Linking the Moro People with the Rest of the World

THE BANGSAMORO JOURNAL

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The Bangsamoro:

A people displaced in their own homeland

OUR COVER

Since the aborted signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD), large-scale military operations have been waged against three allegedly rogue Moro Islamic Liberation Front base commanders in Lanao del Norte, North Cotabato and Sarangani provinces. The government had tagged them for threatening and attacking innocent non-Moro civilian communities in these areas. This accusation was publicly denied by the MILF commanders in question, citing that they were not in these areas to attack, but that local para-military personnel in these areas misunderstood their presence and had fired the first shots. Nevertheless, the attacks were publicized by government as emotional reactions to the junking of the MOA-AD.

Though it was later claimed that the military operations against the three MILF commanders were "surgical" in nature, over 600,000 civilians have ironically been displaced as a result. Until the present, no discernible move had been made by the government to return them to their places of origin. The Bangsamoro have effectively been displaced in their own ancestral domain.

IN THIS ISSUE

- Two Fundamental Postulates for Lasting Peace in Mindanao
- Looking into SC Decision
- Fundamentalism: A Challenge to our Partnership
- Just How Important is MOA-AD to the Moro People?
- From Estrada to Arroyo's War
- What is the MOA-AD in the MILF-GRP Peace Process?
- Requiem for the MOA-AD
- Making Sense About Development as a Path to Peace in Mindanao
- Arroyo Wants Lasting Power in Malacañang, Not Peace in Mindanao
- Sama Children in Pagadian Thanks SFK for Support

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EDITORIAL

A Peace that Liberates, a Liberation that Transforms

As there are many destructive forms of conflict, so are the many bridges that aim to rebuild or reconstruct broken relationships, including those brought about by historical injustice.

The rise of peace work in Mindanao among different individuals and organizations is a clear indication of support for peace from broad sectors of society which include the NGOs, religious, and key leaders from conflict-affected areas. This peace work has assumed various forms: from grassroots peace building to building peace networks; from formation of peace sanctuaries or peace zones to engagement in formal local peace talks; from simple peace education to peace learning institutes; and from a local peace agenda to a national reconciliation.

The Mindanao peace agenda has always been expressed through active non-violence with a common demand to end the hostilities through a negotiated peace settlement with the armed revolutionary forces. At the height of skirmishes, the point of convergence among many peace advocates is always a call for immediate ceasefire and an appeal for the warring parties to settle their disputes through formal peace talks to open other venues for addressing contending issues, grievances or complains. This call is not only sound but also urgent given the vulnerability of people in conflict areas to violent repercussions of armed hostilities as shown in the 2000 'All-Out War' and in the recent outbreak of hostilities in Central Mindanao in the aftermath of the MoA-AD fiasco.

While there are limited venues for people's participation in the formal peace process, it cannot be denied that many sectors of society had really pinned their hope on the final outcome of the GRP-MILF peace talks. Throughout the peace negotiations, parallel efforts have also been initiated by some civil society organizations in promoting peace and in building the awareness of people on the peace process. These efforts have put together a "mosaic of Mindanao's face of peace."

With the evolution of peace advocacy in Mindanao, many peace organizations and individual peace advocates have also been giving high premium on human rights in their peace work. This is evident in the integration of human rights in the fields of advocacy, community organizing, improving governance, and in development projects. While these services are mainly focused in the conflict-affected areas, allied civil society organizations are also complementing by way of strengthening partnership with the government, non-state actors, and other concerned institutions in advocating and advancing the Bangsamoro peace agenda.

'National unity' and international solidarity work are also being engaged to popularize the Bangsamoro struggle and aspiration to regain their ancestral homeland and restore their right to self-determination, both considered as important prerequisites for them to live with prosperity, dignity and honor.

The betrayal made by the Philippine government by its non-signing of the MOA-AD is condemnable. Thus, it remains a great challenge for the civil society organizations (CSOs) to do their share in bringing back a just and lasting peace in Mindanao and to forge a just and lasting peaceful existence among its peoples.

Two Fundamental Postulates for Lasting Peace in Mindanao

By ORLANDO B. QUEVEDO, O.M.I.

After the tragic fiasco regarding the Memorandum of Agreement on Ancestral Domain (MOA-AD), I presume as a matter of course that the Government of the Republic of the Philippines and the Moro Islamic Liberation Front are in contact with its other.

As a contribution to any backdoor channeling, I address myself to both Moros and non-Moros, and those who claim to represent them.

The following, I believe, are the two fundamental bases for the forging of lasting peace in Mindanao. At the very beginning of any peace negotiation, there has to be a clear and explicit recognition, mutually accepted: (1) of the national sovereignty and territorial integrity of the Philippines as enshrined in the Philippine Constitution; (2) of the Moro aspiration for self determination and its concrete realization in a manner in accord with the Philippine Constitution. It seems to me that these fundamental concepts are at lease implicitly accepted by both groups.

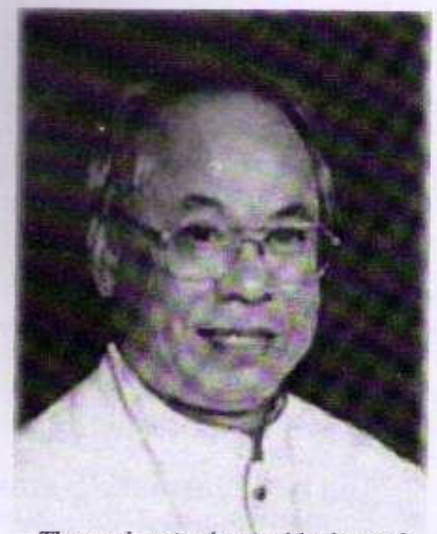
I believe that the lack of clarity in the MOA-AD with regard to the above two-fold fundamental concepts, aggravated by lack of consultation and reinforced by anger, misinformation, misconceptions, biases, prejudices, and resistance to change, led to the present grave uncertainties regarding the peace process.

The first postulate is clear to non-Moros. The second is not. For most of us the recognition of Moro self-determination and

the Bangsamoro Juridical entity in which it is exercised are tantamount to giving away parts of Philippine territory and establishing a Moro independent State. It does not matter if there are several examples in the world, where self-determination is recognized and implemented without necessarily establishing an independent State and dismembering a Republic. It does not matter if the rejected MOA-AD does not in any way express such establishment or dismembering. Great anger and violence have resulted from this situation.

The non-Moro should begin with Moro history to understand Moro self-determination. It is undisputed that Islam was brought to the Philippines before the Spaniards came, even before there was such a name as "Philippines." It is undisputed that Muslim Sultanates exercised sovereignty and wielded political power over most of Mindanao, Tawi-Tawi and Sulu, a territory considerably larger than the present ARMM or the "expanded ARMM" that the MOA-AD envisions. It is undisputed that the demographic composition of the population and the subject of political authority in Mindanao were completely reversed from Moros to non-Moros within only the 50 years between 1920 to 1970, such that Moros became a minority in the large swath of territory over which they, through their Sultanates, once held sway.

We, therefore, need to accept the fact that the Moro aspiration for self-determination is based on indisputable recorded history. Our historical consciousness needs to go back to the times of the southern Sultanates and the religion they professed. There we



The author is the Archbishop of Cotabato.

see a people from the Malay race but with a distinct religion and political identity. They had been part of the indigenous peoples who had converted to Islam.

We know that the term "Moro" came much later in their history, introduced by Spanish colonizers to refer derogatively to the people who had the same religion as the Moors that had conquered southern Spain. Through the Sultanates this distinct people from various indigenous tribes held political sway, sovereignty, if one may use the term, over a territory covering most of Mindanao and Sulu.

Through the Sultans they governed themselves. At documented periods and occasions, Moros expressed their aspiration for self-determination either by peaceful means or by armed interventions. This aspiration has endured through four centuries of relative peace and short periods of war.

The non-Moro should begin with Moro history to understand Moro self-determination.

Restlessness for self-determination lies deep in the collective Moro subconscious. Like Rizal and the Filipino elite of their time, Moro scholars, intellectuals, writers, warriors and leaders kept this aspiration alive.

The desire for self-determination we recognize now as a fundamental right. It does not necessarily mean an independent State. It simply means as a common attribute of all peoples an option for self-government outside or within a national community. It is an option that is enduring lying deep in the subconscious of the human community, part and parcel of that divine gift we call freedom, or self-determination. It does not die. It maybe dormant, it might be repressed, but sooner or later it will want to surface either in rebellion or in peaceful assertion. War will not defeat this fundamental human option. It cannot be killed. Without recognition and some form of implementation, peaceful co-existence is simply an artificial temporary veneer. That is the human condition, the condition of human communities with distinct cultures and identities, especially with a history of self-determination.

Recognizing that legitimate aspiration, we also need to recognize the realities that came during the American period of our history.

Spain ceded the entire islands to the United States. It was the United States that eventually and effectively placed all the islands under its political power. Yet even the United States recognized the aspiration of the Moro people with the creation of a "Moro province."

Historical records tell us that from time to time, Moro leaders would remind the ruling power of their right to self-determination, of not wanting to be under "Filipino" sovereignty.

But we cannot also escape the development of history. The historical reality is that the the United States, followed by the Philippine government, exercised political power over all of the

We need to accept the fact that the Moro aspiration for self-determination is based on indisputable recorded history.

Philippines. And so we have the concepts of national sovereignty and territorial integrity enshrined in successive Constitutions. Even if one might not accept the Constitution, the reality of national sovereignty and territorial integrity predates the Constitution which simply came later to express or articulate the reality.

These then are the two-fold realities that are fundamental to any peace negotiation: the recognition of Moro self-determination and the acceptance of national sovereignty and territorial integrity.

These two concepts are not contradictory. They do not cancel each other out. One can exist with the other. It is the balancing and concrete implementing of these two fundamental postulates that is the central task of peace negotiating.

Looking into SC Decision

By **PATRICIO P. DIAZ**

Retired Chief Justice Artemio V. Panganiban, in his Inquirer column last Sunday, declared as "victory for the constitution" the Supreme Court decision that the Memorandum of Agreement on Ancestral Domain between the Philippine Government and the Moro Islamic Liberation Front is unconstitutional. That cannot be disputed

However, it must be asked: Who is the loser?

North Cotabato Vice-Gov. Emmanuel Piñol, the first to file a petition against the MOA-AD with the Supreme Court, in rejoicing for the "victory" said, "... we also fervently pray that peace would finally come to our troubled land."

Former Senate President Franklin Drilon, another petitioner, while celebrating the "victory" with the city officials of Iligan City, said, "There is every reason that the peace process should be pursued because there are disagreements that should be settled."

What Piñol and Drilon said in "victory", other petitioners, opponents and critics of the MOA-AD must also be saying. They have scuttled the vehicle of peace and are now praying for peace to come. In winning, they "pray" to recover the price of their "victory" - the peace process.

Who then is the loser? Peace!

Panganiban also described the ponencia or decision as "elegant, well researched and well cadenced". That, too, cannot be disputed. It "elegantly" pinned down the MOA-AD for (a) lack of consultation and (b) violations of the constitution - the two main substantive issues.

No Consultations

In failing to consult the people, the peace advocates, the civil society, the local government officials in Mindanao and members of Congress, President Arroyo, her peace advisers and negotiators violated not only Executive Order No. 3 and two laws but also the Constitution. For their sin of omission, Peace is in Limbo.

EO 3 mandates the Presidential Adviser on the Peace Process to convene as his/her advisory body the National Peace Forum. To properly advice the PAPP, the NPF is tasked to conduct forums in the national and local levels about the progress of peace talks and other matters concerning the peace process. The NPF had not been convened, so no consultations on the MOA-AD had been done.

Retired Chief Justice Artemio V. Panganiban

Was it proper to sacrifice the peace process to atone for the sins of the Arroyo government?

Under the Constitution and laws the people have the right to be consulted. If for some reasons this right has been violated, is the violation enough cause to derail the peace process? Why did the Court not just order Arroyo, the PAPP and the GRP negotiators to conduct the consultations? It might be late but the purpose of consultations could still be satisfied. Whatever objections there would be could still be addressed in the negotiation of the Comprehensive Compact.

What happened is patently the court doctrine. A crime is not a crime - not a violation of law - no matter how serious if the evidence has been obtained illegally, in which case, technicality can mute justice for the offended to be just to the offender. What contradictions of rule of law in democracy! Technicality nullified the peace process.

Must Go

The initial petition against the MOA-AD on July 23 filed by the governor and vice-governor of North Cotabato, followed by the city mayor and other officials of Zamboanga City, was to restrain the government from signing the agreement and compel it to furnish them official copies of the agreement. Unofficial copies had already been leaked to the media.

After the Court had issued a temporary restraining order on August 4 and the official copies

had been furnished the petitioners, supplemental petitions were filed – with new petitioners filing their own – asking the Court to declare the MOA-AD unconstitutional, null and void.

In the pursuit of the peace process, rights had been violated and interests thrown in conflict. The petitioners were in no mood to dialogue to save the peace process but were bent on aborting it. Behind the petitions could be seen the ugly head of politics rearing.

To the Court, doing the judicial review was a duty. The issue of constitutionality must be resolved regardless of what would happen to the peace process.

To the petitioners? In the name of democracy, the MOA-AD and the peace process must go.

Two Provisions

In its review of the four strands of the Ancestral Domain:

1. The Court appeared not to have considered in-depth Concepts and Principles. It noted that "the term 'First Nation' is of Canadian origin" but "departs from the Canadian usage of the term". Later, it deemed "ancestral domain" in MOA-AD as contrary to the concept of ancestral domain in RA 8371 or the Indigenous People's Rights Act.

2. It noted that in Territory, the BJE and the Republic of the Philippines "shall exercise joint jurisdiction, authority and management over all natural resources" in BJE "territorial waters" but not in its internal waters; "the sharing of minerals on the territorial waters" is not similarly provided "with respect to the internal waters of the BJE".

3. It had no comment on Resources.

4. In Governance, the Court noted the "associative" relationship "of the Central Government and the BJE" without comment although this would be discussed extensively later. Referring to Consensus 7, Governance, it commented: "As will be discussed later, much of the present controversy hangs on the legality of this provision."

Indeed, Consensus 4 and Consensus 7, Governance are the two provisions that dominated the discussions on constitutionality.

Are the Philippine Constitution, the Court and the offended petitioners that unforgiving that the GRP and MILF negotiators could not be given the chance to address the unconstitutionality of the two provisions, as well as of a few others, in order to balance Moro self-determination and Philippine sovereignty and territorial integrity and to save the peace process?

Five Counts

Of the second substantive issue — "Do the contents of the MOA-AD violate the Constitution and laws?" — the Court said: "The MOA-AD is inconsistent with the Constitution and law as presently worded." The MOA-AD is guilty of unconstitutionality on five counts.

First Count: "[T]he powers granted to the BJE exceed those granted to any local government under present laws, and even go beyond those of the present ARMM." The excessive power is attributed to the "associative" character – by "shared authority and responsibility" – of the relationship between the GRP and the BJE. (Consensus 4, Governance)

Second Count: "the concept of association is not recognized under the present Constitution."

Third Count: The BJE "is not merely an expanded version of the ARMM, the status of its relationship with the national government being fundamentally different from that of the ARMM" — being "a state in all but name as it meets the criteria of a state laid down in the Montevideo Convention, namely, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states".

Fourth Count: "The MOA-AD, moreover, would not comply with Article X, Section 20 of the Constitution."

Fifth Count: "[T]he MOA-AD is also inconsistent with prevailing statutory laws, among which are R.A. No. 9054, or the Organic Act of the ARMM, and the IPRA (R.A. No. 8371)."

These specific sub-issues have been well discussed to prove the unconstitutionality of MOA-AD under the present Constitution beyond doubt. It has been declared "contrary to law and the Constitution". Any hope for it – now dead – to animate the peace process is moot. But what chance could it have had the Court been a little liberal?

The MOA-AD has been declared "contrary to law and the Constitution". Any hope for it – now dead – to animate the peace process is moot. But what chance could it have had the Court been a little liberal?

The Decision has the answers.

The President's Powers

As the Court has acknowledged, despite that the "constitutional provisions on autonomy and the statutes enacted pursuant to them have ... been partially successful" with the creation of the ARMM, "the Filipino people are still faced with the reality of an on-going conflict between the Government and the MILF". The Court saw the problem the MOA-AD intended to address. What's surprising, however, was that it skirted its prescribed solution.

The solution lies in the President. "Being uniquely vested with the power to conduct peace negotiations with rebel groups, the President is in a singular position to know the precise nature of their grievances which, if resolved may bring an end to hostilities."

However, the President needs some concessions: "If the President is to be expected to find means for bringing this conflict to an end and to achieve lasting peace in Mindanao, then she must be given the leeway to explore, in the course of peace negotiations, solutions that may require changes to the Constitution for their implementation."

Its own prescription, notwithstanding, the Court deprived the President of "the leeway". The MOA-AD was the product of three years and eight months of "exploration". Yet, the Court struck it down when local government executives of North Cotabato and the cities of Zamboanga and Iligan complained of having not been consulted during the negotiation.

Mothers look after their sick children in a Rural Health Center in Datu Piang, Maguindanao.

The unique power of the President to conduct peace negotiations must include the discretion when not to consult. In the case of the MOA-AD, she knew – more than the complaining local government executives — the intricacies of the talks which can be messed up by third parties not privy to these intricacies by untimely intrusions.

Evidently, the Court did not consider this.

This does not mean that the right of the local government executives to be consulted has not been violated. But was that enough ground to scuttle the MOA-AD? Could consultations not have been made based on the agreement? It was not fully implementable in its initialed form. As the framework of the negotiation of the Comprehensive Compact, its flaws could have been effectively addressed in the CC – the Final Agreement.

As it appears in the Decision, the petitioners got all concessions and leeway while the President had none despite the Court's prescription – give the President the necessary leeway to complement her unique power to conduct peace negotiations.

Limitation

By "leeway", the Court in its Decision was explicitly referring to possible considerations for solutions including those that call for the amendment of the Constitution before they can be

implemented. Such is the MOA-AD. And the leeway was expected from the Court, since it had accepted the MOA-AD for judicial review. It instead blocked the leeway with limitation.

Of this limitation, the Court said: "As long as she limits herself to recommending these changes and submits to the proper procedure for constitutional amendments and revision, her mere recommendation need not be construed as an unconstitutional act."

An elderly woman looks after her grandchild in Datu Gumbay Elementary School where some of the evacuees stay.

What is the extent of the limitation? "Given the limited nature of the President's authority to propose constitutional amendments, she cannot guarantee to any third party that the required amendments will eventually be put in place, nor even be submitted to a plebiscite.

The most she could do is (to) submit these proposals as recommendations to Congress or the people, in whom constituent powers are vested."

In stressing the limitation of the President's power, the Court was laying down the ground to censure the President by declaring the MOA-AD unconstitutional based on Consensus 7, Governance in which the Court said the President had promised to the MILF to have the Constitution amended and on Consensus 4, Governance which grants "the BJE the status of an 'associated state'" – a status "not recognized under the present Constitution".

Fr. Joacquin Bernas

Paragraph 7

The Court said: "Paragraph (Consensus) 7 on Governance of the MOA-AD states, however, that all provisions thereof which cannot be reconciled with the present Constitution and laws 'shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework.' This stipulation ... is mandatory for the GRP to effect the changes to the legal framework contemplated in the MOA-AD. ..."

Is Consensus 7, Governance a promise? Is it mandatory? Unless given a leeway, it is more likely than not. What was the intention of the GRP negotiators in agreeing with the MILF? Did they not know the limitation of the President's power in relation to Article XVII, Sections 1 to 3 of the 1987 Constitution?

The well known constitutionalist, Fr. Joaquin G. Bernas, S.J., in his Inquirer column (October 19) referred to this issue as a case of ambiguity. He said, "...in my contacts with members of the negotiating panel, I never got the impression that they wanted to by-pass Congress and to formulate self-executing provisions" although "... the document they produced lacks clarity."

He explained: "In their sincere effort to produce language acceptable to people who do not accept our Constitution, their language engineering did not succeed in crafting a document free of ambiguity." But it succeeded in building confidence. The room for a leeway lies there.

This has a parallel in the 1993-1996 GRP-MNLF peace talks. Chairman Nur Misuari, at the outset, rejected references to the Constitution and the ARMM Organic Act or R.A. 6734. GRP panel chairman Manuel T. Yan and President Fidel V. Ramos did not make an issue out of it. They went on with the negotiation without reference to the two documents. With confidence built, Misuari eventually accepted both the Constitution and R.A. 6734.

The Court never credited the President for the rapport the GRP negotiators had established with their MILF counterparts – calling their confidence-building efforts "whimsical, capricious" among others. Keeping the peace process open could not be achieved by confronting the MILF with the 1987 Constitution. No leeway, just limitations!

Intention

The Solicitor General failed to persuade the Court that the "unsigned MOA-AD is simply a list of consensus points subject to further negotiations and legislative enactments as well as constitutional processes" and that it "remains to be a proposal that does not automatically create legally demandable rights and obligations until the list of operative acts required have been duly complied with."

Lawyer Michael O. Mastura, senior member of the MILF panel, said that the MOA-AD is a "framework treaty" or agreement. He said its "working draft" would "explain the necessary 'background' for the GP-MILF peace process" including "the text, and the object and purpose of the treaty". Obviously, the Court did not find it necessary to examine the working draft.

Lawyer Sedfrey Candelaria, chief legal consultant of the GRP panel said – contrary to the Court's opinion – that Consensus 7, Governance "may also explain the unique and non-self-executing character" of the MOA-AD.

Atty. Michael O. Mastura

To explain, he quoted the first paragraph of Consensus 7 stating that: (a) the "Parties agree that the mechanisms and modalities for the actual implementation of this MOA-AD shall be spelt out in the Comprehensive Compact" and (b) for the Parties "to mutually take such steps to enable it to occur effectively".

The "(b)" is relevant to the second paragraph of Consensus 7, Governance which is the focus of the Court's opinion and consistently referred to as "Paragraph 7" — reflecting mutual confidence prevailing: "When the GRP and MILF Panels came to the negotiating table," Candelaria said, "they were driven by what is possible and not by what is unthinkable."

That in the negotiation of the Comprehensive Compact, positions and agreements in the MOA-AD could change, Candelaria quoted a practice of negotiating peace agreements: "By their nature, implementation agreements involve new negotiations ... as parties test whether they can claw back concessions made at an early stage."

Candelaria, it should be noted, distinguishes the MOA-AD from the Comprehensive Compact – the first being the "early stage" or "framework agreement" and the second the "implementing agreement". During the negotiation of the Comprehensive Compact, the parties "can claw back" or reconsider "concessions made" in the MOA-AD as the tentative character of the principles, concepts and framework may evolve".

Candelaria said that the intention of Paragraph (Consensus) 7, Governance "was never ... to supplant the powers of a co-equal branch of the Government by entering into the MOA-AD". The GRP Panel had "the mandate to submit by way of recommendations to the Executive as a result of discussions at the negotiating table. Thereafter, the Executive may consider these for appropriate coordination within the Legislative Branch which may now undertake the necessary legal processes".

"When the GRP and MILF Panels came to the negotiating table," Candelaria said, "they were driven by what is possible and not by what is unthinkable."

Lawyer Soliman M. Santos, Jr., a legal scholar deeply involved in the MILF and MNLF peace negotiations with the Government, said that the Court's opinion on Paragraph 7 "is highly debatable, to say the least" and that the "respondents were all along following a recommendatory mode vis-à-vis their principal, the GRP," relative to the President's powers to negotiate — and their limitation — as expounded by the Court.

"Paragraph 7," he argued, "should not be seen negatively as 'making the Constitution conform to the MOA-AD' but rather as a matter of good faith implementation of peace agreements through constitutional processes that may include any necessary amendments or revisions of the Constitution, as would be the approach too with certain international obligations."

No Leeway

The Court admonished the President for promising the MNLF to amend the Constitution and warned her she has no such power. She can only recommend to Congress agreements that will require constitutional amendments for their implementation.

The admonition and warning are undeserved. The Court said the President cannot delegate powers that she does not have. In like manner, she cannot promise to do what she has no power to do. And, she cannot recommend to Congress any agreement that will amend the Constitution until the signing of the Comprehensive Compact.

That's water under the bridge but it calls for reflection.

The MOA-AD evokes the fate of Julius Caesar, the great Roman conqueror: "... as he was ambitious, I slew him." This, Brutus said in his oration at Caesar's funeral. He was Caesar's best friend but he led the conspirators, including senators, in assassinating Caesar because they had suspected him of planning to crown himself as emperor of Rome, then a republic.

Associative Relation

Because the MOA-AD had envisioned the BJE – the Bangsamoro more autonomous entity – local government officials petitioned the Supreme Court to "slay" it. "Petitioners assert that the powers granted the BJE exceed those granted to any local government under present laws, and even go beyond those of the present ARMM," the Court wrote in its Decision.

Given the leeway to negotiate peace, the President can end the conflict.

According to the Court, "the international law concept of association" is the "unifying link to the different provisions of the MOA-AD" – quoting from Consensus 4, Governance: "The relationship between the Central Government and the Bangsamoro Juridical Entity shall be associative characterized by shared authority and responsibility ..."

The Court granted that this associative relationship would still be precisely defined in the Comprehensive Compact. But it expected a final definition "in an international legal context" to be unacceptable since among the terms of references of the MOA-AD were "international law instruments" wherein the "concept of association is not recognized under the present Constitution".

The Court observed: "The defining concept underlying the relationship between the national government and the BJE being itself contrary to the present Constitution, it is not surprising that many of the specific provisions of the MOA-AD on the formation and powers of the BJE are in conflict with the Constitution and the laws."

Contrary Opinions

Some legal authorities have contrary opinions.

Dr. Alex B. Brilliantes Jr., dean of the National College of Public Administration and Governance of the University of the Philippines in Diliman, Quezon City, observed that the MOA-AD "is a step farther from federalism and may even lay the groundwork for outright separatism". He proposes to further examine some of the MOA-AD provisions and place them "within the context of a sovereign Philippines".

Dr. Alex B. Brilliantes Jr.

Fr. Ranhilio Callangan Aquino, dean of the Graduate School of Law of San Beda College in Manila, took exception to the Court's conclusion – based on its inquiry into the associative relation of the United States with the Republic of the Marshall Islands and the Federated States of Micronesia – that: "An associative relation ... is one between two states or, in the very least, between a state and a political entity 'on the way' to statehood."

What is the exception? He said: "'Association' in international law, however, is not a univocal concept [not one meaning only]. The relation between the Cook Islands and New Zealand is 'associative' and yet sui generis [a class by itself]. The British Commonwealth of Nations is yet another form of association."
Zeroing in on the BJE, he continued: "The proposed BJE could have been another variant to the already variegated forms of association: An association between a sovereign State, the Republic of the Philippines, and a political entity analogous to, but not quite (nor necessarily 'on the road to') a state."

How did he explain the Court's opinion? "Referring to the powers the BJE was proposed to enjoy, the court found them suspiciously bordering on carving out a new independent state. It is a reading, I think,

against the background of a history of secessionist sentiments and rhetoric, but it is not necessarily the only way to read the proposed grant of powers" – the problem being "ultimately semantic – an infelicitous choice of legal characterization".

And he wondered: "Had the GRP Panel refrained from using the disturbing phrase 'associative relationship', choosing instead (another term) to spell out the relations between the Republic of the Philippines and the Bangsamoro, would the result have been different?"

Santos disagreed "that 'the concept [of associative relationship] presupposes that the associated entity is a state and implies that the same is on its way to independence'. There are states ... including constituent states in federal republic and associated states. But these are not sovereign independent states."

Free Association

The Court cited the Federated States of Micronesia and the Republic of Marshall Islands as examples of states with associative relation with the United States. Santos added to these the Commonwealth of the Philippines (1935-46), the Republic of Palau, the Northern Mariana Islands and Puerto Rico.

"Some of these," he observed, "later emerged as a sovereign independent State (notably the Philippines), others stayed as associated states of the U.S." Of these others, the Northern Mariana Islands is a commonwealth and Puerto Rico is a commonwealth or an associated free state. Obviously, Santos is pointing out that the Court's illustrative example is selective.

Survivors of the air strikes done by the Armed Forces of the Philippines (AFP) in the towns of Mamasapano and Datu Piang, Maguindanao, respectively.

At this point, two principles of free association are worth noting:

First: The Court cited Keitner and Reisman stating that "[a]n association is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. Free associations represent a middle ground between integration and independence." (Emphasis supplied by the Court}

Second: Citing the UN General Assembly Resolution 1541 (XV) of 1960, Santos pointed out: "Ordinarily, there are three general options for self-determination, or more precisely for a Non-Self Governing Territory to reach a full measure of self-government: (1) Emergence as a sovereign independent State; (2) Free association with an independent State; and, (3) Integration with an independent State.

Note Well: The two principles are essentially identical. The Court and Santos are in full agreement in their citations.

The cases cited as illustrative examples by the Court (including Antigua, St. Kitts-Nevis-Anguilla, Dominica, St. Lucia, St. Vincent and Grenada), by Santos and by Aquino fall within the above principles.

Compact

By the Court's own account, "the Republic of Marshall Islands and the Federated States of Micronesia (FSM), formerly part of the U.S.-administered Trust Territory of the Pacific Islands, are associated states of the U.S. pursuant to a Compact of Free Association". In essence then, the associative relations between the "associate" and "principal" states are stipulated in the Compact of Free Association.

In the case of RMI and FSM above, "Their international legal status as states was confirmed by the UN Security Council and by their admission to UN membership." However, their currency "is the U.S. dollar, indicating their very close ties with the U.S., yet they issue their own travel documents, which is a mark of their statehood".

The other specific relations of RMI and FSM with the U.S. according to their compacts of free association are almost the same as what the MILF would want the BJE to have with the GRP as proposed in Territory, Resources and Governance of the MOA-AD. Apparently, the RMI and FSM are among the models of the BJE.

Many features of the relations between RMI and FSM with the U.S. are the same as those between Cook Islands and New Zealand. While the former are sovereign states, the latter is not – just self-governing territory in free association with New Zealand. The Republic of Palau is also a sovereign state, like RMI and FSM, with compact of free association with the U.S.

Northern Mariana Islands chose in 1970 commonwealth instead of independence. Its associative status with the U.S. is spelled out in a negotiated "Covenant" approved by the U.S. Congress establishing a political union with the U.S.

The Commonwealth or Associated Free State of Puerto Rico has been associated with the U.S. since the Treaty of Paris when Spain ceded it – together with the Philippines and Cuba – to the U.S. Its associative status is governed by a number of Acts of the U.S. Congress.

Newborn "Baby Bazooka" and his mother stays in Datu Piang Plaza evacuation center.

To sum up, there are various forms of associative relation between "associate" and "principal" states spelled out in the compact of free association, covenant, other agreements and laws. In fact, the "associate-principal" relation is just one of the associative relations. As Aquino pointed out, the Commonwealth of Nations is another form of association. In the same vein, the Association of East Asian Nations and the European Union are other variations.

The BJE

Because the MOA-AD "contains many provisions which are consistent with international legal concept of association", it "indicates, among other things, that the Parties aimed to vest the BJE the status of an associated state or, at any rate, a status closely approximating it", the Court opined.

And it ruled: "The concept of association is not recognized under the present Constitution." Unmistakably, the Court is saying that the Philippines will not – because it cannot – sign a compact of free association with the Bangsamoro people to establish the BJE.

Aquino contends that the international concept of "association" — being "not univocal" or not just having one meaning — should not mean only as in the cases of the RMI, FSM and others cited by the Court. The associative relation of Cook Islands with New Zealand is a variation of "association". Had the MOA-AD not been scuttled, he thinks "the proposed BJE could have been another variation."

Santos, in using Puerto Rico and the Northern Mariana Islands as examples side by side with RMI, FSM and Palau, supports Aquino. He said, "So much depends really on 'the terms of the free association agreed upon'. This precisely is what the GRP and the MILF are in the process of doing, with such terms to be found in the MOA-AD and, more importantly for finality and detail, the Comprehensive Compact."

Brilliantes agreed with the Court and the opponents of the MOA-AD that the powers granted the BJE may lead to "outright separatism". But he only proposed that some of the provisions of the MOA-AD "should be further examined and placed within the context of a sovereign Philippine republic".

From the contrary opinions of Aquino and Santos — and even Brilliantes – it may be inferred: The Court should not have declared outright the MOA-AD as unconstitutional. Instead, it should have allowed the GRP and MILF panels to spell out in the Comprehensive Compact the BJE-GRP associative relation.

From Brilliantes' proposal, it could also be inferred that national sovereignty is the ultimate measure of the constitutionality of the GRP-BJE associative relation. By this standard, the Comprehensive Compact must be judged — implying that what does not violate national sovereignty is not unconstitutional; and, the Constitution should be amended to provide for what does not violate sovereignty but is not recognized in the present Constitution.

Could the Court reconsider its thinking and decision?

Inconsistencies

The Court struck down the MOA-AD not only for being unconstitutional but also for being inconsistent with or contrary to R.A. No. 9054, the Organic Act of the ARMM, and R.A. 8371, the IPRA or Indigenous People's Rights Act as well as the United Nations Declaration on the Rights of Indigenous Peoples. The facts supporting this decision may not be disputed but some flaws and inconsistencies invite perusal.

The MILF is dissatisfied with R. A. 9054 and the ARMM so that in the MOA-AD it is proposing a new autonomous region, the BJE. Why should the MOA-AD be struck down partly for being inconsistent with the ARMM and its organic law? Necessarily, they have to be different since the BJE is being proposed as an improvement of or an alternative to the ARMM.

This will be the home for this Moro child and his family while the war between the Bangsamoro Forces and the government forces is far from over.

The ancestral domain in the MOA-AD is the territory of the BJE, the extent of its political jurisdiction and the source of its economic existence. Why should it be restricted to the IPRA when its purpose and the concept of ancestral domain are different?

Curiously, though, it may be asked: How critical are the inconsistencies discussed by the Court pertaining to R.A. 9054, R.A. 8371 and UN DRIP?

"Bangsamoro People"

The Court found the definition of "Bangsamoro people" in the MOA-AD inconsistent with that in R.A. 9054. It ruled: "Article X, Section 3 of the Organic Act of the ARMM is a bar to the adoption of the definition of "Bangsamoro people" as used in the MOA-AD."

In Consensus (Paragraph) 1, Concepts and Principles of the MOA-AD, "Bangsamoro people" is extensively defined:

(a). Essentially: "It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as "Bangsamoro."

(b). Historically: "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 of its descendants whether mixed or of full blood."

(c). Inclusively: "Spouses and their descendants are classified as Bangsamoro."

(d). Optionally: "The freedom of choice of the Indigenous people shall be respected."

In Article X, Section 3 of R.A. 9054, the "Bangsamoro" is "Moro" or "Muslim". It states: As used in this Organic Act, the phrase "indigenous cultural community" refers to Filipino citizens residing in the autonomous region who are:

(a). Tribal peoples. These are citizens whose social, cultural and economic conditions distinguish them from other sectors of the national community; and

(b). Bangsa Moro people. These are citizens who are believers in Islam and who have retained some of their own social, economic, cultural and political institutions.

The Court commented that "Bangsamoro" as used in the MOA-AD "sharply contrasts with that found in Article X, Section 3 of the Organic Act, which, rather than lumping together the identities of the Bangsamoro and other indigenous peoples living in Mindanao, clearly distinguishes between Bangsamoro people and Tribal peoples".

Is the Court correct?

Flawed

Definition is generic. It generally distinguishes a class or group (genus) and its members from other classes or groups and their members. The Court must be aware of this.

However, it obviously did not consider the flaws in the definitions in R.A. 9054. Look closely. "Tribal people" and its "member tribes", as defined, are not distinguishable from "slum dwellers" and "poor rural communities". "Bangsa Moro people", principally "believers in Islam" ("Moro" or "Muslim"), has attributes not distinguishable from tribal people – who also "have retained some of their own social, economic, cultural and political institutions".

"Bangsamoro" was coined by the Moro rebel leaders in the late 1960s as their identity and that of the Moro people and others sympathetic to their cause. Some in the media used "Bangsa Moro" and until today the two could still be interchanged. Congress used the second form. By its nuances known to the Moro Front leaders, "Bangsamoro" must be distinct from "Bangsa Moro".

The Court is wrong. There is no "lumping together" of identities in the MOA-AD. On the other hand, the Court has confused "Bangsa Moro" with "Bangsamoro", presuming they are the same. While the Court is confused, in either the MOA-AD or R.A. 9054, the distinction is clear.

In the MOA-AD, "Bangsamoro people" consists of "all Moros and all indigenous peoples of Mindanao. "Bangsa Moro" in R.A. 9054 is "Moro" in MOA-AD. "Tribal peoples" in R.A. 9054 is "indigenous peoples" in MOA-AD. Generically, "Indigenous cultural community" in R.A. 9054 is "Bangsamoro" in MOA-AD.

Viewing it from another angle may help the Court clear its confusion.

MOA-AD viewpoint: The Bangsamoro people consists of the Maranaos, Maguindanaos, Tausugs, etc. (Moros) and the Manobos, Blaans, Tedurays, etc. (indigenous peoples).

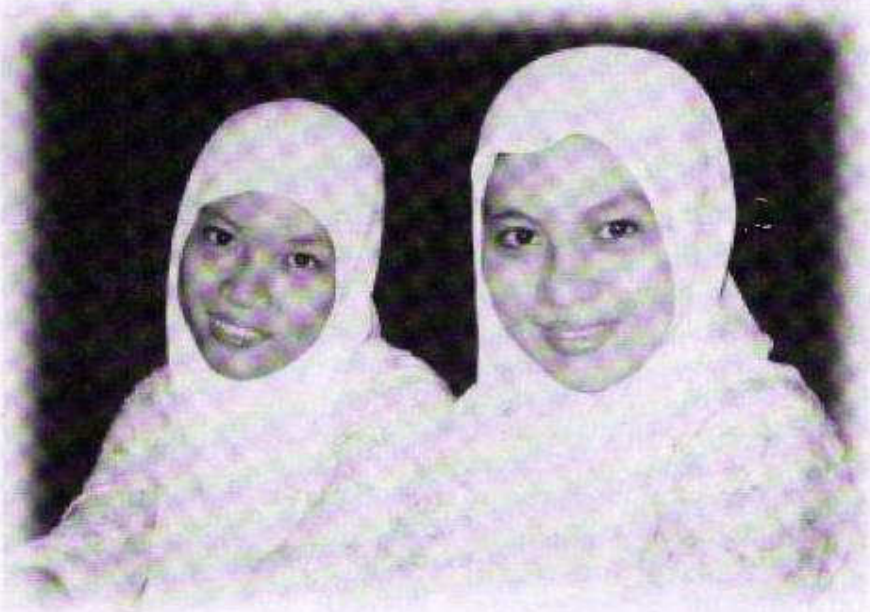
R.A. 9054 viewpoint: The indigenous cultural community consists of the Maranaos, Maguindanaos, Tausugs, etc. (Bangsa Moro) and the Manobos, Blaans, Tedurays, etc. (Tribal peoples).

Indigenous

Another question may arise: In the MOA-AD, the Moro is distinct from the indigenous peoples. Is the Moro indigenous? Certainly! As class names, the Bangsamoro and indigenous cultural communities are the same.

used, in scholarship as well as international, regional, and state practices, to refer to groups with distinct cultures, histories, and connections to land (spiritual and otherwise) that have been forcibly incorporated into a larger governing society. These groups are regarded as "indigenous" since they are the living descendants of pre-invasion inhabitants of lands now dominated by others."

It continues: "Otherwise stated, indigenous peoples, nations, or communities are culturally distinctive groups that find themselves engulfed by settler societies born of the forces of empire and conquest. Examples of groups who have been regarded as indigenous peoples are the Maori of New Zealand and the aborigines of Canada."



These Bangsamoro women undeniably take pride of their identity, culture and religion.

The Court's concept of "indigenous peoples" essentially applies to the Moro tribes and the indigenous or tribal peoples. It states:

"Turning now to the more specific category of indigenous peoples, this term has been

Consensus (Paragraph) 1, Concepts and Principles is consistent with this concept. However, as already pointed out, the definitions in Article X, Section 3 of R.A. 9054 do not distinguish the "Tribal peoples" and "Bangsa Moro" from slum dwellers and poor rural

communities. Why strike down the MOA-AD because its correct definition of "Bangsamoro" is inconsistent or "sharply contrasts" with the flawed definitions in R.A. 9054?

UN DRIP

The Court has not pointed out any other inconsistency - or sharply contrasting provisions - of the MOA-AD and R.A. 9054. Surely there should be others. However, to show further that the MOA-AD, as presently worded, cannot be reconciled with laws, the Court lengthily referred to the UN DRIP (United Nations Declaration on the Rights of Indigenous Peoples).

Pursuant to Article II, Section 2 of the Constitution stating that the Philippines "adopts the generally accepted principles of international law as part of the law of the land", the Court recognizes the UN DRIP adopted by the UN General Assembly on September 13, 2007 with the Philippines as among the 143 signatories. It applies to the Philippine indigenous peoples.

The Decision quoted Articles 3, 4 and 5 of UN DRIP recognizing "the right of indigenous peoples to self-determination, encompassing the right to autonomy or self-government", noting that this only means right to "internal self-determination" - not "external self-determination" or secession. Comparing the three articles to the Concepts and Principles of the MOA-AD would is a revelation.

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. (Emphasis by the Court)

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous function. (Emphasis by the Court)

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

The Court also quoted some of the UN DRIP articles (Articles 8, 21, 26, 30, 33, 37 and 38) that particularly define "the extent of self-determination". They closely and positively compare with the MOA-AD.

The Court concluded:

"Assuming that the UN DRIP, like the Universal Declaration of Human Rights, must now be regarded as embodying customary international law ... the obligations enumerated therein do not strictly require the Republic to grant the Bangsamoro people, through the instrumentality of the BJE, the particular rights and powers provided for in the MOA-AD." Of course! UN DRIP, like any other international laws are persuasive, not coercive.

Then, the Court qualified: "Even the more specific provisions of the UN DRIP are general in scope, allowing for flexibility in its application by the different States." Alluding to the MOA-AD, it enumerated two instances:

The UN DRIP does not require that "States now guarantee indigenous peoples their own police and internal security force".

The UN DRIP does not acknowledge "the right of indigenous peoples to the aerial domain and atmospheric space".

Why Not?

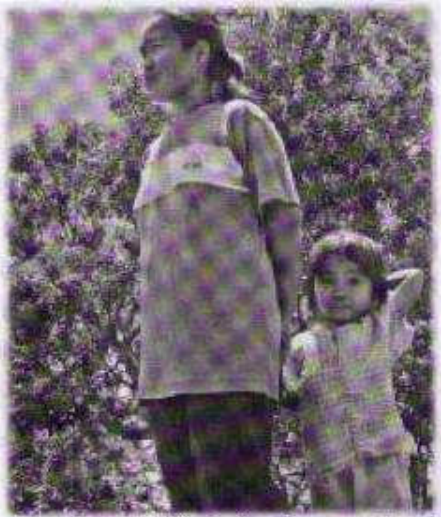
Most of the rights of the Bangsamoro people and the powers of the BJE provided in the MOA-AD are consistent with the UN DRIP. In the opinion of the Court, the Philippine State is not obliged to grant them. Is it because the MOA-AD will make the BJE more autonomous than the ARMM and allow the Bangsamoro people to enjoy more autonomy than they do now?

In "1" above, the Court is saying that the BJE cannot have its own police and security force. But the Regional Police or Regional Security Force was provided in the 1996 FPA, Paragraphs 77 to 93 and in R.A. 9054, Article X. The MOA-AD includes "police and security force" – not military force – among the institutions of the BJE (Consensus 8, Governance). Why deny the BJE what has been allowed the ARMM?

The "2" above has no precedence. However, on the very slim chance that the Court would reconsider its Decision, should the negotiation resume on the unsigned MOA-AD, the lack of acknowledgment in the UN DRIP should not be the reason for the Philippine State not to grant it if the MILF can show convincingly its necessity.

Will the Court admit some inconsistencies in its Decision and reconsider?

Remember the biblical story of King Herod of the Jews and the Slaughter of the Innocents? He ordered all infants in Bethlehem killed in his fear that one among them was the Infant Jesus, the new born King of Kings, who someday would dethrone him.



A mother and her daughter patiently wait for some relief assistance.

The Court "slew" the MOA-AD believing that the BJE it proposed to create as an autonomous entity much more autonomous than the ARMM will someday secede from the Philippines. The Court's option, despite the more than 2,000-year gap, has striking similarity to King Herod's.

And the Decision bears these other options concerning the peace process.

Final Option

The Court restrained the signing of the MOA-AD instead of restraining itself from issuing the Temporary Restraining Order. In doing so, the Court opted to restrain the peace process.

The Court struck down the MOA-AD as unconstitutional instead of withholding judgment until the GRP and MILF peace panels could complete the series of negotiations that should have ended with the Comprehensive Compact. In doing so, the Court opted to cut off the peace process.

The Court acknowledged the unique powers of the President to negotiate peace and the need to give her the leeway to exercise these powers in order to succeed. But in striking down the MOA-AD, the Court opted to repudiate the President's unique powers and to deny her the necessary leeway to negotiate successfully with the MILF.

It should not be said, however, that the Court is anti-peace. After striking down the MOA-AD, it suggested to the President two final options: (1) renegotiate the present MOA-AD, meaning, the unsigned text; or, (2) negotiate a new agreement similar to or significantly dissimilar from the unsigned text – suggesting, as stated below, that some provisions of the unsigned MOA-AD may be adopted while others should be disregarded and new ones introduced.

As part of its 14-paragraph summary, the Court said: "The MOA-AD is a significant part of a series of agreements necessary to carry out the GRP-MILF Tripoli Agreement of Peace signed by the government and the MILF back in June 2001. Hence, the present MOA-AD can be renegotiated or another one drawn up that could contain similar or significantly dissimilar provisions compared to the original."

Earlier, after stating the above, the Court noted:

(1) that the Executive Secretary had said that the government "is committed to securing an agreement that is both constitutional and equitable because it is the only way that long-lasting peace can be assured";

(2) that the Court was "reminded to render a decision on the merits in the present petitions to formulate controlling principles to guided the bench, the bar, the public and, most especially, the government in negotiating with the MILF regarding Ancestral Domain".

It should be noted that the verb phrase "can be renegotiated" in the summation above is both in potential and permissive mood. The Court might not have intended it; but, subconsciously, it is giving the President the permission to renegotiate with the MILF with its Decision on the petition against the MOA-AD as the guide or controlling principles.

Is the Court correct? Is it not overstepping into the separate powers of the Executive?

The Court said that while "the authority of the President to conduct peace negotiations with rebel groups is not explicitly mentioned in the Constitution", it "is implicitly included in her powers as Chief Executive and Commander-in-Chief" – describing these powers as "uniquely vested" and the President as being "in a singular position to know the precise nature" of the grievances of the rebels". Necessarily, this authority must include the power to set guidelines.

It is the exclusive competence of the Court to resolve any issue on constitutionality. Is it also within its competence to prescribe its Decision as "controlling principles" to guide the government [read: President] in negotiating with the MILF?

> Does the Court imply that it was not inclined to render decision on the constitutionality of the MOA-AD at the outset? Who reminded it to do so?

The Court revealed that it was the government's commitment to secure an agreement with the MILF – citing the Executive Secretary – that compelled it to decide on the constitutionality of the MOA-AD; and it was reminded to render decision on the merits of the petitions in order "to formulate controlling principles".

Does the Court imply that it was not inclined to render decision on the constitutionality of the MOA-AD at the outset? Who reminded it to do so? Are there powerfully influential groups or individuals who do not want the government to negotiate with the MILF?

Out-of-Issue

Defining the powers of the President and their limitations was necessary to the resolution of the second substantive issue, "Do the contents of the MOA-AD violate the Constitution and the laws?", in particular reference to Consensus (Paragraph) 7, Governance. But limiting the President's authority to negotiate through "controlling principles" was unnecessary – not called for in the issue.

The Court has acknowledged that "the President is in a singular position to know the precise nature of their [rebel groups] grievances which, if resolved may bring an end to hostilities". Are those controlling principles compatible with the President's precise knowledge about the grievances of the rebel groups and the necessary solutions?

Consider the following three instances:

Because of her "singular position to know", the President can "explore ... solutions that may require changes to the Constitution for their implementation". This was exactly what the President did through her negotiators to arrive at the MOA-AD. Yet, the Court struck it down because it "contains numerous provisions that cannot be reconciled with the Constitution and the laws as presently worded" — acknowledging and closing the leeway at the same time.

One of these solutions is "associative relation with shared responsibility". The Court agreed that the MOA-AD "contains many provisions which are consistent with the international legal concept of association". Yet, it said that the "concept of association is not recognized under the present Constitution" – despite that the Constitution can be amended to implement such solution on the recommendation of the President.

These solutions explored would make the BJE, the political entity created by MOA-AD, more autonomous than the ARMM. Yet, the Court protested that the "BJE is a far more powerful entity than the autonomous region recognized by the Constitution".

There are many more instances. They follow the same pattern. The solutions explored by the President are deemed inconsistent with the "controlling principles" formulated by the Court.

Layman's View

According to the doctrine of check and balance, the Court can tell – or even censure — the President her mistakes. But after that, according to the doctrine of separation of powers, the Court must not tell the President what to do and what not to do. Leave the President alone, with the help of her legal advisers, to

learn from her mistakes and do the necessary repairs. This seems not so in the MOA-AD case.

The Decision is quite revealing. The out-of-issue option is really a consolation. The justices, all but two being appointees of President Arroyo, might have felt uneasy in rebuffing her. So, they tell her, "All is not lost. Here's what can be done to salvage the peace process." That would also give hope to the peace advocates.

> ... according to the doctrine of separation of powers, the Court must not tell the President what to do and what not to do.

That the Court admitted it was reminded "to render a decision on the merits of the petitions to formulate controlling principles" — as a reaction to the government commitment to secure a peace agreement with the MILF — is also revealing. The justices are not immune from influence and pressure of political and other leaders and opinions in the media despite the much vaunted independence of the Court.

President's Call

What now will the President do? Which of the two options will she take? Can she achieve much in the one year and a half that remains of her term?

She can take the first option. Metaphorically, the infrastructure is in place. She must reappoint the same peace negotiators since they already have established rapport and goodwill with their MILF counterparts. Most important, they know the problem. With the unsigned MOA-AD text as the framework and, hopefully, with Malaysia facilitating, the controversial provisions can be ironed out and the negotiation of the Comprehensive Compact finished in 15 months.

Taking the second option will be complicated and contentious, especially if the government will field an entirely new negotiation panel. It took three years and eight months to steer the unsigned MOA-AD through contentious waters. Expect the same difficulty in agreeing on which provisions to adopt and what new provisions to substitute. The impasses will maybe be more frequent than in the past.

In either option, the President has to summon her will to conduct the negotiation according to her authority and power as – according to the Supreme Court – Commander-in-Chief and Chief Executive. The so-called "controlling principles" constrict her leeway very narrowly.

With her authority and powers, she can negotiate on the balance of Moro self-determination and national sovereignty and territorial integrity. That will be following the essence of the Constitution; solutions not in the present Constitution can be recommended to amend it.

Balancing Moro self-determination with national sovereignty and territorial integrity is essentially the same principle that the Organization of Islamic Conference prescribed as the basis of the GRP-MNLF negotiation in 1976: "... a just solution to the plight of the Filipino Muslims within the framework of the national sovereignty and territorial integrity of the Philippines..."

Maybe the President will prefer the multi-faceted "new peace policy" she hastily formulated around DDR (demobilization, disarmament, reintegration) and dialogue with communities immediately after the breakout of the MOA-AD controversy. But that looks doomed before take off. In the 1970s, President Ferdinand E. Marcos resorted to that to neutralize the MNLF. Will Arroyo succeed where Marcos failed?

Pres. Gloria Macapagal - Arroyo

With the MOA-AD struck down, the peace process is in distress. The Arroyo government, whether in sincerity or pretense, wants to salvage it. The MILF has not abandoned its quest for peace, so it says. The Supreme Court, while derailing the peace process has suggested two options to put it back on track on the wreckage of the MOA-AD. President Arroyo has the final option.

(Patricio P. Diaz was honored by the Brandsma Media Awards in 2002 with a "Lifetime Achievement Award" for his "commitment to education and public information to Mindanawons as Journalist, Educator and Peace Advocate.)

Fundamentalism
A Challenge to Our Partnership

By **FR. ELISEO "JUN" MERCADO, JR., OMI**

Muslim and Christian partnership is a major issue and concern in the work for peace in Mindanao. This has been made more complex by the rise of a new wave of fundamentalism, both in Islam and in Christianity in our contemporary times. Coupled by the tragic legacies that have marred our relationships, the question of Muslim and Christian partnership has become a more problematic task. Biases and prejudices are as strong as ever, if not stronger. Often our perception of each other is shaped more by historical memory and the mass media than by actual knowledge and factual experiences.

Today, the rise of fundamentalism is a single factor that seems to block Muslim and Christian partnership. The new wave of religious fundamentalism is not a monopoly of Islam. Tragically, our secular humankind understands this new religious awakening in a very narrow sense. Various religious revivalist movements in Islam as well as in Christianity or in other religious traditions are, often, lumped together under a generic label of religious fanaticism. Often, this religious "strain" is interpreted as a reaction to the present secular realities.

...our perception of each other is shaped more by historical memory and the mass media than by actual knowledge and factual experiences.

Yet, the religious revivalist movement is much wider and broader. Muslims themselves, like their Christian counterparts, do not accept the label of fundamentalism to describe the present religious re-awakening. For one thing, religious re-awakening differs from country to country. In fact, it is as complex as the very relations between Muslims and Christians.

Fr. Eliseo "Jun" Mercado, Jr., OMI

As in the Christian re-awakening movement, the Islamic one is a desire and a determination to "return" to the perceived "basics" or "fundamentals" of the religious tradition. There are those who are inspired by the ancient religious "grandeur" and want to replicate, in our present time, the institution and praxis of the so-called "golden era".

On the other hand, there are those who attempt to recapture the dynamism of religion and reconcile it with the exigencies of a modern and technological era and the condition of globalization in which old rules cannot possibly remain unaltered. Then there are those who embrace the new wave of religious re-awakening to oppose the increasing secularizing trends of contemporary society.

There are four basic common characteristics of current religious revivalism.

First, there is the accepted blueprint of societal as well as individual life. Rightly or wrongly, they believe that God gives this blueprint in the revelation. The blueprint is completed and/or nearing completion. The "believers" are called upon to either re-produce or hasten the realization of the said blueprint in our times.

Second is the fact that religious revivalism is a reaction to the contemporary secularizing trends that are perceived as menace to the faith of the individuals and the community. The adherents of this movement believe that this new "modernism" and the perceived moral and social "corruption" threaten to destroy the very fiber of the traditional mooring of the individuals and societies. Revivalism, in this sense, is a strong reaction to the present social and moral order that is perceived as a new "paganism".

Third, religious revivalism gives answer to the individual's needs for healing and identity. No doubt, the "woundedness" and injustice, particularly the structural violence that reduces

the greater number of people to poverty, seek healing and redress. The religious re-awakening movements focus on this individual and communal "brokenness" and the necessity of healing by way of strict adherence to the imperatives of faith as given in "illo tempore". In the same vein, the growing alienation of people in our contemporary world surfaces the need for identity and belonging where lines and parameters are clearly defined and delineated. Often, these parameters are also God-given thus cannot be changed or modified at all times. The religious revival movements give "security" and identity as well as belonging to individuals and groups who are considered "saved" or "redeemed" constituting the new "Holy Nation".

Fourth, the new revivalism is seen as an alternative vis-à-vis the growing arrogance of the state to think and decide for all. The imposition of a uniform economic and social order in this era of globalization threatens to destroy the specific character of peoples, nation and individuals. The new revivalist movements take this power from the state and business and restore it to God.

There is, today, a strong belief that the new surge of religious revivalism in the world is the single factor that erodes the inter-religious dialogue and collaboration that have gained currency in the post-Vatican II era. Religious re-awakening both in Islam and Christianity as in other religions has taken an "exclusivist" form that views all others as "foreign" bodies and source of contamination and defilement.

Moreover, the new religious revivalism is bringing to the fore the lingering resentment and injustices of our past relationships. These are easily resurrected since the resentment and prejudice are deeply embedded in the psyche of Muslim-Christian encounters. With few exceptions, there is really no mutual openness between Muslims and Christians but a steady accumulation of bias. These have developed into a sort of exclusivity of culture and identity, drawing all things into a calculated "otherness" and reciprocity.

...the new religious revivalism is bringing to the fore the lingering resentment and injustices of our past relationships.

Another view has gained popularity in our globalized era beginning from the mid 1990s with the publication of Prof. Samuel Huntington's seminal work, "The Clash of Civilizations." This view sees the historical territorial contests between "Islamic" and "Christian" powers from the seventh centuries (in the Middle East, North Africa, Europe and Asia) to the present (in the Persian Gulf and again in Asia, Middle East and Africa) as instances of the "clash of civilizations".

In a similar vein, in some segments in the Muslim world, the perceived "Christian" or Western dominance in the globalizing trends of new world social and economic order is seen as another form of territorial contest that undermines the true course of Islamic history. All these readings of the "clash of civilizations" are familiar enough and part of our present problem. Often, they exercise tyranny over our spirits. They have produced a culture and a habit of suspicion and confrontation that make partnership and dialogue truly a very difficult task. It requires a commitment and determination to steadily school our hearts and minds to resist and reject the habit of preferring suspicion to trust, and the instinct to prefer the familiar confrontation to a new relationship of partnership in the world that is in difficult transition.

(Fr. Eliseo "Jun" Mercado, Jr., OMI was President of Notre Dame University in Cotabato City in 1992 to 2002. He served as the Director for Justice, Peace & Integrity of Creation for the OMI based in Rome from 2003 to 2006. A recognized expert on the role of Islam in Southeast Asia and the Philippines, Father Mercado was designated Chairperson of the Independent cease-fire Monitoring Committee of the Philippine Government and the Moro Islamic Liberation Front (MILF) and the Floor leader of the Consultative Assembly in the transitional Special Zone of Peace and Development in Southern Philippines.)

Just how important is MOA-AD to the Moro people?

Mohagher Iqbal, the chief negotiator of the Moro Islamic Liberation Front (MILF), said the document contains the political solution to the age-old problem of the Bangsamoro people.

He said that the Bangsamoro's age-old problem had something to do with self-governance. The Bangsamoro people, who used to be under the rule of a Sultanate, lost their self- governance when Spain included Mindanao in the sale of the Philippines to the United States in the Treaty of Paris in 1898, despite the fact that Spain never really conquered Mindanao as part of the colony.

Mohagher Iqbal

How can it sell something that it did not own in the first place? Bangsamoro scholar Abhoud Syed M. Lingga asked in a 2002 paper he presented to a tri-people's (Lumads, Muslims and Christians) gathering in Davao.

Iqbal always referred to the official granting of Philippine independence by the Americans in 1946 as the beginning of the "annexation" of Mindanao to the Philippines. He said the Moro people were not asked whether they wanted to be included in the Philippines or not.

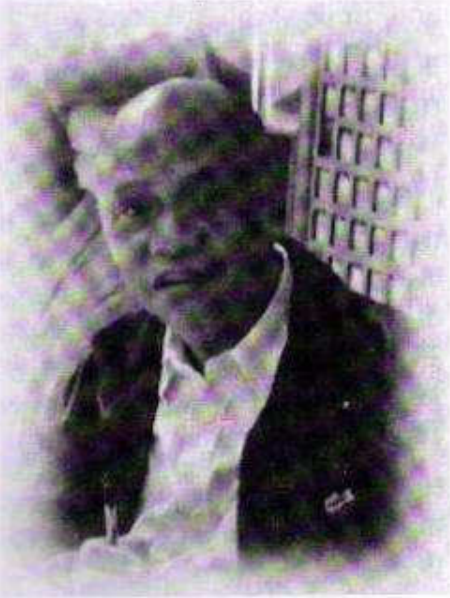
Lingga said that Bangsamoro leaders did not want to be part of the Philippine republic during the granting of its independence from the United States.

In his paper, "Referendum: A political option for Mindanao," Lingga said Moro leaders even wanted the islands of Mindanao, Palawan and Sulu cut off from the Philippines in 1924, expressing their desire to be a US colony because they hoped that later on, they will be granted independence as a separate state under the UN declaration on de-colonization.

According to Iqbal, the MOA on ancestral domain would have been a step toward the Bangsamoro people's right to self- determination because it would have given the Moro Islamic Liberation Front (MILF) the authority over territories covered by the BJE.

"It gives back to our people their lost sovereignty, their right to govern themselves either in the form of state or substate," he said. "The right to self determination is the collective right of people to determine their political status and to pursue their social, economic development."

Various United Nations instruments have enshrined the people's right to self determination, including Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 1 of the International Covenant on Civil and Political Rights (ICCPR), which states that all "peoples have the right to self-determination, by virtue of which, they freely determine their political status and freely pursue their economic, social and cultural development."



Abhoud Syed Lingga

Iqbal said that BJE's powers have yet to be spelled out in the comprehensive compact, which was supposed to be the third and the last agenda in the talks between the government and the MILF.

"Without BJE, which is the framework agreement, the comprehensive compact cannot be crafted," Iqbal said.

Under the BJE, the MILF had settled for "shared authority" in

terms of territory, resources and governance. Iqbal said 'shared authority' is different from 'shared sovereignty,' which the MILF initially asserted but eventually compromised, because the government construed it to mean "granting independence" to MILF.

"The GRP is afraid to open (granting independence to MILF) because of its many crimes against the Moro people and because of vested interests of political warlords and business oligarchs," Iqbal said.

BJE also redefines the relationship of the Bangsamoro and the Filipino people, according to Iqbal. After Mindanao was included in the territories that made up the Philippines, he said, the Moro people have become "second class" citizens.

"It is rare for the Moro people to occupy positions in the bureaucracy," he said. "Who is the President? Who are the senators? Who own big companies in Mindanao? Who heads the military and the police? Who are the big landowners?" he asked.

He explained that the BJE would have redefined such 'lop-sided' relationship.

Most of all, the BJE recognized the Moro people as the "First Nation," which Iqbal said, meant they're the original occupants of Mindanao. The document defines the First Nation as a "domestic community" distinct from the rest of the national community, which has a "definite historic homeland." The First Nation has a "defined territory" and a "system of government."

Iqbal claimed the former Sultanates that governed Mindanao had entered into "treaties of amity and commerce" with foreign lands, as proof of this advanced system of government.

In the book "Bangsamoro, a Nation Under Endless Tyranny," Salah Jubair, (Iqbal's pseudonym) said the Sulu sultanate, considered even more superior than the Brunei sultanate, ruled the entire Sulu archipelago, Basilan, Mindoro, Palawan and Sabah in 1450.

He said the Maguindanao sultanate, at one time headed by Sultan Dipatuan Muhammad Qudarat, had once controlled the whole of Cotabato, Lanao, Davao, Misamis, Bukidnon and Zamboanga during its grandest time in 1619.

Amirah Lidasan, president of partylist group Suara Bangsamoro, said the BJE is just a piece of paper that recognized the birthright of all Moros as original inhabitants of Mindanao, Palawan and Sulu. For Lidasan, BJE also defined the ancestral domain of the Moro people, by including those villages where the Moro live.

In the 1890s, the Moro people controlled ninety percent of Mindanao but now they own only about fifteen percent of the land in Mindanao, Lidasan pointed out.

Among the Bangsamoro people are 13 ethnolinguistic tribe which include Kalbogan, Jama Mapun, Badjao, Tausug, Samal or Sama Bangingi, Maranao, Iranon, Maguindanao, Yakan, Sangir, Kalagan, Palawanis and Molbog in Palawan.

Lidasan referred to the Sulu sultanate, founded in 1450, as the oldest and the most developed.

Jubair said that before the turn of the 20th century, the Moros

Amirah Lidasan

owned ninety-eight percent of the lands in Mindanao and Sulu but several land laws during the American colonization have taken the land away from them.

Public Land Act No. 718, enacted by the Philippine Commission under the Americans, nullified all land grants made by Moro leaders or any Christian tribes without the authority of the state.

The Mining Law of 1905 declared all public lands free, open for exploration, occupation and purchase. This particularly included Mindanao.

Commonwealth Act No. 141 limited the lands that the Moros could apply for titling to not more than four hectares; while Christian settlers are allowed as much as 24 hectares; and corporations as much as 1,024 hectares.

Several other land laws stole the lands of the Moros for big agricultural corporations, Iqbal wrote.

But Lidasan said the BJE should ensure that the plunder of lands in Mindanao should stop. Lidasan said Suara is wary of the provision in the BJE that continues existing mining concessions and timber licenses.

"How can we say that we are Bangsamoro if the lands where we are standing are already owned by big plantations and mining companies?" asked Lidasan.

Lidasan also said that they are wary of the US government intervening in the BJE because of the provision that allows joint ventures in developing and utilizing the resources.

"Will it still be an ancestral domain if foreign corporations already have claims over the land?" she asked. Lidasan said the right to self-determination would not be realized if societies under the BJE are still oppressed.

Lidasan said that the Moro people continued to be displaced from their communities to give way to projects of big multi-national corporations. She said the government's all-out war against bandits like the Abu Sayyaf and the Jemaah Islamiya also displaced civilians from their communities.

In 2000, the government's all-out war against the MILF, killed over a hundred civilians and displaced 100,000 in Maguindanao, North Cotabato, Lanao del Sur and Davao Oriental; the "Silent War" (as she referred to the discreet entry of US troops for counterinsurgency operations) in 2000-2002 in Sulu; the attack of Buliok Complex in February 2003, displaced 160,000 and killed 12 people and nine children in Pikit, North Cotabato and Pagalungan, Maguindanao (Liguasan Marsh).

In July 2001, the declaration of the "state of lawlessness" in Basilan, Zamboanga city and Sulu, forced 20,000 to leave their homes and led to the illegal arrest of 500 people.

Even the twin bombing of the Davao airport and Sasa wharf in 2003 led to warrantless arrests of Moro people in Cotabato and Davao City, Lidasan said.

The failed signing of the MOA-AD reminds the MILF of the failure

Nur Misuari

of the Moro National Liberation Front's peace negotiation with the government. If there is a lesson that MILF learned from MNLF, it is that the government will take back what it has conceded once the agreement is signed, Iqbal said.

Nur Misuari, MNLF chair, signed the Final Peace Agreement (FPA) with the Ramos administration in 1996. Iqbal said the Arroyo government cannot be trusted.

But no matter what happened to the MOA-AD, the MILF will continue the struggle for the right to self-determination, which is still the key to a lasting peace in Mindanao, Iqbal said. "There is no easy path," he said. "But we will move forward." *(Grace S. Uddin/ Davao Today)*

These evacuees cook their meals in a makeshift kitchen in an evacuation center. Food supply usually comes from various non-government organizations and government agencies.

From Estrada to Arroyo's war

By **AYESAH U. ABUBAKAR**

The former president Joseph Estrada declared an "all-out-war" against the Moro Islamic Liberation Front (MILF) in 2000 that lasted for nine months.

A perfect icon for war, he made good his acting as a soldier-president fully dressed in green fatigue leading his military troops to annihilate the rebels. And just as fitting as a war hero, for every military success, he went to visit the captured MILF camps and feasted on victory.

The Philippine media had a field day. They had great pictures of war - Estrada as the superstar-complete with his sensational war statements like, "*pupulbusin natin sila* (pulverize them)".

These two mothers spend time with their children in their makeshift shelter in an evacuation site in Talayan, Maguindanao.

Those were very painful days for every Moro—whether they were in Mindanao, Manila, or elsewhere. It was painful because the greatest casualties had been the vast majority of the Moro people, besides the military soldiers of course.

Not only did the war bring out physical affliction and hardship, it also opened deep wounds of discrimination and biases. While, at that time, I may have been fully integrated to the Philippine society having grown up in Manila, the reality of the conflict in Mindanao did not escape me.

Those nine months of horror became a baptism of fire for me. Suddenly the words "Abu Sayyaf", "Camp Abubakar", "MNLF, MILF" (without necessarily knowing the difference) had become familiar lingo to the Filipino society to the point of using it as part of daily humour. My own friends, and even acquaintances, would ask me about some of these words. Sometimes, they would jokingly say, "Do you own Camp Abubakar?" and most of the time, I would laugh with them. However, after a while, I stopped laughing at these jokes or insinuations. Instead, I started to feel a sense of pain and unhappiness on how the Moro identity and the rest of the Moro people are generally viewed in Manila. It made me think how callous society can be to think that the war that is being waged in Mindanao is an acceptable reality...that Estrada is right in crushing the Moro rebels at all costs in order to achieve peace in Mindanao.

The "all-out-war" context made me realize that perhaps, what peace really means to President Estrada, and all those who support his view, is for the Moro people to be banished from their own homeland.

For the very first time, I actually felt something that none of my

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other Filipino friends seemed to understand. Later on, it was only with my Moro friends with whom I had found the same feelings of frustration and great concern for the plight of the communities bombarded by deafening sound of aerial bombings and exchanges of firefights.

To the majority of the people of Manila, the war in Mindanao was so distant and amusing as another cinematic feat of an actor-president—it was so casual and entertaining just like watching a movie.

their memory would be filled with the never-ending war in Mindanao, and how the Moro areas remain to be the last frontier of the country.

Undeniably, the war in Mindanao has brought me back to my ancestors' history. It did not only help renew my own identity as a Moro, but it also inspired me to search for solutions to the problems that continue to plague us in Mindanao. While in the beginning I subscribed to the notion that is education and development that would bring

Young Bangsamoro women undergoing Human Rights Documentation Training in Cotabato City.

While among my Moro friends and families, it was like we are made to understand that the life and future of a Moro is not as valuable as another Filipino. And that if we are to survive in Mindanao and in the Philippines, we would have to live by the dominant culture, identity, and other social systems. Sadly, this would also mean that we can only be contented with vague recognition among my Filipino friends that I must have come from some sort of Moro royalty (a usual generalization among Filipinos in Manila when they meet a Moro person as they view this as exotic), while the rest of

about a better future for the Moro people (having been trained in development work), I have also come to understand that this will not end the injustices that we will continue to experience under the Philippine State.

Our historical and ongoing relationship with the State has not shown any change for the better, but instead has worsened the condition of our communities. Consequentially, the "all-out-war" and all other succeeding armed conflict waged by the State will continue to make the people poorer, hopeless, and as a natural impact, it is these wars that further marginalize our status and value as a people in their very own homeland.

Granting after every war, the State does mobilize all its resources to bring education and development to Mindanao, does it actually guarantee the Moro people of being fairly treated as decision makers of their own destinies? Or will it continue to promote an outsider's intervention mode of development with little respect of what the people actually want for themselves? Will this kind of development bring us forward to a future of reconciliation in spite of an absence of a closure from our violent and unjust history as a result of the conflict?

It is therefore upon these questions that I have shifted my view to a need for conflict resolution in Mindanao through peaceful means in contrast to the tactical development oriented solution. There is no other way but for the State and the Moro people to forge a peace agreement and a new relationship for the future. There is no easy road to peace, and surely, any use of military means will take us a much longer path ahead.

As soon as the spirit of Edsa 2 succeeded in overthrowing president Estrada, his successor, President Gloria Macapagal-Arroyo was quick to reverse a pro-war stance to an "all-out-peace" government policy towards all the revolutionary groups, including the MILF. I was one of those in euphoria. After all, I, too, took part in Edsa 2 and helped her become president overnight.

However, since the peace negotiations between the government and the MILF commenced in 2001 with

Malaysia as its third party facilitator, it had been a very difficult process. We have witnessed the forging of some of the initial agreements and having these agreements implemented, again, with much more difficulties (like the establishment of the Bangsamoro Development Agency) which idea was welcomed with mixed reactions by civil society itself in the beginning.

While the peace talks were conducted steadily, the armed violence that is escalated from time to time had threatened the whole process. It was only up until the International Monitoring Team (IMT) was deployed that we saw a more stable ceasefire situation in Mindanao. The relative peace had bought us some dividends and had enabled more development initiatives by various NGOs, government agencies, and donor agencies. This period has also allowed increased activities on the promotion of peace education and peacebuilding work by civil society groups. These two strategies are very significant foundations because these will ensure sustainable peace in Mindanao.

President Gloria Arroyo's management of the conflict in Mindanao and her goal for achieving peace with both the MILF and the Moro National Liberation Front (MNLF) has always been a puzzle. Although she appears to give her support to her government panel of peace negotiators and other agencies working towards her peace agenda, at the same time, she has been thrifty in unequivocally declaring her priority for peace in Mindanao.

Instead, she has always been very vocal in throwing her support to political allies and advisers who are more comfortable in using military power as a means to demonstrate her strength as a national leader.

In her 2008 State of the Nation Address, there were six lines dedicated that mainly asks the legislative bodies to support a move for constitutional changes that will hopefully implement the government's peace deal with the MILF.

However, knowing that there is already a deep resistance towards chacha, she couldn't get any further by assuring that her intentions are clear—to bring peace to Mindanao, and not to use this as part of her own political agenda.

Another great example is how she embarked on her succeeding reactions and actions upon the stopping of the signing of an agreement with the MILF as caused by a temporary restraining order in the Supreme Court.

When her own government peace panel, OPAPP, and secretary for Foreign Affairs are put in an embarrassing situation arriving in Putrajaya, Malaysia but not being able to deliver its commitment, she has embarrassed her own leadership all the more when she allows her Solicitor General to tell the Supreme Court that the officials sent to Putrajaya did not have her authority to sign any agreement. As the Arroyo administration takes the heat of opposition to the Memorandum of Agreement on Ancestral Domain from political enemies and from its own allies, it found a great opportunity, again, to demonstrate its "strong leadership" by waging war with the MILF.

> The "all-out-war" context made me realize that perhaps, what peace really means to President Estrada, and all those who support his view, is for the Moro people to be banished from their own homeland.

The president had to blame and fire its own peace negotiators, suspend the peace talks, and challenge the MILF to surrender (its commanders and accept an immediate DDR implementation) if it wants to move for peace.

And recently this September, while many people from Mindanao (as part of the Mindanao People's Caucus advocacy) appeal to her to put a stop on the ongoing military offensives as it destroys homes and kills innocent civilians, she insists that this has to be done to protect the people and the territorial integrity of the country.

The president's view is not unique; it is a view she has taken together with millions of Filipinos who maintains their firm belief that the Moro people can only be tamed by the use of force. It is a view that articulates well how the MILF, as the governments counterpart party in the peace negotiations, will only be worthy if it first accepts the latter's own conditions and terms and puts itself at the mercy of the powerful Philippine military. It is also a view that upholds no equitable respect to the lives of innocent civilians who are often the collateral damage (mostly Moros) of this war.

Lastly, the President's statement and actions further divides by playing the "good cop, bad cop" game in which it allows the media and the opinion of the major influencers in Manila to capitalize on the miseries and trauma of conflict and unrest in Mindanao.

We should not lose sight that this war has been provoked by local disputes and escalated by traditional leaders who were opposing the MOA-AD.

It had become a communal conflict participated by not only some MILF commanders but also by CAFGUs and CVOs of local politicians. It was only a matter of time that these peace spoilers had succeeded in making President Arroyo take a stand—whether she values her commitments with the MILF (in their peace process), or her political allies and constituencies. The rest of it is history as we reach a full circle of this culture of war that president Arroyo's leadership continues to nurture. How then, can Philippine leaders expect the Moro people to believe in a promise for peace in Mindanao when they continue to become the victims of military rule and pawns of national and local politicking?

I have no regrets about my commitment to working for peace in Mindanao. It has taught me many life lessons and has made me proud of my identity and history—something I did not get while being assimilated as a Filipino in Manila. It has allowed me to build on more honest and meaningful relationships with the indigenous peoples and Christians in Mindanao, and in Manila, with mutual respect and acceptance. It has earned me new friends, who, this time, do understand how I feel when another war is waged in Mindanao—mostly because they, too, have found themselves to be stakeholders in this conflict and in this never-ending search for peace.

Although leaders like presidents Estrada and Arroyo have never learned their lessons well with Mindanao, I console myself by being hopeful that their values and judgment cannot be the long lasting norm. Should the Filipino society truly want meaningful change, it would have to recognize that it is a nation of diverse peoples. And as a credible and strong nation that is part of the international community of nations, it must fully embrace a culture of peace, not war, as its societal value.

I wish to end this article with the following verses from the Quran. May be all be blessed!

"But if the enemy inclines towards peace, do you (also) incline towards peace, and trust in God: for He is the One that hears and knows (all things). Should they intend to deceive you,—verily God suffices you: He it is that has strengthened you with His aid and with (the company of) the Believers; And (moreover) He has put affection between their hearts: not if you had spent all that is in the earth, could have produced that affection, but God has done it: for He is Exalted I might, Wise. O Prophet! Sufficient unto you is God, — (unto you) and unto those who follow you among the Believers.—Holy Quran: 8: 61-64

"Although leaders like presidents Estrada and Arroyo have never learned their lessons well with Mindanao, I console myself by being hopeful that their values and judgment cannot be the long lasting norm."

What is the MOA-AD in the MILF-GRP Peace Process?

By **ORLANDO B. QUEVEDO, OMI**

What is the MOA-AD?

It is the Memorandum of Agreement between the Moro Islamic Liberation Front and the Government of the Republic of the Philippines that consists of statements agreed upon by consensus between the peace panels of both parties. It deals with Concepts and Principles, Territory, Resources, Governance of the Ancestral Domain of the Bangsamoro.

Who are the Bangsamoro people?

According to the MOA, 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."

What is the Bangsamoro homeland?

Historically the Bangsamoro homeland consisted of the territory under the control or influence of the Moro Sultanates. But now as described by the MOA, the Bangsamoro ancestral domain would only include the present territorial territory of the ARMM (Autonomous Region of Muslim Mindanao) as its core and additional barangays in Region IX, XII, and Palawan. More than 700 barangays outside ARMM would be restored to the ancestral domain, subject to plebiscite within 12 months after the signing of the MOA. More towns would be included, again subject to plebiscite after 25 years. Moreover, this Bangsamoro ancestral domain would consist of land, waters, seas, air, and other resources.

What is the Bangsamoro Juridical Entity (BJE)?

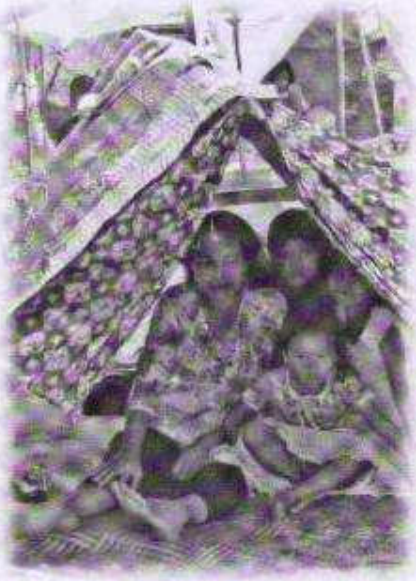
The territory described above would have a juridical personality. It is a juridical entity that would have its own form of government and would exercise authority and jurisdiction over the Bangsamoro ancestral domain.

How will the BJE relate to the Republic of the Philippines?

The MOA is silent about the issue whether or not the JBE is part and parcel of the Republic of the Philippines. Instead it recognizes "the Central Government," and establishes "associative relationship and associative arrangments" between BJE and GRP, as well as "shared authority over territory" "shared responsibility" "sharing of resources," etc., with a period of transition specifying the relationship. But the MOA also states that "The Parties shall faithfully comply with their commitment to the associative arrangements upon entry into force of the Comprehensive Compact." Therefore, it may be understood that the "relationship of associative arrangements" will continue even after the JBE shall have been "fully entrenched and established in the basic law of the BJE."

Will private owners lose their properties in the BJE?

The MOA expressly enjoins that "Vested proprietary rights upon the entrenchment of the BJE shall be recognized and respected subject to paragraph 9 of the strand on Resources." Paragraph 9 of the strand of Resources refers to forest concessions, timber licenses, contracts or agreements, mining concessions, mineral production and Sharing Agreements, Industrial Forest Management Agreements, etc. By such reference, privately owned farms and other properties would be respected by the BJE.



What changes took place through the years in the Bangsamoro ancestral domain?

To answer the question and to have a better understanding of the MOA-AD, we need to have a quick recall of history. Islam arrived in the Philippines 200 years before Christianity arrived. Eventually and before the Spaniards came a regime of sultans began. From that time on the Bangsamoro people have asserted and exercised self-determination and sovereignty over their ancestral domain, until the effective political power of the sultanates faded away. The Bangsamoro people came under the control of the Americans. The ancestral domain of the Bangsamoro people became public domain.

But even when the Americans gave independence to the Philippines, many of the Bangsamoro people continued to assert their claim to self-determination and sovereignty rather than be under the authority of the Philippine government. Successive waves of migrants from the Visayas and Luzon in the 1900s, authorized by a series of public laws, gained land titles in the form of torrens titles as against the native titles of the Bangsamoro people.

The population pattern in Mindanao significantly changed from the 1920s to the 1960s. In the 1930s the great majority of Mindanao people were Muslims and Indigenous Peoples (IP), with a small minority of Christians. By the time the waves of migrations ended in the 1960s, Christians constituted the great majority of Mindanao people, with a minority of Muslim and IPs. In other words the Bangsamoro became a minority in their own ancestral domain. Difference in concepts regarding land ownership also contributed to these major changes in the ancestral Bangsamoro ancestral domain.

How does the MOA-AD respond to the loss of ancestral domain?

The MOA-AD restores a certain self-determination and sovereignty to the Bangsamoro people in their own homeland. Because of historical development since the 1900s the Bangsamoro ancestral domain/ homeland is no longer of the same extent over which the sultanates once held sway. It is now limited territorially to what is described in #3 above. The MOA-AD also follows the principle that the IPRA law grants to the Indigenous Peoples, i.e., that their ancestral domain is not part of the public domain. The many details regarding concepts and principles, territory, resources and governance remain subject of negotiations in view of a Comprehensive Peace Pact. The concrete type of governance that would be established by and in the Bangsamoro Juridical Entity would be determined by a basic law. Ultimately the changes regarding territory will depend on the Congress of the Philippine and peoples' referendum.

Can the MOA-AD bring Lasting Peace?

The Memo of Agreement on Ancestral Domain initialed by the peace panels of the Moro Islamic Liberation Front and the Government of the Republic of the Philippines is a sign of contradiction. For probably most Christians, it is a document that is unpatriotic, a betrayal of the nation, a surrender of national sovereignty over huge swaths of Mindanao, Sulu Archipelago and Palawan, a selling of Christians "down the river", a document to be rejected. For some Muslims, the document is not enough. It is a betrayal of their hopes and aspirations for self-determination and freedom, a surrender of territories that once belonged to them by right of ancestral domain and native title.

The MOA-AD restores a certain self-determination and sovereignty to the Bangsamoro people in their own homeland.

But the MOA-AD, no matter how one looks at it, is a remarkable document. It is a very serious attempt to balance national sovereignty and Bangsamoro aspirations for self-determination and freedom. For this reason, I believe that the MOA-AD can bring lasting peace. Let me elaborate.

The document should be read in the light of Bangsamoro history. This history is not one that our Spanish and Filipino Christian historians have developed. Our history is a history written by one party to the complex human encounter that we call Philippine history, written perhaps by "victors." Bangsamoro history has largely been one of oral tradition and only in the last 400 years do we see that history

written, but not from their point of view.

But it is from the largely unfamiliar side of Philippine history that is also true and indisputable that the concepts of ancestral domain and a Bangsamoro homeland should be understood. The MOA-AD document returns to that concept as a basis for lasting peace.

On the other hand, the document is also remarkable from the angle of what Mindanao is today. Through successive waves of migration and public laws, the face of the population as well as of territories has changed. In less than 50 years beginning with the 1930s Christians now outnumber Muslims in the land once under the sway and influence of Muslim Sultans. The document recognizes this fact. And it is to the credit of the MILF that its vision today carries on the vision of its late Chairman, Hashim Salamat. He had said that his vision for the Bangsamoro people is framed in consideration of present realities. For this reason, the document speaks about the ARMM territory as the core of the Bangsamoro Juridical Entity. Altogether, the territory is much less than the original Bangsamoro homeland. The MOA-AD makes use of present realities as a basis for lasting peace.

The balancing act between Bangsamoro aspirations for self-determination and national sovereignty may be seen in the concepts on governance, concretized in such terms as "associative relationships," "shared authority," the idea of "central government," and its responsibility for external defence, etc. For the GRP the balancing continues with two fundamental democratic safety valves - acts of Congress and referendum.

Perhaps, concepts need to be clearer. They can be made so in future steps of the peace process as both parties move towards a Comprehensive Pact. But the MOA-AD need not be the document that should contain all the details that would resolve all questions and doubts. The peace process will continue even after it is signed. With good will, patience and wisdom — and consultation —such further steps will surely resolve substantive questions.

Therefore, if seen from the perspective of history as we usually know it from our own Christian writers (Spanish, American, Filipino), with no consideration to the enduring aspirations of the Bangsamoro for self-determination in their homeland, the MOA-AD will not lead to peace.

But if the document is seen from two perspectives, that of the Bangsamoro historical past and of Mindanao-Sulu-Palawan present day realities, and these two perspectives are somehow respected, then the MOA-AD can lead to lasting peace.

Some Questions about the MOA-AD

To all of us who were not privy to the intense discussions in the peace negotiations, the MOA-AD has a lot of ambiguity as well as questionable presentation. Muslims, Christians, Lumad would want such issues to be clarified, before saying yes or no to the consensus points.

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

2.1. Abstracting from the reported MILF rejection of the Constitution, Filipino citizens would want to know in clear terms: Does the MILF recognize either de iure or de facto that the Republic of the Philippines holds

authority and sovereignty over the whole of Mindanao, Sulu, and Palawan?

2.2. Does the MILF, with the MOA-AD, as a stepping stone intend to set up an independent State? In other words, is the MOA-AD an initial process of dismembering the Republic of the Philippines?

2.3. Did the Lumad people agree to being coopted into the Bangsamoro? By virtue of the IPRA Law, do they not in fact have their own ancestral domain? What happens to this Lumad ancestral domain when they are coopted by virtue of the MOA-AD into the Bangsamoro?

2.4. What do the negotiating panels mean by "associative relationship and associative arrangements"?

2.5. Does the use of the term "central government" in the MOA-AD connote the idea that the Bangsamoro Juridical Entity recognizes the authority of a central government over it?

2.6. Does the term "shared authority and control" in the MOA-AD connote the exercise of power by two equal authorities, or is it a recognition that in the sharing there is a "primus inter pares" principle?

2.7. Is the MOA-AD faithful to the idea repeatedly reported that negotiations would take place while safeguarding the sovereignty of the Republic?

2.8. What happens if the Congress of the Philippines is unwilling to make the necessary changes in the Constitution envisioned by the MOA-AD? What happens if the MNLF and/or the ARMM do not agree with the MILF vision?

2.9. Why did the peace panels agree to include in Category A many barangays that are obviously Christian-dominated and thus make the MOA-AD unacceptable?

3. At present, I give the MOA-AD and the two peace panels the benefit of the doubt. They have worked at the agreement for years, painstakingly hammering out every word and every phase, every concept and its implications. I know that they have the interests of their respective constituencies always in mind. Right now, despite the ambiguities of the MOA-AD, I sincerely believe that both parties, given the complexities of the situation, have admirably attempted a remarkable balancing between Bangsamoro aspirations for self determination and GRP conviction in its own national sovereignty.

4. Therefore, my present interpretation of the MOA-AD is that it attempts to apply a treasured social principle called the Principle of Subsidiarity. Enshrined in the social teachings of the Catholic Church, the principle of subsidiarity may be expressed in the following way: a member of the social organism may do everything it is capable of, in freedom and self-determination, for its own good and for the good of the social organism. It is only when the member fails to do so that the social organism intervenes and provides the necessary assistance. The principle of subsidiarity is a principle of governance, authority, decision-making, etc., for the secular community. Nowadays Catholic scholars prefer to use an analogically similar principle called the principle of "communion" as more applicable to the Church community.

5. The answers to the questions posed above may prove me wrong about the MOA-AD as a concrete application of the principle of subsidiarity. But if the answers prove me right, then it is my contention that the peace process is going in the right direction.

Will People Accept the MOA-AD?

While the MOA-AD between the MILF and GRP can be the basis of lasting peace with the Bangsamoro in Mindanao and Sulu, we already see the negative reactions of Christians in North Cotabato and other provinces and of some legislators. Some of these reactions could be knee-jerk reactions with no solid basis. But I believe this is not always the case.

...if seen from the perspective of history as we usually know it from our own Christian writers (Spanish, American, Filipino), with no consideration to the enduring aspirations of the Bangsamoro for self-determination in their homeland, the MOA-AD will not lead to peace.

Two immediate reasons for the negative reception of the MOA-AD are lack of information regarding the contents of the document and lack of previous consultation with various stakeholders as to what the document should contain. No serious effort was apparently made to establish a supportive public constituency. Having consultations, asking for directions, providing progress reports – these are proven ways to have people participate in any matter that is of utmost importance to them and their future.

It remains true that many things cannot be negotiated in public, otherwise the plethora of opinions and suggestions, each one passionately presented and defended, would create disorder out of order. But there is a certain irreplaceable and indispensable benefit to people's participation through consultation and information dissemination at various points in the peace journey. I am quite certain that both the MILF and the GRP have set a certain time for extensive consultations, perhaps when referendum and changes to constitution/law are to be made. But present reactions cannot wait for that time.

The journey to peace in Mindanao is inarguably long and tedious, with many stops and detours. It is almost impossible to accelerate it. Milestones have been set along the way, one of which was the 1996 peace agreement. These milestones are marks of progress. One would think then that along the arduous and difficult journey, certain stops should been made to ask for directions, consult people, set goals and then obtain consensus points at the roadside negotiation table.

This, of course, could simply be hindsight wisdom. Be that as it may, it is wisdom to consult, ask questions, and secure assistance regarding directions and goals from stakeholders, left, right and center. For the government – consult with the different branches of government and with the people directly affected by conflict. For the MILF – consult with the Bangsamoro people, with the MNLF, and with the ARMM. I am not sure that any of these consultations were done — and in a satisfactory manner. On the GRP side, the negative reactions are open and even hostile. On the MILF side, much less so, except for some ARMM reaction. But the question of Bangsamoro unity (MILF, MNLF, ARMM, and their various constituencies) on the MOA-AD has yet to be established.

For the Bangsamoro people with three different groups wanting to speak in their name, not counting the extremists who claim a certain political or even ideological identity, the need for consensus is as important as for the GRP. For the MILF it may not be as apparently urgent.

There is certainly the imperative of educating all the various constituencies and stakeholders as to the contents (concepts and principles, territory, resources, and governance) of the MOA-AD, their bases in history and in law, the steps still to be taken, the recognition of mutual rights, as well as the mutual sacrifices needed by both peoples, Bangsamoro and non-Bangsamoro.

For the non-Bangsamoro people, knowledge of Moro history will sometimes make a bloody entrance because of mutual prejudices and biases, entrenched through four centuries of attitudinal and

A certain injustice to the Bangsamoro people is not a concept that is easily understood by the non-Bangsamoro, much less accepted.

psychological buildup. A certain injustice to the Bangsamoro people is not a concept that is easily understood by the non-Bangsamoro, much less accepted. One can already perceive the truth of this statement in the immediate remarks of some politicians regarding the MOA-AD. In their present level of understanding of Bangsamoro history and culture, I doubt very much if they could ever acknowledge the right of various peoples, including the Bangsamoro, to self determination, a fundamental right already enshrined in the present Constitution.

For both peoples, the key to the acceptability of the MOA-AD consists, I believe, in the following: consultation and dialogue, information and education, and building a constituency supportive of the general goals and specific objectives as well as the processes and contents of the peace negotiations.

The Temporary Restraining Order issued by the Supreme Court is an occasion for all of us to reflect on this key to acceptability and work on it. Precipitous haste is not a wise response to urgency nor the way to acceptability.

The MOA-AD, a Memorandum of Intent?

The distinct impression that the Memorandum of Agreement on Ancestral Domain between the Moro Islamic Liberation Front and the Government of the Republic of the Philippines gives me is that the title is a misnomer. The document is effectively a Memorandum of Intent.

The MOA-AD purports to be precisely what it says, a memorandum of agreement by the MILF and GRP. Both parties agree on the various points of the memo. And presumably both agree to implement them. In this sense the document is a memo of agreement. But can the two panels really bind, without prior consultation and consent, the two bodies they represent to do what is written in the document?

First with regard to the GRP side. Let us presume that the GRP peace panel did not consult nor have the agreement of the legislative and judicial branches of government. Let us also presume that much of the MOA-AD will depend on the consent of both these bodies. If so, it would seem to me that the GRP side would be assuming too much if it were to sign the Memorandum of Agreement prior to that consultation and consent. The Supreme Court could, for instance, strike down the agreement as illegal or unconstitutional. The legislative branch in turn might not agree with changes in government structures that a peace agreement could require.

Moreover from what I know about the reactions of both government branches to the document, I have the idea that the name "GRP" in the GRP-MILF negotiations would represent only the executive branch of the government of the Philippines. Therefore, if it signs the document prior to consultation and consent the executive branch only really intends to do its very best to persuade both the judicial and legislative branches that everything is above board.

Present developments and reactions to the MOA-AD would indicate this. The MOA-AD is now to be argued by the representatives of the Executive branch before the Supreme Court. Waiting for their chance to attack or support the MOA-AD are the members of Congress, House and Senate. What we read in the newspapers about the reactions of some members, albeit the opposition group, does not bode well for the MOA-AD.

On the other hand, the MILF could face the same challenge. The document is to be signed by the MILF on behalf of the Bangsamoro people. But logic tells me that the MILF cannot do so unless the ARMM and the MNLF that also claim to represent the Bangsamoro would first be consulted and give consent. The document could mean an entirely new basic law for the Bangsamoro people. Or it could mean amendments to the present ARMM law. But would the ARMM agree? Would the MNLF agree to changes that could possibly supersede their 1996 peace agreement with the government? Would both of these agree to changes in the power structure within the Bangsamoro ancestral domain that the MOA-AD implies? Perhaps this is one reason that at least one foreign representative has urged the various Bangsamoro groups to come together and forge a united position.

Moreover, the present MOA-AD contains many provisions stating that such and such points will be the basis of negotiations towards a future Comprehensive Compact. Hence, the present document could be more of preliminary agenda setting by way of consensus points for formal negotiations to take place. But as I go through the MOA-AD it seems to be more than agenda setting.

In the light of all the above, the following would be my conclusion: the memorandum of agreement on ancestral domain, initialed by both panels, is in effect an agreement on consensus points. By this document the parties intend to do their very best to have these points approved by the groups they represent. More negotiations and consultations will take place until a Comprehensive Pact is signed, indubitably "owned" by the Bangsamoro and the Government of the Republic of the Philippines.

But until such time, the document on consensus points would not really be a memorandum of agreement but a memorandum of intent and perhaps one of commitment to take the necessary steps towards a final Comprehensive Compact.

Should either party fail to get such an approval, the peaceful alternative would be for the peace panels to return to the negotiating table and resolve the problematic issues. It is for this reason that the following, I believe, are imperative: prior as well as ongoing consultation and dialogue with various constituencies on the issues of the peace negotiations, information for and education of the constituencies on the historical, cultural, legal, political, territorial, economic, and social dimensions of the peace talks, and the building of support constituencies.

Therefore, as a way out of the present impasse let organized and focused public discussions on the MOA-AD be conducted for a specific and reasonable period of time so that the two parties may be guided accordingly.

Requiem for the MOA AD

By **CHITO GENEROSO**

Oftentimes I ask myself why I choose to get embroiled in Mindanao peace and conflict issues and putting my nose into other people's problems. Living in a bustling tiger metropolis at the country's financial nerve center, I could choose to ignore a tragedy seemingly too geographically distant to affect me. Why not just lay back, indulge in what money can buy, and be amused at how armed conflicting parties tear each other apart. So what the heck am I doing? This is my own paradox but allow me to indulge you with my own ramblings.

Having joined and co-organized initiatives for so many years, as futile & Quixotic as they seem be in attempting to influence public policy and opinion, I feel sad that our nation's Supreme Court would add the final nails to what would seal the casket where lies the hopes of a minority that for decades have tried, in more ways than peaceful, to be respected and to be recognized. Few understand why some would insist that they are a people different from us. Did these animosity and alienation originate historically because they refused to accept a religion, imposed under the pain of the sword by early religious & economic colonizers on the rest of us? And yet they seem to be so much like us, beginning with skin and color, but beyond that, I believe our bonds of interrelatedness existed during pre-colonial times.

To the men and women who have toiled for years to craft the MOA AD, to Mohagher Iqbal (MILF Peace Panel Chair), Rudy's Garcia

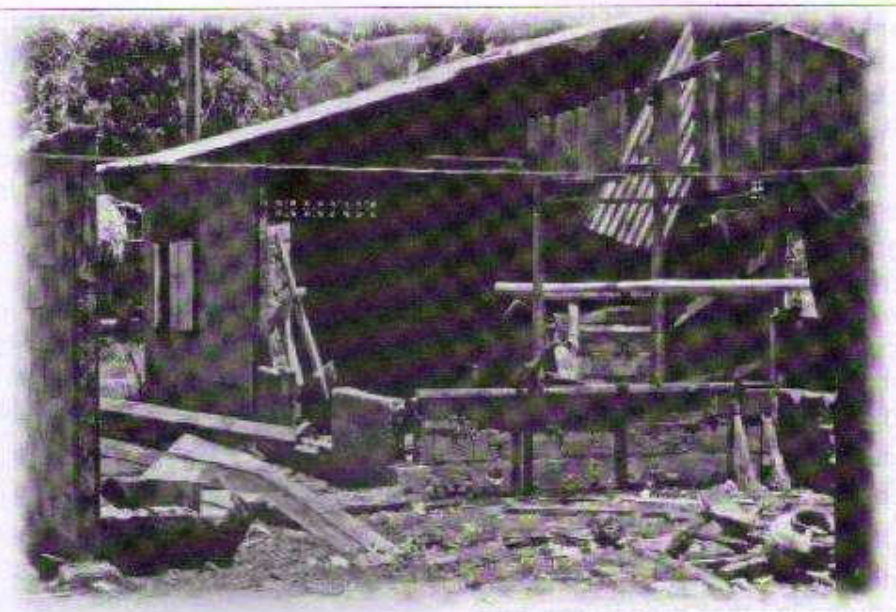
The author is the Executive Director of the Interfaith Center for the Culture of Nonviolence (ICCN).

and Rodil (Sacked GRP Peace Panel Chair & Vice chair), and their colleagues, I will continue to honor you. I know that one day your efforts will be appreciated and honored for its fairness, equanimity, and honesty.

While you, the then GRP Peace Panel had the best of intentions, and while so human and so imperfect, you may have tried to minimize controversy by skirting broader consultation s with a public still so ignorant, so suspicious, so indignant, and so protective of entrenched privileged status of power and dominance against the persistent and sometimes feeble cry for equality and respect for minority rights. Just as it took years & even centuries before enlightened nations, like South Africa, and Religions, like Roman Catholicism, and their leaders, to take the courage to admit and to apologize for some inhumanity, done in the past, to people who were different either because of color, belief, and tradition, one day this nation too will regain its honor and courage to face its past and do the same, seek apology, to heal and to reconcile.

To you, Peace Panel Chair Mohagher Iqbal and your colleagues in the MILF, I cannot ask for your patience enough, for you have shown that, over the years of seemingly endless negotiations & peace talks. I know too that some of your colleagues thought it is futile and they have resorted to taking up arms once more. But I & many peace advocates will continue to ask you again and again. Please do not give up on us. It also takes time for us to shed off the oppressive narrative that our old history textbooks and religious traditions have been molded into our hard-headed minds since the time of the early colonizers. But many of us are aware of this flaw and we have not stopped trying to move towards what is conciliatory and just. There is still a lack of political will and stability to retell the victim – offender historical accounts that could help reconcile our past.

If I have to get out of my way and ask my colleagues to join me to offer apology for the wrong that we, as a people, as the predominant culture, have done to you in the past and continue to deny you up to the present, then please consider it done. So many continue to suffer needlessly, and half a million this



One of the houses in Tipo-Tipo, Basilan burned by the elements of the AFP during one of their operations.

time around, because this endless sporadic war continuous, as if to remind us again and again about the primacy of dialogue and negotiations in resolving conflict.

Thank you for not giving up, thank you for insisting that the peace talks are not over, thank you for hoping that someday the sacrifices and the hurt of your people, and ours too, who have steadfastly refused to sow counter-violence against the war brought on to your people, will be appreciated.

One day, because your people chose not to repay evil with evil, the majority among us who have maligned you and demonized you will be enlightened and see the dignity and honor that your people rightly have and deserve, as a first nation, even before the colonizers set foot on this land. Nations will honor you and help bring to light what is true, and beautiful, and just.

Finally, one day, no longer will this republic waste its precious and meager resources on waging war it cannot win, choosing to patronize the merchants of death, instead of feeding its own impoverished people and sustaining their livelihood, avoiding and denying minority rights to live with dignity and honor, will open its doors to share the bounty that God/ Allah has bestowed on us all, practicing tolerance and constructively appreciating our differences, transforming conflict nonviolently, and learning to accept each one as co-equal in a community of nations.

This dream is not too distant, the MOA AD may have not been realized, strangled even before its merits could be explained and appreciated, for it presented an embodiment of hope. Someday, the majority will understand and accept even if perhaps, in name, it will resurface, re branded and reclaimed by its current detractors, as its own.

"... one day, no longer will this republic waste its precious and meager resources on waging war it cannot win, choosing to patronize the merchants of death, instead of feeding its own impoverished people and sustaining their livelihood, avoiding and denying minority rights to live with dignity and honor, will open its doors to share the bounty that God/ Allah has bestowed on us all, practicing tolerance and constructively appreciating our differences, transforming conflict nonviolently, and learning to accept each one as co-equal in a community of nations."

Making Sense about Development as a Path to Peace in Mindanao

By **AHMED HARRIS R. PANGCOGA**

Development is not the way to peace. It never is. It will never in any way whatsoever build the foundations of lasting peace in Mindanao. The reason is simple. When development is introduced into a community without first tackling governance issues, then justice issues, and subsequently, peace issues, it would more often than not be perceived by those who are receiving it, or to the more aware as a pacification strategy or a "counter-insurgency' approach by those doing the development interventions. Development as a "stand alone", or as a first intervention to troubled areas, would be seen as something that would "fill up the stomachs and the pockets" of the people so that the injustices of the past would be forgotten.

POOR GOVERNANCE, NO GOVERNANCE

But let us just say for the sake of argument that development is the way to peace. With a "despotic" government implementing poor policies and manned by a substantial number of over qualified yet incompetent personnel that struggle to be righteous and politically correct by employing a highly ineffective and culturally insensitive "top-down" approach, development would still remain unsustainable, or even worse, development interventions would never become a reality. There is red tape, corruption, myopic attitudes and wrong work ethics everywhere. There is a state of "unpeace" in the very halls of our national public institutions, where partisan politics is the order of the day and the usual dynamic is between the "power-seekers" and "power-keepers".

Then on the ground, there are a lot of local government units (LGUs) that are either in a state of "poor-governance" or "no-governance" at all. You have local chief executives who do not hold office in the local government halls, but are most of the time in their posh mansions in urban centers such as Davao City, Iligan City, Cotabato City, General Santos City and Cagayan de Oro City, to name a few. Elected leaders who strongly, though narrow-mindedly, believe that the Internal Revenue Allotment (IRA) of the LGU is his/her personal pocket money, that the 20% Development Fund is for salaries and MOOE, and that external funding is for LGU projects that were originally identified under the 20% Development Fund. You see LGU buildings that are magnificently built but are practically empty, or used for the wrong purpose originally intended, or unused at all. You see LGUs that are, for all intents and purposes, barely functional or totally non-functional, or are operated by one-men-armies. Development interventions would never reach the people who are supposed to benefit from them.

Public participation in decision-making processes is a pathetic myth in these types of LGUs, because there is no government institution that the constituency or civil society sector can go to or engage with for such democratic purposes as partnership, cooperation and collaboration. There is, therefore, "unpeace" also in the halls of local government.

What adds insult to injury in this sorry scenario is the reality that international development interventions, whether coming from bilateral or multilateral arrangements, donor agencies, or international NGOs, by the mere fact of their continued push towards providing as much "development" to Mindanao as possible, turn a blind eye to these

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very glaring gaps in national and local government. It is as if they are condoning this unjust condition of "poor-governance" or "no-governance" to perpetuate. This is very un-peaceful indeed. Development can, therefore, have the devastating potential of "doing much harm" by promoting the cycles of structural violence and injustice if implemented half-heartedly.

ODA AND THE "POT OF GOLD"

Billions of pesos worth of Official Development Assistance (ODA) and development interventions has poured into Southern Philippines through the years, particularly after the 1996 Final Peace Agreement between the Moro National Liberation Front (MNLF). But until now, twenty of the poorest provinces are still in Mindanao. Five of whom constitute the entire ARMM. Since the 1996 Final Peace Agreement, there has been no positive change in the plight of the Bangsamoro people. It has remained negative. The Bangsamoro are still the poorest in Mindanao. They still grow old the earliest and die the youngest. They still are the least educated. Some even say they have been "mis-educated". They still are the most affected by human rights abuses and violations. And they still are the most adversely impacted by a war that they had not initiated nor had wanted in the first place. If the donors and international NGOs have seen this "Moro-Moro" before and had not done something about this, then shame on them. But if we allow this act of blatant disregard to continue, then shame on us.

What is more shameful to tell is that the Bangsamoro is literally sitting on a pot of gold. Its natural resources, both on land and under the sea is so rich that the Bangsamoro could live in "honor, dignity and prosperity" for many generations to come if they are only able to tap these to their own benefit. But they are not the ones tapping this "pot of gold". It is the government that has the constitutional right to tap this, by virtue of the principles of "national sovereignty", the "archipelagic principle" and the "one-nation policy". That is, if one uses the "constitutional lens" and not the "historical lens".

> There is a state of "unpeace" in the very halls of our national public institutions, where partisan politics is the order of the day and the usual dynamic is between the "power-seekers" and "power-keepers".

There would have been no problem had the government given the Bangsamoro their rightful and equitable share of the produce. But out of the total amount of natural resources being tapped by government, 65% of which comes from the original Bangsamoro homeland of MINSUPALA, and less than 20% of that goes back and is shared among the Mindanawon – not only the Bangsamoro. Much of this produce is used primarily in Luzon and secondly in Visayas. And much of that is used – at a profit – by those with power, whether in government or in business. So, where is peace there?

That is the very reason why the Bangsamoro has "deputized" the MNLF and then the MILF to fight for their rights and welfare in an armed struggle against government, and then later mandated them to represent their interests in separate peace processes with government.

GOOD GOVERNANCE, HR AND JUSTICE, PEACE & DEVELOPMENT

So, let us try to shift our seemingly obsolete paradigms on development and try this four-fold conceptual framework instead.

Let us first advocate for national, regional, provincial and local government structures to practice genuine and sincere governance and for other stakeholders to practice good governance in their respective spheres as well. Let us change the status quo that graduate and post graduate degrees, or pleasing personalities, or "guns, goons and gold" are requisites for public positions. Let us work towards establishing and operationalizing schemes or mechanisms that would require would-be-leaders to undergo the proper formation needed so that they would possess the values and attitudes that would make them more attuned to their constituency and less attuned to their political patrons and the desire to plunder public funds prior to their assumption to office. If we are successful, we will have started to make these structures practice genuine transparency, accountability and responsiveness to the needs and rights of the people.

However, it is a sad fact that a very miniscule percentage of the international community has allocations for projects on good governance, for transparency

and accountability, or even for responsible public leadership. Most donor funds are allocated primarily for development projects, and secondarily for peace and human rights projects. If there actually are allocated funds for good governance projects, it would still be based on a process where such projects would be implemented by the same government unit in question. To use a metaphor, "the fruits (development aid) don't roll down to drop in the bin, because the funnel (government) it passes through is riddled with holes." So the cycle continues.

Second, after good governance, let us next advocate for human rights and justice. Such incidents as the massacre of seven civilians and one MNLF integree of the Philippine Army by elements of the Navy and Army in Ipil, Maimbung in Sulu, or the killing of a farm boy by a Marine detachment in Baas, Lamitan City should become taboos to government and would cease to be an oft denied common, convenient and necessary practice of government personnel, or dare I say as an "unfortunate collateral damage".

If we are likewise successful in this endeavour, both national and local government structures and mechanisms and other stakeholders in society would genuinely uphold the virtue of justice and sincerely promote the basic civil and human rights of the common people. Of course, we do not need to wait for good governance practices to perpetuate first before we start advocating for human rights and justice, because it would take time. The second advocacy can begin while the first is still being propagated. But the concept framework here is that, for us to have an effective and sustainable promotion of human rights and justice – then peace and then development – we must first address governance as an indispensable priority and at the very least try to begin the process of transforming our government structures into becoming genuinely "pro-people". Because government, and not civil society, is the permanent structure and is the duty-holder. Civil society only enters into the fray when, and only when, government is not doing anything, or is doing it wrong.

After good governance and human rights and justice, let us next advocate for genuine peace. Not just a peace that is the absence of war or the mere cessation of hostilities, or a peace that is based on money, as what many have wrongly believed. These are manifestations of negative peace and are, thus, very temporary and limited to surface appearances only. What is needed is a peace that is based on the first two issues of good governance and justice. It is more meaningful and is assured to be more lasting and more "pro-people" this way.

Rebuilding a peace in Mindanao that incorporates the complete historical aspect of the conflict and the injustices in Mindanao – the truth, in other words – has a much greater chance of becoming sustainable.

Rebuilding a peace in Mindanao that incorporates the complete historical aspect of the conflict and the injustices in Mindanao – the truth, in other words – has a much greater chance of becoming sustainable. By studying our 400-year history of conflict first and using this as basis of the government framework in order for it to attain its long eluded dream of attaining "NIC-hood" (Newly Industrialized Country) we get to accurately address the prevalent issues in our personal and relational life, as well as in the sub-systems and systems that we are part of today, which are perpetuating violence, biases, prejudice, cultural chauvinism, and all the other ingredients that make Mindanao a hell-hole. In lay man's terms, we don't rely purely on the doctorate degrees and the law degrees and the megalomaniacal personalities of those in power to plan the future for all. This damnable practice has been the biggest mistake of leaders since time immemorial. Instead, we actually ask the people what has been missing all this years and what still remains due to them as humans and as a people that duty-holders must give to them. And then we make government and the other state and non-state stakeholders really listen to all of these and make them sincerely act on these.

In this way, the majority Filipinos and the leaders of the Philippines would understand the reason why the Bangsamoro people have never considered themselves part of the greater Philippine body politic – because their sovereignty as a people and a nation is centuries older than the Philippine government. Older even than the Malolos Constitution, which is the "progenitor" of the present 1986 Constitution. As an example,

interpreting documents such as the MOA-AD within the framework of the 1986 Constitution, and subsequently acting on such limited interpretations, can be considered as a blatant disrespect of that pre-colonial sovereignty by those in power.

In one episode of the Clinton Global Initiative hosted by the former US President Bill Clinton himself, HE Gloria Macapagal-Arroyo said in so many words that the economy of the Philippines is healthy, and will continue to be healthy "with or without the peace process". If we use a metaphor on this statement, it would be like picturing a fat Philippines with a cancerous lung. She may believe that the Philippines is healthy because she uses its being fat as an indicator of being healthy. But with the peace process in shambles (plus accusations of the insincerity of government and all that), the cancer has already become malignant. 600,000 civilians, almost all of whom are Bangsamoro, have been displaced. Prior to that, two million had been displaced, and prior to that, a 400-year long history of injustice, marginalization, disenfranchisement and displacement. Global crisis aside, can we now say that the Philippines is indeed healthy? Not by a long shot.

CONCLUSION

So, therefore, by using this paradigm, we thus make our vision for a just, peaceful and prosperous future more attainable. Also, mercy and reconciliation between parties-to-conflict, be it small or large, can easily be made at the latter part of a peace process if peace is worked out through this indispensable process.

When we will have started the process of perpetuating these three preconditions of good governance, human rights and justice, and finally, genuine peace, then and only then will development interventions can be more significant and lasting. Any development intervention that is utilized with utter disregard to the first three, and used as a sole point of entry to the communities, as was proven by so many precedents in the past, would more often than not end up as a waste. So many rice fields in Mindanao had been seeded and reseeded again from out of ODA, international aid, donor funds, and even government funds after a battle or after a war, only to be destroyed again and again by more battles and wars.

HE Gloria Macapagal-Arroyo said in so many words that the economy of the Philippines is healthy, and will continue to be healthy "with or without the peace process".

How many health centers and other small scale infrastructure projects had been constructed in Mindanao using these funds, only to be damaged again by war? How many of them were built only to become white elephants because of the prevalent top-down mentality of overqualified but thoroughly incompetent bureaucrats, or if used, were relegated to the level of goat pens or evacuation centers? Finally, how many times have we given hope to the people, Filipino, Bangsamoro and Lumad, make them toil with a promise of a new tomorrow, only to rip it out from them again and again because of political necessities?

In conclusion, if development interventions will continue to be done in the same manner as it had been done since the past and up to the present, not even the most honest minded analyst would make any sense of it at all. One would now, therefore, invariably question the motives and reasons behind this "blind" downpour of development interventions in Mindanao. Are they indeed for the Mindanawon and the Bangsamoro, or are they for someone else?

Arroyo wants lasting power in Malacañang, not peace in Mindanao

By **SAMMY P. MAULANA**

Both pro and anti views have been articulated about the Memorandum of Agreement on Ancestral Domain (MOA-AD) and its unconstitutionality since the aborted signing at Pattra Jaya in Malaysia on August 5, 2008.

The MOA-AD is a victim of greedy politicians who wanted to remain in power and those who are hungry to cling to power. It was also held hostage by a certain foreign power, a religious sect, transnational or multinational corporations and the same greedy politicians who have personal interests on the vast natural resources of the Bangsamoro homeland. Being unmindful of whatever consequences, they maneuver everything just to attain their selfish motives and had succeeded in using the Supreme Court (SC) to rule the MOA-AD unconstitutional.

By all indications, President Gloria Macapagal Arroyo had used the MOA-AD to subvert the Senate as a stronghold of the opposition and to open the floodgates for charter change (Cha-cha). She has employed duplicity in the Government of the Republic of the Philippines' peace negotiations with the Moro Islamic Liberation Front to cater her own desire for political perpetuation. While she negotiated peace with the MILF, her government engaged all-out-war against the Bangsamoro.

The proposed Charter Change is a handiwork of a government which has brought the country into debacle such as mass poverty, economic crisis, political instability, massive corruption and state repression. If pushed through, Cha Cha will just serve as a tool to railroad the shifting of the form of the government to either parliamentary or federal and install Mrs. Arroyo either as lifetime prime minister or head of state, and this will not at all bring or restore a just and lasting peace in Mindanao.

The GRP-MILF peace process is an attempt to search for the most viable solution to address Mindanao's centuries-old problem. After grappling over contentious issues for over a decade, the GRP-MILF peace panels had wrapped up their peace talks with the MOA-AD containing with its concept and principle, scope of territory, natural resources and system of governance. If only given a chance, the MOA-AD will have paved the way for the restoration of a just and lasting peace in Mindanao. It will also have served as a key to attain more harmonious relation and just and lasting peaceful co-existence among the people in Mindanao.

It is so hurting that Arroyo and her cohorts have muddled the noble aspiration of the Bangsamoro to a least regain a portion of their ancestral homeland and restore their inherent and inalienable right to self-determination (RSD) through a compromised scheme in the peace talks. The Bangsamoro will not gain from the political maneuvering of the Arroyo government. Rather, Arroyo will go down in history as a president who scuttled the GRP-MILF peace process to pursue her ambition to stay in power beyond 2010.

The author is the Secretary-General and Human Rights Adovacacy Coordinator of the Consortium of Bangsamoro Civil Society (CBCS).

The MOA-AD is a living document. As we assert its supremacy over the constitution, we also assailed the betrayal made by the Arroyo administration on the GRP-MILF peace talks and vehemently condemn its deliberate move to kill the MOA-AD.

Sama children in Pagadian thank SFK for support

The beneficiaries of the Learning Center for the Sama Kabingaan Children Project in Pagadian City articulated their deep appreciation to Stiftung Fuer Kinder (SFK), a Germany-based children's foundation, for its benevolent support.

During the visit of SFK's officials and staff, headed by their executive director, Atty Ekkehard Arnsperger, in the city last November 30 to December 1, the children and their parents met with them and discussed how the school project has helped them.

The school project is managed by Pagdakayo Kasamahan ma Kauman (PAGKAKA) through the financial support of SFK. It benefits thirty (30) Sama Kabingaan children in the city. On the SFK delegation's arrival last November 30, a welcome program was organized and actively participated by the children, their parents and the officers of PAGKAKA, from 2:00 to 4:00 p.m., at the PAGKAKA Learning Center.

During the program, the children and their parents expressed their profound gratitude to SFK for their support extended which makes the children happy and enjoy learning. In response to them, the SKF, through Atty. Ekkehard Arnsperger, promised a commitment to help sustain the school project.

After the program, the delegation toured around the community. They walked along the bamboo bridges constructed by the Sama people. They were happily greeted by the residents and they spent time talking with them.

The delegation also visited Pagadian City Fish Port, a newly constructed fish port located in Barangay San Pedro, just a short distance away from the PAGKAKA School; Horse Back Riding center, located in Rotunda; and Pagadian City Medical Center, the newly constructed public hospital inaugurated last September 17 in Barangay Dao.

In the evening, the SFK met again and had a dinner with the PAGKAKA officers and the teachers of the school. (*Mohaiya S. Pua, Program Coordinator*)

SFK visits children in Kuya

Saddened by the traumatic experience of a village in South Upi, Maguindanao, the team from Stiftung Kinder visited the children of Barangay Kuya on November 28, 2008 to see how they are coping after typhoon Frank hit their community August this year.

The locals prepared a short program to entertain the guests — Stiftung für Kinder (SFK) Executive Director Atty. Ekkehard Arnsperger, Dr. Wolfram Deisler and Thomas Varadi. The program also provided the T'duray culture to be showcased through the dance and musical numbers performed by some T'duray women and children from Barangay Kuya.

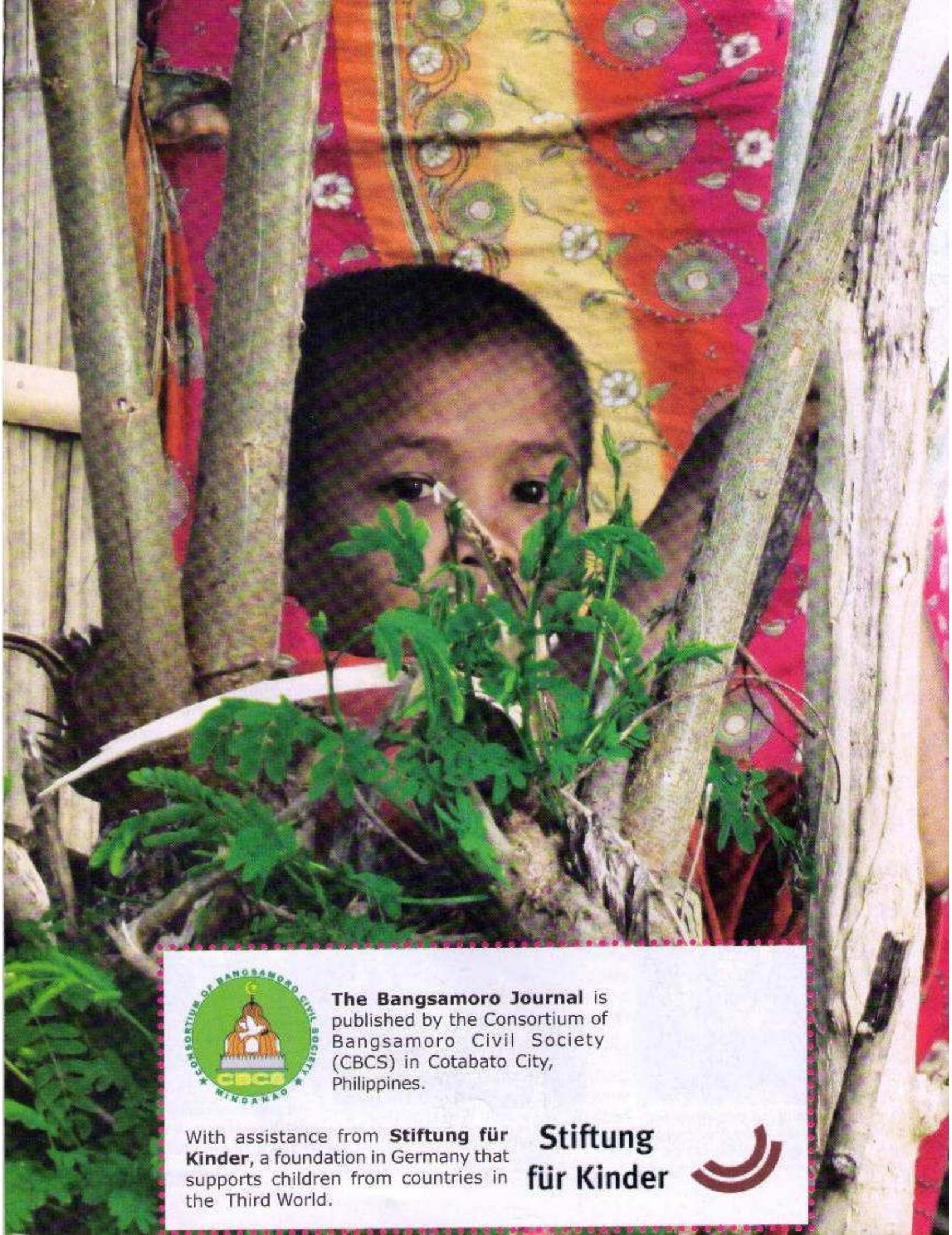
SFK have been extending support for the Teduray children in Pandan, South Upi, Maguindanao -- another T'duray village in close proximity to Kuya.

Atty. Ekkehard Arnesperger cuddles a T'duray child during his visit to Barangay Kuya this year.

A group of T'duray women play the gong while the children perform a T'duray cultural dance.

This child lost everyone in his family due to the flood brought about by the typhoon Frank.

The faces of these children from Barangay Kuya show no trace of the sad experience which they woke up on one morning of August 2008.



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With assistance from **Stiftung für Kinder**, a foundation in Germany that supports children from countries in the Third World.

Stiftung für Kinder