, §§ 2 (c), 26, & 27.

415. Jose V. Romero, Jr., *Geopolitical issues of the CAB*, MANILA TIMES, May 23, 2014, available at <http://www.manilatimes.net/geopolitical-issues-of-the-cab/98859> (last accessed Feb. 17, 2015).

416. On 9 September 2013, the MNLF splinter group attempted to raise the flag of the self-proclaimed *Bangsamoro Republik* in the Zamboanga City Hall. See Erik De Castro, *Guns, clans, rogue Muslim rebels undermine south Philippine peace*, available at www.reuters.com/article/2013/09/15/us-philippines-rebels-idUSBRE98E01920130915 (last accessed Feb. 17, 2015).

417. See PHIL. CONST. art. III, § 7. See also PHIL. CONST. art. II, § 28.

especially the “vocal minorities,” can prevent them from taking up arms in defense of the perceived trampling of their rights.⁴¹⁸

C. Safeguarding Human Rights and Development

It is worth highlighting that the peace process should not just carry the agenda of peace, but also of human rights and development. Without the latter, the entire process could prove futile and lend itself to an intensified armed conflict. The Constitution itself affirms that “[t]he State values the dignity of every human person and guarantees full respect for human rights[.]”⁴¹⁹ and that it “shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”⁴²⁰

Many of the roots of the conflict are found against the background of poverty and powerlessness, including the want of economic access and real participation in economic and political governance, as well as land rights disputes.⁴²¹ Before peace becomes possible, the “conditions for its full enjoyment” must be first established.⁴²² Thus, “for as long as there is no adequate food, jobs[,] and no land for the people to till, there can be no lasting peace.”⁴²³

The peace-building efforts of the government must “extend rehabilitation beyond the conflict affected areas into the entire [Bangsamoro] community in need of peace, development, and progress.”⁴²⁴ To date, the

418. Jose V. Romero, Jr., Geopolitical issues underlying the CAB, *available at* [http://www.negroschronicle.com/web-archives/opinion/GEOPOLITICAL%20ISSUES%20UNDERLYING%20THE%20CAB%20\(Romero\).html](http://www.negroschronicle.com/web-archives/opinion/GEOPOLITICAL%20ISSUES%20UNDERLYING%20THE%20CAB%20(Romero).html) (last accessed Feb. 17, 2015).

419. PHIL. CONST. art. II, § 11.

420. PHIL. CONST. art. II, § 9.

421. See Stichting Cordaid, Zamboanga and Lasting Peace on Mindanao, *available at* <https://www.cordaid.org/en/news/zamboanga-and-lasting-peace-mindanao> (last accessed Feb. 17, 2015).

422. Lansana Gberie, Mandela’s struggles for peace and justice in Africa, *available at* <http://www.un.org/africarenewal/web-features/mandela%E2%80%99s-struggles-peace-and-justice-africa#sthash.nSFz773M.dpuf> (last accessed Feb. 17, 2015).

423. Cagoco-Guiam, Part Two, *supra* note 253.

424. TAN, *supra* note 223, at 44.

government has already adopted a two-pronged approach to winning the peace:

- (1) First, the negotiated political settlement of all armed conflicts (Track 1), as exemplified by the signing of the CAB;⁴²⁵ and
- (2) Second, the creation of a conducive environment for peace, which is being achieved through socio-economic projects under the *Payapa at Masaganang Pamayanan* (PAMANA) Program, a development initiative of the government⁴²⁶ (complementary track).⁴²⁷

The GPH has likewise made advancements in safeguarding human rights and international humanitarian law (IHL). President Aquino III enacted Administrative Order (A.O.) No. 35,⁴²⁸ establishing an Inter-Agency Committee (IAC)⁴²⁹ on Extra-Legal Killings,⁴³⁰ Enforced Disappearances,⁴³¹ Torture,⁴³² and Other Grave Violations of the Right to Life, Liberty, and

425. OPAPP, Citizen's Charter, *supra* note 280, at 11.

426. The PAMANA program is the government's premier development strategy to:

- (i) reduce poverty and vulnerability in conflict-affected areas,
- (ii) improve governance, and
- (iii) empower communities and strengthen their capacity to address issues of conflict and peace through activities that promote social cohesion.

Id.

427. *Id.* at 11-12.

428. OP, Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture[,] and Other Grave Violations of the Right to Life, Liberty[,] and Security of Persons, Administrative Order No. 35, Series of 2012 [A.O. No. 35, s. 2012] (Nov. 22, 2012).

429. The IAC created by A.O. No. 35 is composed of the Department of Justice as chairperson; the Presidential Human Rights Committee, Department of the Interior and Local Government, Department of National Defense, Presidential Adviser on the Peace Process, Presidential Adviser for Political Affairs, Armed Forces of the Philippines, Philippine National Police Director, and National Bureau of Investigation as members; and the Ombudsman and Commission on Human Rights as observers. *See* A.O. No. 35, s. 2012.

430. For the definition of Extra-Legal Killings or Extra-Judicial Killings, *see* Philippine National Police, Salient Provisions of the Operational Guidelines of Administrative Order No. 35, Series of 2012, art. 1, ¶ 1 [hereinafter A.O. No. 35 Operational Guidelines].

431. *Id.* art. 1, ¶ 3.

432. *Id.* art. 1, ¶ 4.

Security of Persons⁴³³ (A.O. No. 35 Mechanism). The A.O. No. 35 Mechanism seeks to address the culture of impunity, real or perceived, with regard to gross human rights and IHL violations committed “by agents or elements of the [s]tate or non-state forces.”⁴³⁴ It is composed of a composite team of investigators and prosecutors who collaborate, cooperate, and coordinate in the investigation and build-up of A.O. No. 35 cases to ensure a successful prosecution.⁴³⁵

By bringing the perpetrators to justice, the GPH “commits to establish an institutional legacy of [] efficient, coherent, and comprehensive government machinery dedicated to the resolution of unsolved cases of political violence.”⁴³⁶ This milestone achievement will ensure that the rule of law reigns supreme, and that the victims are afforded their rights, in times of war or peace. It helps deter a repeat of gross human rights violations, such as the infamous Jabidah⁴³⁷ and Ilaga-PC⁴³⁸ massacres, as it makes headway for an effective criminal justice regime.

D. Securing Transitional Justice

On the issue of land, the GPH and the Bangsamoro can “provide reparations for those who lost their lands”⁴³⁹ This way, “peace seeps down to the grassroots, Christians, Muslims, and *Lumads* (indigenous people) in Mindanao who were unjustly dispossessed of their land.”⁴⁴⁰ They can seek reparations under the new autonomous Bangsamoro political entity.⁴⁴¹

Undoubtedly, “[l]and ownership is a sensitive issue in Mindanao where Christians from the North have resettled in areas that were once dominated by Muslims.”⁴⁴² For Mindanao to finally know peace, the Parties in conflict

433. *Id.* art. I, ¶ 5.

434. A.O. No. 35, s. 2012, whereas cl.

435. *See generally* A.O. No. 35 Operational Guidelines, *supra* note 430.

436. A.O. No. 35, s. 2012, whereas cl.

437. Snakenberg, *supra* note 225.

438. *Id.*

439. Philip C. Tubeza, *Gov't, Bangsamoro to pay those who lost lands*, PHIL. DAILY INQ., Oct. 12, 2012, available at newsinfo.inquirer.net/287374/christians-moros-who-lost-their-lands-to-be-compensated-says-leonen (last accessed Feb. 17, 2015).

440. *Id.*

441. *Id.*

442. *Id.*

must be able to negotiate a way forward. This cannot be done without directly addressing the legacy of historical injustice committed against the Islamized natives in Mindanao. Transitional justice is “not a special form of justice;”⁴⁴³ rather, it is justice suited to societies transforming themselves⁴⁴⁴ usually after an armed conflict.⁴⁴⁵ In securing transitional justice after years of war with the *Moro* rebel groups, the GPH aims “to address perceived historical grievances in Mindanao”⁴⁴⁶ and therefore achieve complete healing and reconciliation.⁴⁴⁷

The FAB states that “the legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenure[,] or their marginalization shall be acknowledged.”⁴⁴⁸ It adds that “[w]hen restoration is no longer possible, the [c]entral [g]overnment and the [g]overnment of the [Bangsamoro] shall take effective measures for adequate reparation collectively beneficial to the [Bangsamoro] people in such quality, quantity, and status to be determined mutually.”⁴⁴⁹

As suggested by Supreme Court Justice Marvic Mario Victor F. Leonen when he was still the Chairman of the GPH Peace Panel,⁴⁵⁰ the one to provide compensation is not the current private property owner, but the national government or the Bangsamoro government.⁴⁵¹ The government

443. International Centre for Transitional Justice, *What is Transnational Justice? (A Paper Explaining Transitional Justice)*, available at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (last accessed Feb. 17, 2015).

444. *Id.*

445. Gentian Zyberi, *The Transitional Justice Process in the Former Yugoslavia, Long Transition, Yet Not Enough Justice* (Oxford Transitional Justice Research Working Paper Series) 1, available at http://www.csls.ox.ac.uk/documents/Zyberi_formerYugoslavia_OTJRWorkingPaperSeries.pdf (last accessed Feb. 17, 2015).

446. Tubeza, *supra* note 439.

447. *Id.*

448. Framework Agreement on the Bangsamoro, *supra* note 13, pt. VI, ¶ 2.

449. *Id.* See also H.B. No. 4994, art. IX, § 3 & S.B. No. 2408, art. IX, § 3.

450. Supreme Court Justice Marvic Mario Victor F. Leonen served as the Chair of the GPH Peace Panel from 2010 to 2012. See Patricia Denise Chiu & Mark Merueñas, *Peace negotiator Leonen named to Supreme Court; youngest justice since '38*, available at <http://www.gmanetwork.com/news/story/283213/news/nation/peace-negotiator-leonen-named-to-supreme-court-youngest-justice-since-38> (last accessed Feb. 17, 2015).

451. Tubeza, *supra* note 439.

will do so not just on behalf of “the Christian who grabbed another person’s property, but also [of] the *Moro* who seized somebody else’s land.”⁴⁵²

But before receiving compensation, the claimant must show evidence, such as a Torrens title or other means of proving prior ownership, for the lost property.⁴⁵³ This is in light of the difficulty in determining who voluntarily moved out and who were forcibly displaced.⁴⁵⁴ Meanwhile, vested property rights must be respected.⁴⁵⁵ No confiscation of property or ejectment of the current land owners shall be made.⁴⁵⁶ At the same time, existing land titles must be reconciled to find out which ones are overlapping or fraudulent.⁴⁵⁷ The proper procedures set by applicable laws, including the Administrative Code,⁴⁵⁸ the Property Registration Decree,⁴⁵⁹ and IPRA, must be looked into prior to taking a decisive action on the questionable titles.

Other forms of reparations can be given to the victims, such as the “recognition that a historical wrong was committed.”⁴⁶⁰ Details on how to set up the compensation mechanism can be further discussed between the government and the Bangsamoro people. As an example, a Truth and Reconciliation Commission⁴⁶¹ may be established to ferret out the past wrongdoing of the state or of a non-state armed group. This strongly adheres

452. *Id.*

453. *Id.*

454. Knack, *supra* note 65, at 466.

455. See H.B. No. 4994, art. IX, § 3 & S.B. No. 2408, art. IX, § 3.

456. Tubeza, *supra* note 439.

457. Knack, *supra* note 65, at 470.

458. Instituting the Administrative Code of 1987 [ADMINISTRATIVE CODE], Executive Order No. 292 (1987).

459. Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes, Presidential Decree No. 1529 [Property Registration Decree] (1978).

460. Tubeza, *supra* note 439.

461. Truth commissions are “part of a wider and continuing process of transitional justice. How they complete their operations are as important as how they commence them.” See Alex Bates, Transitional Justice in Sierra Leone: Analytical Report (Part of the Atlas Project on Armed Conflicts, Peacekeeping, and Transitional Justice) at 4, available at projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_SL_Final_Report_FINAL_EDITS_Feb2011.pdf (last accessed Feb. 17, 2015).

to the path of anti-apartheid champion, former South African President Nelson R. Mandela.⁴⁶² In helping South Africa recover from conflict, former President Mandela established a “truth-telling” body, the South African Truth and Reconciliation Commission (TRC), as the “new paradigm” for reconciliation.⁴⁶³ The TRC is more “restorative” than retributive — in its hearings, the victims of human rights violations narrated their experiences and, after a full disclosure and confession by the perpetrator, the TRC acted on the latter’s amnesty application.⁴⁶⁴

Thus, as part of the transitional justice mechanism,⁴⁶⁵ legal reprieve may be given to those involved in the armed conflict, provided their acts were politically motivated.⁴⁶⁶ Under *lex pacificatoria*,⁴⁶⁷ the GPH can grant amnesty to the *Moro* rebels who took up arms in the name of freedom. However, those who committed grave violations of IHL can be prosecuted.⁴⁶⁸ This is in line with the decisions in the Nuremberg trials and of the International Criminal Tribunal for the former Yugoslavia⁴⁶⁹ and the International Criminal Tribunal for Rwanda.⁴⁷⁰

E. Managing Expectations

In building peace in Mindanao, expectations must be reasonably managed. The passing of the proposed BBL “should be seen as a step forward in what

462. See History, Nelson Mandela, available at <http://www.history.com/topics/nelson-mandela> (last accessed Feb. 17, 2015).

463. *Id.* at 9.

464. See generally Christian Gade, *Restorative Justice and the South African Truth and Reconciliation Process*, 32 S. AFR. J. PHILOS. 1 (2013).

465. See H.B. No. 4994, art. IX, § 4 & S.B. No. 2408, art. IX, § 4. These similar sections on Transitional Justice provide that “[t]here shall be created a transitional justice mechanism to address the legitimate grievances of the Bangsamoro people, such as historical injustices, human rights violations, marginalization through unjust dispossession of their territorial and proprietary rights and customary land tenure.” *Id.*

466. Gade, *supra* note 464, at 11.

467. *Lex pacificatoria* means “a new law of the peacemakers.” See generally CHRISTINE BELL, ON THE LAW OF PEACE: PEACE AGREEMENTS AND THE LEX PACIFICATORIA (2008).

468. For the International Centre for Transitional Justice, however, “[t]hose who commit crimes on a large or systematic scale should be held accountable.” See generally International Centre for Transitional Justice, Criminal Justice, available at <https://ictj.org/our-work/transitional-justice-issues/criminal-justice> (last accessed Feb. 17, 2015).

469. *Id.*

470. *Id.*

is entailed to be a *longer* road to peace, beyond 2016.”⁴⁷¹ The peace process is not an overnight solution. Mindanao currently faces a “complex web of violence:” (1) Muslim separatism; (2) communist insurgency; (3) criminality led by terrorist groups such as the Abu Sayyaf Group and the BIFF;⁴⁷² (4) attacks by private armed groups, and (5) endemic clan conflict or *rido*.⁴⁷³ This Article has primarily tackled the issue on *Moro* separatism.

Observably, “[a]t the heart of both the MILF and MNLF claims lie dissatisfaction about the lack of economic opportunities, real participation in economic and political governance, and disputes about land rights.”⁴⁷⁴ Thus, a negotiated settlement such as the CAB must deliver the peace it promises.⁴⁷⁵ In the implementation of the CAB through the proposed BBL, considerable resolve must be made to be able to reap the dividends of peace — such as the restoration of normal civilian life in conflict-affected areas, and the enjoyment of government interventions that will generate stability, prosperity, and social welfare in Mindanao.

At the same time, it must be acknowledged that there will be limitations — legal, financial, or otherwise — which could result in either party getting less than what was bargained for. The Parties in a negotiation cannot remain rigid and unmoving in their demands — they should be able to arrive at a mutually-acceptable ground.

F. Individual Contributions for Peace

Indeed, the success of any peace settlement is measured not only in the signing of the peace agreement by the negotiating parties, but, more importantly, in the acceptance of the public at large.⁴⁷⁶ To break down the

471. Santos, Jr., *Bangsamoro Basic Law*, *supra* note 24, at 92.

472. See Agence France-Presse, BIFF, Abu Sayyaf pledge allegiance to Islamic State jihadis, *available at* www.gmanetwork.com/news/story/375074/news/nation/biff-abu-sayyaf-pledge-allegiance-to-islamic-state-jihadists (last accessed Feb. 17, 2015).

473. Abreu, *supra* note 134, at 66. See also WILFREDO MAGNO TORRES III, RIDO: CLAN FEUDING AND CONFLICT MANAGEMENT IN MINDANAO 13 (2007).

474. Stichting Cordaid, *supra* note 421.

475. For the peace process to succeed, the Parties must remain true to their word. In the CAB, the GPH has agreed to an expanded political and fiscal autonomy in Muslim Mindanao through the proposed BBL, while the MILF agreed to a gradual decommissioning of its troops by having them return to civilian life. See Comprehensive Agreement on the Bangsamoro, *supra* note 8.

476. Candelaria, *supra* note 320, at 5.

barriers to peace, tolerance must be practiced. Each culture, whether that of the majority Christians or the minority Muslims, should be respected and appreciated as “unique and functional for the people who practice it.”⁴⁷⁷ Embracing the culture of the *Moros* involves removing our fears of the differences between us and them.⁴⁷⁸ Understanding them from their own cultural glasses and historical wounds can help remove our deep-seated prejudices. This way, we can begin the process of acceptance and, ultimately, begin building peace with one another.⁴⁷⁹

In light of the hostility created by the conflict, it takes years to finish the reconciliation process.⁴⁸⁰ Religious leaders, counselors,⁴⁸¹ a “multidisciplinary group of experts,” and “seasoned high-level peace negotiators” can all spread the message of peace, bring the Parties together towards a mutually-accepted settlement, and “promote credibility and build confidence in the process.”⁴⁸²

Ultimately, the success of the peace process could result in a better Philippines, and its failure could bring it back into an intensified civil war, even running the risk of turning it into an internationalized armed conflict.⁴⁸³ Rather than leaving Mindanao a “wasteland ravaged by war,” it can be transformed into a “catalyst in fulfilling the dream of all Filipinos” for peace.⁴⁸⁴ Any peace negotiation can benefit from the valuable lessons this challenging process has yielded thus far.⁴⁸⁵

477. See Cagoco-Guiam, Part Two, *supra* note 253.

478. Stanislaw Barszczak, *War, Peace and Love by Emmanuel Levinas*, 22 LINGUA AC COMMUNITAS 33, 33-58 (2012).

479. *Id.*

480. See Charles Hauss, Reconciliation, *available at* <http://www.beyondintractability.org/essay/reconciliation> (last accessed Feb. 17, 2015).

481. *Id.*

482. Knack, *supra* note 65, at 471.

483. See generally International Committee of the Red Cross, How is the Term “Armed Conflict” Defined in International Humanitarian Law? (Opinion Paper), *available at* <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (last accessed Feb. 17, 2015).

484. Villacorta, *supra* note 405.

485. See Knack, *supra* note 65, at 470.