

**THE PHILIPPINES: INDIGENOUS RIGHTS
AND THE MILF PEACE PROCESS**

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THE PHILIPPINES: INDIGENOUS RIGHTS AND THE MILF PEACE PROCESS

EXECUTIVE SUMMARY

The indigenous peoples of the southern Philippines known as the Lumad are in a precarious position as the peace process between Muslim rebels and the government moves forward. If and when a settlement is reached, thorny questions about protecting their distinct identity and land will have to be addressed. Many of the tribes fear that because they lack titles for their traditional territory, they will be unable to claim the resources and exercise their right to self-governance after a deal is signed. The question is what can be done now to reassure them that they will retain control of their land. While the peace process with the Moro Islamic Liberation Front (MILF) may be ill-suited to advancing indigenous rights because its structure and content do not prioritise these issues, the government and the MILF should take steps both within and outside the parameters of formal negotiations to respond more concretely to the concerns of the Lumad.

Roughly nine million Lumads live in the conflict-torn southern island of Mindanao where they can assert native title over large swathes of land known as their ancestral domain. Their rights need to be reconciled with the demands of the Muslims, called the Bangsamoro, who want to incorporate some of this land into a proposed autonomous “sub-state”, and the interests of millions of Christian settlers who moved to Mindanao over the course of the twentieth century. A settlement that ignores overlapping claims to land and resources will be a shaky foundation for peace and could well give rise to further claims of injustice. The issues at stake cut to the heart of many concerns about how democratic a sub-state would be. What protections would be in place for minorities, both Lumad and Christian? How would land disputes be resolved? Who would control the resources?

The MILF has consistently asserted the Bangsamoro right to self-determination and argued that the Philippine government needs to address their political grievances by granting them the highest form of autonomy possible. It maintains that the various tribes who comprise the Lumad will benefit from a political settlement that will end decades of armed rebellion. On the surface, it seems natural that Moros and Lumads would share common interests; both were pushed off their land as Mindanao was incorporated into the Phil-

ippine state. In practice, relations are uneasy. Tribal leaders are quick to point out that their ancestors were enslaved by Moros. They doubt that their communities will be better off under a Moro-ruled government, especially if it does not respect existing land titles. And even if such a government did respect ancestral domain titles, it is not impossible that other indigenous rights in national legislation could be curtailed.

Lumad leaders say that the Bangsamoro are not the only group in Mindanao with claims to self-determination. They are frustrated with the flawed implementation of the 1997 Indigenous Peoples Rights Act (IPRA), which in any case does not apply in the existing Autonomous Region of Muslim Mindanao (ARMM). They are also angry that they are not one of the parties at the negotiating table because they have not taken up arms against the Philippine government. Divisions within and between tribes have made it difficult for the Lumad to take a unified position. The vast majority are impoverished and marginalised while the handful of leaders who speak on their behalf struggle to be heard.

In August 2008, the last-minute collapse of the so-called Memorandum of Agreement on Ancestral Domain (MOA-AD) between the MILF and the Gloria Macapagal-Arroyo government deepened the mistrust. The agreement envisioned the expansion of the ARMM through plebiscites, including in areas with many Christians who feared they would lose their land. Christian politicians protested to the Supreme Court, which ruled that the agreement was unconstitutional. Lumads shared these concerns about an expanded Bangsamoro homeland, particularly because they are minorities in the areas where plebiscites would be held. They also objected to the inclusion of “indigenous peoples” in the definition of the Bangsamoro because they saw themselves as distinct. This solidarity did not mask the differences among the tribes, some of whom were resolutely opposed to being included in an expanded Bangsamoro homeland, while others were resigned to their fate.

Since President Benigno S. Aquino III took office in June 2010, both the MILF and the Philippine government have been holding consultations with Lumad leaders. The tribes that will be affected by a peace settlement have also sub-

mitted position papers to the two panels negotiating on behalf of the government and the MILF. But these efforts have neither dispelled the fears of Lumads nor reassured them that their rights will be guaranteed after a settlement. Efforts to do so must address the issue of land because it is the bedrock of tribal identity and self-governance.

The Aquino administration and its partners in the ARMM government should make it a priority to implement existing legislation on indigenous rights in the autonomous region. Applications for ancestral domain titles from tribes who live in areas that may be included in an expanded Bangsamoro homeland should be processed without further delay. For its part, the MILF can dispel some of the suspicions of Lumad leaders by clarifying whether IPRA would apply in a Bangsamoro sub-state and how overlapping ancestral domain claims – and therefore control over resources – might be resolved.

Jakarta/Brussels, 22 November 2011

THE PHILIPPINES: INDIGENOUS RIGHTS AND THE MILF PEACE PROCESS

I. WHY DO THE LUMAD MATTER?

The Lumad view themselves as distinct from Moros because they did not convert to Islam centuries ago.¹ Both groups are indigenous to Mindanao.² There are approximately eighteen major non-Muslim indigenous ethnic groups in Mindanao for a total population of roughly nine million.³ Within the Autonomous Region of Muslim Mindanao (ARMM),⁴ Lumads account for only 2 per cent of the population (around 60,000) compared to Muslims who constitute 90 per cent (roughly 2.5 million).⁵ Most Lumad communities are in remote areas, where poverty is high, education low, and government services poor or non-existent.

There is not much binding the non-Muslim indigenous peoples of Mindanao together. In contrast, the thirteen ethno-linguistic groups who are known as the Bangsamoro share one faith, Islam, and a common identity, if one vaguely de-

finied.⁶ Nevertheless, at the founding congress of the organisation Lumad Mindanaw in June 1986, representatives from fifteen different tribes began using the term “Lumad” to refer to the indigenous peoples of Mindanao.⁷

Like the Moros, the Lumad experienced cycles of land grabbing and displacement as Mindanao was incorporated into the Philippine state over the course of the twentieth century. During the American colonial period (1898-1946), tribes lost control over their land because of legislation that did not recognise customary property rights,⁸ paving the way for an influx of Christian settlers from elsewhere in the country.⁹ Armed conflict in Mindanao erupted in the

¹ Some have since converted to Islam and to Christianity, while the rest practice traditional beliefs.

² Moros, however, do not for the most part refer to themselves as “indigenous peoples” because they have sought to establish a separate political identity. In the Philippines, “IPs” is commonly used to refer to indigenous peoples from across the country, including the Lumad of Mindanao. Previously, the Philippine government used “indigenous cultural communities” (ICCs).

³ This figure is drawn from a draft version of the National Commission on Indigenous Peoples (NCIP) master plan for 2011-2016. Indigenous people in Mindanao are close to two thirds of the indigenous population countrywide. Statistics however are unreliable. There are various ways of counting the tribes and sub-tribes, but the eighteen major ethno-linguistic groups are the Subanen, Manobo, B’laan, Ata, Mandaya, T’boli, Higaonon, Teduray (also spelt Tiruray), Mansaka, Bagobo, Bukidnon, Dibabawon, Tagakaolo, Banwaon, Ubo Manobo, Manguwangon, Lambangian and Mamanwa.

⁴ The law creating ARMM passed in 1989 and the region was expanded in 2001. It comprises the provinces of Maguindanao, Lanao del Sur, Basilan (except for Isabela City), Sulu and Tawi-Tawi.

⁵ Statistics are based on the 2000 census and are drawn from Miriam Coronel-Ferrer, “To Share or Divide Power? Minorities in Autonomous Regions, the Case of the Autonomous Region in Muslim Mindanao”, *Ethnic and Racial Studies* (2011), table 1.

⁶ Moro and the Bangsamoro are used interchangeably in this paper. Although Bangsamoro is often used colloquially only for the Moros, the MILF has chosen at various points in the peace process to define ‘Bangsamoro’ to include Lumads and even Christians who support their cause. See Section II.A below. For a thorough, critical analysis of Muslim nationalism see Thomas M. McKenna, *Muslim Rulers and Rebels: Everyday Politics and Armed Separatism in the Southern Philippines* (Berkeley, 1998). For a personal account of what Moro identity means in practice, see Noralyn Mustafa, “Kris-Crossing Mindanao: To be or not to be ‘Bangsamoro’”, *Philippine Daily Inquirer*, 11 August 2008.

⁷ Rudy B. Rodil, “Achieving Peace and Justice in Mindanao Through the Tri-people Approach”, *Mindanao Horizons* vol. 1, no. 2 (2010-2011), pp. 27-30. “Lumad” is a Visayan word which implies an individual has emerged from a particular piece of land; it can be roughly translated as “indigenous” or “autochthonous”. This briefing uses the term “tribe” interchangeably with Lumad, as this is common practice in the Philippines.

⁸ The 1902 Land Registration Act required all private individuals or corporations to register their land. The 1903 Public Land Act declared all land not registered under the 1902 Land Registration Act to be public land and therefore available for homesteading, purchase or lease. The holding of land granted by Moro or tribal chieftains was deemed invalid by the 1903 Philippine Commission Act. For an analysis of changing land laws, see Myrthena L. Fianza, “Contesting Land and Identity in the Periphery: The Moro Indigenous People of Southern Philippines”, Working paper prepared for the Tenth Biennial Conference of the International Association for the Study of Common Property, August 2004.

⁹ On settler migration to Mindanao and the incorporation of Muslim-dominated areas into the colonial and post-independence states, see Patricio Abinales, *Making Mindanao: Cotabato and*

1960s and 1970s – the Philippine government was simultaneously fighting the communist New People’s Army (NPA) and the Moro National Liberation Front (MNLF).¹⁰ The loss of their land is not just a historical injustice for the Lumad; territory is integral to their identity and the basis of tribal self-governance.

The tribes likely to be affected by a final settlement with the MILF are scattered across Central Mindanao, the Zamboanga peninsula and the Sulu archipelago. Of those already within the ARMM, the most numerous are the Teduray-Lambangian of Maguindanao that number roughly 60,000.¹¹ There are smaller numbers of Dulangan Manobo and B’laan in Maguindanao as well.¹² In Lanao del Sur there are Higaonon,¹³ while the Badjao of Basilan, Sulu and Tawi-Tawi also identify themselves as “non-Islamised ethnic groups”.¹⁴ Several other tribes live around the fringes of the ARMM, including the Erumanen-Menuvu in North Cotabato.¹⁵

Davao in the Formation of the Philippine Nation-State (Manila, 2000). For a discussion of the impact of migration on land ownership, see Eric Gutierrez and Saturnino Borras Jr, “The Moro Conflict: Landlessness and Misdirected State Policies”, East-West Center, Policy Studies 8, 2004.

¹⁰ The MILF is a splinter of the MNLF, which is now much weaker and divided into factions. For previous Crisis Group reporting on these conflicts, see Asia Briefings N°125, *The Philippines: A New Strategy for Peace in Mindanao?*, 3 August 2011; N°119, *The Philippines: Back to the Table, Warily, in Mindanao*, 24 March 2011; N°88, *The Philippines: Running in Place in Mindanao*, 16 February 2009; N°83, *The Philippines: The Collapse of Peace in Mindanao*, 23 October 2008; and Asia Reports N°202, *The Communist Insurgency in the Philippines: Tactics and Talks*, 14 February 2011; and N°152, *The Philippines: Counter-insurgency vs Counter-terrorism in Mindanao*, 14 May 2008.

¹¹ Coronel-Ferrer, “To Share or Divide Power?”, op. cit., p. 5. Teduray activists estimate the number to be much larger. Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011.

¹² The B’laan live between Datu Paglas in Maguindanao and Columbio in Sultan Kudarat.

¹³ In the municipalities of Bumbaran, Wao, Tagoloan II (there is another in Lanao del Norte) and Kapai.

¹⁴ See Elena Joaquin Damaso, “Honoring Mamalo: Turning a Paradox into a Paradigm Shift”, *Autonomy and Peace Review* (April-June 2011), p. 13. Some of the ethno-linguistic groups who are considered to be Bangsamoro also identify as indigenous, such as the Sama, Badjao and Iranun. Crisis Group interviews, NCIP officials and journalists, Manila and Mindanao, 27 April-3 May 2011. The Badjao have in fact applied for recognition of their ancestral water claims under IPRA in Tawi-Tawi and Sulu. See Coronel-Ferrer, “To Share or Divide Power?”, op. cit., fn. 23.

¹⁵ Others include the T’boli who live mainly in South-Central Mindanao; the Obo-Manobo, who live on Mount Apo in the eastern part of North Cotabato (although they are more affected by the conflict with the New People’s Army); the Talaandig in the western boundary of Bukidnon bordering on Lanao del Sur;

The Lumad have lived alongside the Moros for centuries, with some intermarrying and even taking up arms for the MNLF and MILF, but tensions persist.¹⁶ This history, as passed down through oral tradition, is contentious and pivots on conflicting narratives of oppression.¹⁷ On the one hand, many Lumads lament their ancestors’ enslavement by the *datus* (highborn Muslim leaders).¹⁸ On the other, many Moros are baffled as to why the tribes cannot see who the real interlopers in Mindanao are: the Christian settlers. They say that it was the government, not the Sulu or Maguindanao sultanates that once ruled much of what is now the southern Philippines, which passed discriminatory legislation and took indigenous lands. As a member of Moro civil society commented: “The Lumad position is illogical – that they would side with the oppressor”.¹⁹ Lumad activists strongly disagree. As a woman activist based in Davao said, the “tradition of oppression” was with the Moros, not the Christians: “We will never subject ourselves to Moro domination. This [efforts to secure a Bangsamoro sub-state including ancestral land] is just a continuation of efforts to conquer us during the sultanate”.²⁰

This history bears on the present in several ways. The Lumad of Central Mindanao believe they share ancestors with the Maguindanaon and the Maranao, two of the largest ethnic groups that make up the Bangsamoro and the two dominant groups in the MILF. In the version heard in the Cotabato area, there were two brothers, one of whom, Apu Tabunaway, converted to Islam while Apu Mamalu did not.²¹ Many tribes explain how traditional peace pacts agreed between

the Higaonon in the outlying parts of Iligan, Lanao del Norte; and the Subanen on the Zamboanga peninsula.

¹⁶ Today, those who are with the MILF have converted to Islam although this was not always the case with those who joined the MNLF in the 1970s and 1980s. Crisis Group interviews, Lumad activists, Manila and Cotabato City, 30 June and 8 October 2011.

¹⁷ See Rudy B. Rodil, “A Study on Indigenous Peoples and National Security”, submitted to the National Defense College at Camp Aguinaldo, Quezon City, 28 July 2009, pp. 18-19.

¹⁸ Some Moro interviewees explained that such practices were carried out by individual *datus* but were not systematic or sanctioned by the Maguindanao sultanate which controlled much of Mindanao from the sixteenth century to the end of the nineteenth century. Crisis Group interviews, members of civil society, Cotabato City, 3-4 May 2011 and 8 October 2011. Other experts note that such practices persisted into the twentieth century and are widely acknowledged among Moros. Crisis Group email communication, member of civil society, 12 November 2011.

¹⁹ Crisis Group interview, Cotabato City, 3 May 2011.

²⁰ Crisis Group interview, Davao, 2 May 2011.

²¹ Crisis Group interviews, Lumad leaders, Malaybalay, 1 May 2011 and Teduray leader, Upi, 4 May 2011. For other versions, see “A Working Paper on Ancestral Domain and Peace”, Mindanao Peoples Caucus, undated.

their ancestors and Maguindanaon and Maranao elders divided Mindanao along the lines of ethnicity and religion.²²

Lumad leaders have increasingly invoked these ancient pacts in the context of the peace process although there is no written record of them. They say these agreements provide the basis for mutual respect and coexistence and can help achieve a just peace in Mindanao. Tribal leaders and the panel appointed to negotiate on behalf of the MILF with the Aquino government agreed during a dialogue in Cagayan de Oro on 12 June 2011 to reaffirm these pacts.²³

While this may dispel some mistrust, what matters is the impact, if any, such gestures will have on the peace process. The content of the pacts remains obscure and the boundaries between Moros and Lumads have shifted over time.²⁴ As a prominent member of Moro civil society pointed out, it is unclear if these traditional agreements entailed the division of territory and systems of governance.²⁵ An Erumanen-Menuvu *datu* (tribal chieftain) from North Cotabato disagreed, saying: “That boundary [between Moros and Lumads] is not only a boundary of territory, it is a boundary of faith, a boundary of economic activity, a boundary of political rulings ... it is a boundary of everything”.²⁶ Others question whether the MILF as an organisation has the authority to reaffirm pacts that were originally concluded between tribal leaders and Maguindanaon and Maranao elders.²⁷

The Lumad remain on the sidelines of the peace process and have plenty of reason to be worried. They fear they will be the “sacrificial lambs” of a final settlement because they are not a party to the negotiations. Advocates for indigenous rights have long tried to promote a “tri-people” – Muslim, Christian and Lumad – approach to the peace process in order to secure the latter a seat at the table. But this would not necessarily benefit them because of the dif-

ferences in power and influence.²⁸ Neither the government nor the MILF has shown much interest in the idea although indigenous rights have been acknowledged in their joint statements (see below). The current architecture of the peace talks has proved resilient and there is little reason to change it now.²⁹

²² The Erumanen-Menuvu of North Cotabato say the boundary between the Maguindanaon and Erumanen-Menuvu, known as the *peheletan*, is the Pulangi river. Crisis Group interview, Erumanen-Menuvu *datu*, Malaybalay, 1 May 2011.

²³ See for example “Reaffirming traditional peace pacts among indigenous inhabitants in Mindanao”, Talaandig Cultural Site, <http://talaandigsite.blogspot.com>, 4 September 2011.

²⁴ Crisis Group interview, Erumanen-Menuvu leader, Manila, 30 June 2011.

²⁵ Crisis Group interview, prominent member of Moro civil society, Cotabato City, 4 May 2011. Others emphasise that the boundary is not divisive but rather reflects common ground or a place where lands connect. “To the IPs therefore, there is no reason for misunderstanding or conflict even if their ancestral domains and those of the Moro appear to overlap”. “A Working Paper on Ancestral Domain and Peace”, op. cit., p. 8.

²⁶ Crisis Group interview, Erumanen-Menuvu *datu*, North Cotabato, 3 May 2011.

²⁷ Crisis Group interview, Lumad leader, Malaybalay, 1 May 2011.

²⁸ Crisis Group interview, academic who researches Lumads within ARMM, Cotabato City, 7 October 2011.

²⁹ On the structure of the talks, see Crisis Group Briefing, *Back to the Table, Warily, in Mindanao*, op. cit., fn. 6.

II. INVOLVEMENT IN THE PEACE PROCESSES

Fear of losing land rights is the primary reason some Lumads reject the idea of a Bangsamoro homeland with expanded territory and powers, as demanded by the MILF. To understand how these fears developed, it is necessary to look at the history of the peace process. Time and again, talks have deferred issues such as the protection of minorities and conflicting land claims while the contours of a new political set-up for the Bangsamoro were worked out. Meanwhile, the MILF has tried to reassure the Lumad that their rights will be respected. Many tribal leaders say they are looking to the Philippine government to protect their interests in the negotiations and uphold existing legislation on indigenous rights.³⁰

A. THE LUMAD AND THE BANGSAMORO CAUSE

The Moro National Liberation Front (MNLF) waged a war to assert the Bangsamoro right to self-determination in Mindanao, the Sulu archipelago and Palawan starting from the early 1970s. Under the leadership of Nur Misuari, the rebellion, while rooted in Bangsamoro nationalism, had a strong anti-colonial bent which left considerable scope for the Lumad to join.³¹ In 1976, the MNLF and the government of Ferdinand Marcos signed the Tripoli agreement, which agreed on principles for Muslim autonomy and ceasefire terms. Talks on implementation broke down soon afterwards. The agreement made no mention of the Lumad, nor were any present at the negotiations in 1975, 1976 and later in 1987.³²

The 1987 constitution, the legacy of the current president's mother, Corazon "Cory" Aquino, recognised distinct an-

cestral domain rights for Muslims and "indigenous cultural communities".³³ This paved the way for the creation of the ARMM and another autonomous region in the Cordillera, in the northern Philippines.³⁴ In addition, it envisioned that "Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain" of indigenous peoples.³⁵ The foundation for further legislation was therefore laid by the 1987 constitution.

The indigenous rights movement had gained ground nationally and globally by the time the MNLF and the Fidel Ramos administration were working out the terms of the 1996 Final Peace Agreement.³⁶ The MNLF had several Lumads on their negotiating team. The deal, which was meant to implement what had been agreed in Tripoli in 1976, provided for the expansion of the autonomous region through a plebiscite, which was held in 2001, and for the integration of MNLF fighters into government security forces. There were several provisions that pertained to indigenous rights. The most notable was that one of the three deputies on the Southern Philippines Council for Peace and Development – an MNLF-led body that would supervise development programs in the areas covered by the agreement for three years – would represent "cultural communities".³⁷

With the negotiations with the MNLF ostensibly finished, the Philippine government began peace talks with the MILF in 1997. The Lumad have been more involved in the MILF process than they were during talks with the MNLF.³⁸ Indigenous consciousness and efforts at mobilisation had increased even if most communities remained marginalised. There are also many more groups and individuals willing to champion their cause. Another factor was the passage of the landmark Indigenous Peoples Rights Act (IPRA) in 1997. But many tribes are frustrated with its implementation (see below), leading them to resent the peace and

³⁰ Crisis Group interview, Lumad leader, Malaybalay, Bukidnon, 1 May 2011. Or as an Erumanen-Menuvu *datu* from North Cotabato said, there may be problems with IPRA, "but it is better than nothing". Crisis Group interview, North Cotabato, 3 May 2011.

³¹ Rudy Rodil, a historian and former member of the government negotiating panel for talks with the MNLF and MILF, argues that "from the very beginning, Lumads have always been made an integral part of the definition of Bangsamoro". Rodil, "A Study on Indigenous Peoples and National Security", op. cit., p. 29. In a speech in Algeria in 1977, Misuari explained: "In keeping with the desires of the broad masses of our people, the MNLF adopted a political programme which called for the complete liberation of our people and national homeland from all forms and vestiges of Filipino colonialism, to ensure our people's freedom and the preservation of our Islamic and indigenous culture and civilization". Quoted in McKenna, *Muslim Rulers and Rebels*, op. cit., p. 164.

³² Rodil, "A Study on Indigenous Peoples and National Security", op. cit., p. 30.

³³ Rudy Rodil, "Institutionalising Social Spaces", World Bank study, undated, p. 2.

³⁴ See Article X, Sections 1 and 15-21.

³⁵ See Article XII, Section 5.

³⁶ For example, the UN declared 1995-2004 the "international decade of the world's indigenous peoples".

³⁷ See the 1996 Final Peace Agreement, article 3. Other parts of the agreement on indigenous peoples include 7(c), on the Office of Southern Cultural Communities (see fn. 44 for more details); 25, on sectoral representatives in the Regional Legislative Assembly; 64, on the right to representation in the national government; and 100 and 103 on curriculum in schools.

³⁸ Rodil, "A Study on Indigenous People and National Security", op. cit., p. 30; and "Solidarity message by Mohagher Iqbal of the MILF delivered by Professor Amor Pentaliday during the Second Timfada Limud", 5 October 2010, available at http://hdxup.multiply.com/journal/item/1304/Solidarity_Message_by_Mohagher_Iqbal_of_the_MILF_delivered_by_Prof._Amor_Pentaliday_during_the_2nd_Timfada_Limud.

development assistance that targets the Moro-government conflict.³⁹ Moros often perceive these sentiments to be manufactured or raised in bad faith by the government at the negotiating table to block discussion.⁴⁰

The Philippine government clearly can play the Lumad card for its own reasons, but this does not mean that the concerns of tribal leaders are baseless. The relationship between the tribes and the MILF is more fraught than it was with the MNLF because of the former's more Islamic orientation. It is not uncommon to hear tribes express alarm about the prospect of living in an area governed by Islamic law.

Negotiations with the MILF have centred on the concept of a Bangsamoro ancestral domain – the same term used in IPRA for indigenous peoples – which has led to fears of exclusive Moro control.⁴¹ These sentiments came quickly to the surface in 2008 when the MILF and the government were ready to sign the ill-fated Memorandum of Agreement on Ancestral Domain (MOA-AD).

B. THE LUMAD, THE MILF AND THE MOA-AD

The MILF does not deny Lumads the right to their own ancestral domain, but argues that their fate is inseparable because of history. It is their destiny to be the “small or young brother” of the Moros, who will protect them.⁴²

When the Arroyo government and the MILF began seriously discussing ancestral domain in April 2005, the latter submitted a concept note that defined the Bangsamoro to include “all the Moros and other indigenous peoples of Mindanao” and their ancestral domain to include “communal

lands under claim of ownership of ... groups of indigenous peoples”.⁴³ On delimitation of their homeland and historic territory, the document noted that this would encompass “traditional dominions and proprietary rights of the Sulu, Magindanaw-Buayan sultanates and the Ranaw principalities as well as the traditional homeland of the Indigenous Peoples based on territorial contiguity and geographic linkages”.⁴⁴

By September 2005, the two parties had come up with a list of nine consensus points on governance. The first of these addressed the Lumad question:

The Parties agree that the entrenchment of the Bangsamoro homeland as a territorial space aims to secure the identity and posterity of the Bangsamoro people, protect their property rights and resources and establish a system of governance suitable and acceptable to them as a distinct dominant people. The Parties respect the freedom of choice of the indigenous peoples.⁴⁵

Negotiations bogged down in September 2006 over the proposed territory of the Bangsamoro homeland. While the government argued that any expansion of the ARMM must go through a democratic and constitutional process, the MILF maintained that “the subject of discussion is more about geography and not demography ... the issue of people and religion should not be given too much emphasis at the expense of geography”.⁴⁶ The two sides overcame the impasse in November 2007 and on 27 July 2008, they initialled the MOA-AD.

The MOA-AD contained the first consensus point on governance cited above in almost identical form. Its one other explicit reference to the Lumad draws on the definition of the Bangsamoro used in the MILF's April 2005 concept note:

It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as the “Bangsamoro”. 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 colonisation and their descendants whether mixed or of full native blood The freedom of choice of the indigenous people shall be respected.⁴⁷

³⁹ Crisis Group interviews, priest with experience working with remote Lumad communities, Manila, 27 April; and Lumad leaders, Malaybalay, 1 May 2011.

⁴⁰ Crisis Group interview, members of Moro civil society, Cotabato City, 3 May 2011.

⁴¹ The MNLF process focused on autonomy whereas as early as the 2001 Tripoli Agreement on Peace, the MILF and the government had agreed that one of the three clusters to be negotiated was ancestral domain (alongside security and relief and rehabilitation). Ancestral domain has consistently proven to be the most difficult aspects of the talks. As a scholar argues, there is “a tendency to associate this concept [Bangsamoro homeland] with property ownership. More often than not, we have observed that these two concepts are made interchangeable, ie, a Bangsamoro homeland is equated to an effective legal title over these territories to preclude ownership by non-Bangsamoro”. Antonio La Viña, “Riverman's vista: land is the answer”, *Mindanews.com*, 13 September 2011.

⁴² See the chapter on the Lumad (“The ‘Protected’”) in Salah Jubair, *The Long Road to Peace: Inside the GRP-MILF Peace Process* (Manila, 2007), pp. 101-112. Salah Jubair is the pen name of the MILF chief negotiator Mohagher Iqbal.

⁴³ “General Concepts and Negotiation Parameters of the Moro Islamic Liberation Front (MILF)”, seventh exploratory talks, Kuala Lumpur, 18-29 April 2005, copy on file with Crisis Group. For the MILF account of the April 2005 round, see Jubair, *The Long Road to Peace*, op. cit., p. 118.

⁴⁴ “General Concepts and Negotiation Parameters of the MILF”, op. cit.

⁴⁵ Jubair, *The Long Road to Peace*, op. cit., p. 140.

⁴⁶ *Ibid*, pp. 144-145.

⁴⁷ Memorandum of Agreement on Ancestral Domain, 2008.

Provisions on territory did not refer explicitly to the inclusion of Lumad ancestral domains. The new Bangsamoro Juridical Entity (BJE) was to comprise the existing autonomous region and six municipalities in Lanao del Norte that had voted to be included in 2001. In addition, plebiscites were to be held in 737 Muslim-majority *barangays* (villages) called “Category A” within twelve months to allow the inhabitants to choose whether to join. Further plebiscites would be held in 1,459 conflict-affected areas, “Category B”, after a 25-year period.⁴⁸ But because Lumads are not a majority in the areas concerned, those living in a Muslim-majority *barangay* that voted in favour would likely be included in the new Bangsamoro homeland.⁴⁹

The controversial draft was leaked in late July and powerful Christian politicians, including the then vice governor of North Cotabato, Manny Piñol, protested to the Supreme Court which issued a temporary restraining order. Many Lumads were angry as well. While they protested that they were not Bangsamoro, they were most upset about the territorial provisions of the agreement and the fact that they had not been consulted.⁵⁰ More than 200 tribal leaders issued a statement after meeting in Cagayan de Oro in late August 2008. They made five recommendations to the negotiating panels:

- To respect our right to self-determination and the peace pacts of our ancestors by excluding the Indigenous Peoples’ territories under the BJE except those ancestral domains of Teduray, Lambangian and Dulangan Manobo tribes that are located within the ARMM, a core area of the BJE;
- For these tribes within the ARMM, the Bangsamoro peoples should respect their rights to self-determination, traditional governance, tribal justice system and their rights on their ancestral domain as well as the utilisation of its resources;
- To stop the war and resume the stalled peace talks, but this time with the officially designated representatives of Indigenous Peoples;

⁴⁸ For further discussion of the terms of the MOA-AD, see Crisis Group Briefing, *The Philippines: The Collapse of Peace in Mindanao*, op. cit.

⁴⁹ Crisis Group interviews, journalist and former member of the government peace panel, Cagayan de Oro and Iligan, 29 April 2011.

⁵⁰ See “Mindanao tribal chiefs hit RP’s [Republic of the Philippines] homeland deal with MILF”, *Philippine Daily Inquirer*, 31 July 2008; “Lumad leaders want no part in Bangsamoro deal”, *Philippine Daily Inquirer*, 5 August 2008. Several leaders pointed to a July 2006 summit at which tribes agreed to oppose the inclusion of their ancestral domains in a Bangsamoro homeland. For the MILF reaction to this, see Jubair, *The Long Road to Peace*, op. cit., pp. 105-108.

- To create an independent panel composed of tribal leaders or Lumad representatives who will bring the voices of the Indigenous Peoples in any peace agreements;
- To clarify the concept on governance within the Bangsamoro Juridical Entity in relation to the tribal governance of indigenous peoples and to our ancestral domains.⁵¹

Among the tribes who attended the conference, there were some who adopted a stronger stance, such as the Subanen on the Zamboanga peninsula, and others, such as the Teduray, who took a much softer position (see below). But most Lumads simply had no knowledge of the MOA-AD and how it would affect them.⁵²

In the end, the Supreme Court ruled the agreement was unconstitutional.⁵³ The MILF reached out to hundreds of tribal leaders and invited them to Camp Darapanan. An Erumanen-Menuvu *datu* from North Cotabato who attended explained how the MILF asked for support for their idea of an expanded Bangsamoro homeland and recognised that their elders were brothers. They said that they could support Lumad ancestral domain in concept only at that point, because the tribes first needed to support the Bangsamoro struggle. After a peace settlement with the government, the MILF would support them.⁵⁴

Because the MOA-AD was only an interim agreement rather than a final settlement, it did not spell out how the BJE would be governed and so the “freedom of choice of the indigenous peoples” was ambiguous. Subsequent negotiations under the Arroyo administration did not clarify this, although in the 3 June 2010 declaration of continuity the parties agreed to reframe “the consensus points of Ancestral Domain, [to] respect the existing property and community rights taking into account in particular the rights of indigenous people”.⁵⁵ But the question remains: what sort of mechanism would the Lumad have to express this freedom of choice? Peace negotiations which resumed un-

⁵¹ The Cagayan de Oro Declaration on the Memorandum of Agreement on Ancestral Domain of the GRP [Government of the Republic of the Philippines]-MILF Peace Panel, 27 August 2008.

⁵² Crisis Group interviews, priest who has worked extensively with Lumad communities, Manila, 27 April 2011; and senior figure in the Catholic Church in ARMM, Cotabato City, 4 May 2011.

⁵³ The 14 October 2008 ruling is available on the Supreme Court website: <http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/183591.htm>.

⁵⁴ Crisis Group interview, Erumanen-Menuvu *datu*, Malaybalay, 1 May 2011. Another *datu* from the same tribe, who is not particularly sympathetic to the MILF, pointed out that the organisation’s leaders are very professional in their interactions with tribal chiefs when there are such consultations. Crisis Group interview, Carmen, North Cotabato, 3 May 2011.

⁵⁵ Declaration of Continuity for the Peace Negotiation between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, Kuala Lumpur, Malaysia, 3 June 2010.

der the Aquino administration in February 2011 have yet to tackle it.

C. CONSULTATIONS IN 2010-2011

The MILF seems to have taken on board some of the concerns of the Lumad and Christian settlers as well as those of Filipinos beyond Mindanao. Its negotiating panel has been criss-crossing the country to explain its proposal for a sub-state, the new variant on the Bangsamoro homeland. In its meetings with Lumad communities, the panel presents the provisions from its draft that pertain to basic rights, identity, the right to be governed by traditional laws, religious bodies and representation. The PowerPoint presentation concludes with a map from the MOA-AD showing the territories listed in Category A.⁵⁶

The identity question has been finessed so that the Lumad have the right to “opt in” to the Bangsamoro identity rather than “opt out”, as in the failed 2008 agreement. The other new provision is on representation: “This Comprehensive Compact provides for a democratically-elected Bangsamoro Assembly with reserved seats allocation to non-Moro after the expiration of the transitional arrangement”.

The MILF has also been trying to emphasise that it has always been committed to upholding indigenous rights. Chief negotiator Mohagher Iqbal sent a statement to a Teduray meeting in October 2010 that cited MILF founder Salamat Hashim as saying:

Matters concerning territory are negotiable. As for non-Muslims and un-Islamised native tribes they will be given many options: 1) Autonomy or federal government with freedom to practice their beliefs and culture; 2) Join the Philippine government and the state will compensate all their legally possessed properties that will be left behind including ... land; and 3) Remain under the [Bangsamoro] state and be its citizens. In this case the would-be state ensures its citizens – Muslims and non-Muslims – full freedom, justice, and equality and democracy and [that] their human rights are protected and promoted.⁵⁷

Whether this charm offensive is working is hard to assess.⁵⁸ Members of the insurgents’ negotiating panel are confident

it is, and most observers believe the MILF is being much more accommodating this time around – not just to the Lumad but to the various segments of the public that were very sceptical in 2008.⁵⁹ There is a sense that the MILF may be more willing to make concessions. Several people pointed to the idea of reserved seats for indigenous people in a future assembly as a positive step, even if details have not been spelled out.⁶⁰ Lumad leaders who attend the consultations, however, tend to be those who are more open-minded to begin with.⁶¹ It also remains unclear whether national legislation on indigenous rights would apply in a new Bangsamoro homeland, even if the MILF negotiating panel has been encouraging tribes to apply under IPRA for recognition of their domains during the consultations.

With donor support, the Mindanao Peoples’ Caucus, a non-governmental organisation based in Davao, has assisted the Lumad in drawing up position papers for submission to the government and MILF peace panels.⁶² The consultations were held in areas included in Category A.⁶³ The position papers from the various tribes consulted broadly fall along the same lines as their reactions to the 2008 agreement. For example, the Subanen continue to claim that the entire Zamboanga peninsula and Misamis Occidental should be excluded from the territory under negotiation with the MILF.⁶⁴

Several tribes are continuing to push for a separate panel of Lumad representatives who would be consulted by both the government and the MILF, as was demanded in the 2008 Cagayan de Oro declaration. The government negotiating panel is lukewarm on the idea. While its members, like the MILF, have been meeting Lumad leaders since the Aquino administration took office, they are not interested

www.kadtuntaya.org, 26 February 2011; and “Lumads, CSOs agree in principle with proposed MILF peace pact”, *Mindanews.com*, 15 June 2011.

⁵⁹ Crisis Group interviews, Manila and Mindanao, May and July 2011.

⁶⁰ Crisis Group interviews, senior figure in the Catholic Church in ARMM, Cotabato City, 4 May 2011; Western diplomats, Manila, 6 May 2011.

⁶¹ Crisis Group electronic communication, Erumanen-Menuvu leader, June 2011.

⁶² The MILF takes a dim view of tribal leaders’ fondness for position papers. It “considers the making of resolutions or petitions whether for exclusion or inclusion to the BJE as an effort not in the right direction ... The Parties must first agree on the mechanics of how to conduct or determine the free choice for the IPs, which might include petitions, before any document or effort from either of the Parties could hold water”. Jubair, *The Long Road to Peace*, op. cit., p. 108.

⁶³ “Results of the IP Community Consultations on the GPH [Government of the Philippines]-MILF Talks and the Issue of Ancestral Domain”, Mindanao Peoples’ Caucus, undated.

⁶⁴ Position paper of the Subanen, 16 March 2011, copy on file with Crisis Group.

⁵⁶ Abhoud Syed Lingga, “Indigenous Peoples’ Rights Under the MILF Proposal of the Comprehensive Compact”, PowerPoint presentation, undated, made available to Crisis Group.

⁵⁷ “Solidarity message by Mohagher Iqbal of the MILF delivered by Professor Amor Pentaliday during the Second Timfada Limud”, op. cit.

⁵⁸ See “MILF admits non-Moros wary of proposed ‘sub-state’”, *Philippine Daily Inquirer*, 11 May 2011; “MILF peace panelist: We support IP voice in talks”, Kadtuntaya Foundation,

in formalising whom they consult as tribes' representatives.⁶⁵ Although the government panel includes one Lumad, Ramon Piang, the Teduray mayor of North Upi, some leaders feel that he is not their representative because he was appointed by the government. In any case, they say, the whole panel should be engaged in the Lumad question, not just one person. Likewise, the MILF negotiating panel has a member of the B'laan tribe, Datu Kinoc, as an alternate.

Position papers are not new, as tribes have submitted them intermittently over the years to little effect. Some observers are also sceptical of the merits of trying to organise the Lumad as often this prompts more questions than answers. A senior figure in the Catholic Church in ARMM noted that this can lead to debates over what it means to be indigenous, for example.⁶⁶ Likewise, a priest who has worked extensively with remote Lumad communities commented, "until you have the main blocks in place [with the government and the MILF], there is no point bringing in others".⁶⁷

The Lumad are demanding a place at the negotiating table so they can advance their right to self-determination. They also have little faith in the MILF or the government protecting their interests. Both the parties acknowledge a peace settlement will affect the Lumad, but there is no doubt that compared to other stakeholders, they wield much less power. It was Christian politicians that scuppered the MOA-AD, not the Lumad. The tribes are in the unenviable position of being caught between a peace process that has little space for an indigenous rights agenda and the deeply flawed implementation of IPRA.

III. THE LEGAL FRAMEWORK FOR INDIGENOUS RIGHTS

The Philippine Congress passed the Indigenous Peoples Rights Act (IPRA) in 1997,⁶⁸ but its weaknesses mean few tribes in Central and Western Mindanao have received titles for their ancestral domains. Some Lumad leaders worry that even if their communities have titles, these may not be respected in an expanded Bangsamoro homeland.⁶⁹ The act has never been implemented in the existing autonomous region, ARMM.

The act recognises native title and enables communities to delineate their ancestral domain and receive a Certificate of Ancestral Domain Title (CADT).⁷⁰ This new category of land title is communal and is distinct from private and public lands.⁷¹ Its purpose was to give indigenous communities security of tenure.⁷² Applications are handled by

⁶⁸ As Republic Act (RA) 8371.

⁶⁹ For example, in 2003, the UN special rapporteur on indigenous people, Rodolfo Stavenhagen, reported that, "While IPRA recognises the right to land, self-determination and cultural integrity of indigenous peoples, the Special Rapporteur is concerned about serious human rights issues related to the lack of its effective implementation". "Mission to the Philippines", Commission on Human Rights, 59th Session, E/CN.4/2003/90/add.3, 5 March 2003. Other problems include its imposition of one conception of territory despite differences among indigenous groups, NCIP's insufficient funding and weakness vis-à-vis other government agencies, and contradictions with the 1995 Mining Code and the 1992 National Integrated Protected Areas System (NIPAS) Act. For other assessments of IPRA, see Nestor Castro, "Three Years of the Indigenous Peoples Rights Act: Its Impact on Indigenous Communities", *Kasarinlan*, vol. 15, no. 2 (2000); Roger Plant, "Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Regional Report", Asian Development Bank, June 2002, pp. 22-24; and Marvic M.V.F. Leonen (current chair of the government negotiating panel for the MILF process), "The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371): Will this legal reality bring us to a more progressive level of political discourse?", *Philippine Natural Resources Law Journal*, vol. 9, no. 1 (September 1998).

⁷⁰ IPRA also established a Certificate of Ancestral Land Title (CALT), which can be held by individuals, families and clans who are members of an indigenous community. IPRA and its implementing rules and regulations can be downloaded from www.ncip.gov.ph. Section 3(l) defines native title as "preconquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest".

⁷¹ Castro, "Three Years of the Indigenous Peoples Rights Act", op. cit., p. 39.

⁷² Tenure security is the ability to control and manage land, use it and dispose of its products and undertake transactions, in-

⁶⁵ Crisis Group interview, member of the government negotiating panel, Manila, 5 May 2011.

⁶⁶ Crisis Group interview, Cotabato City, 4 May 2011.

⁶⁷ Crisis Group interview, Manila, 28 April 2011.

the National Commission on Indigenous Peoples (NCIP).⁷³ Rights over ancestral domain include, among others, the right to ownership, the right to develop lands and natural resources and the right to stay in the territories.⁷⁴ However, these titles do not transfer pre-existing property rights to indigenous communities.⁷⁵

The community must give its free and prior informed consent according to customary practices before any contracts or concessions can be granted or renewed within the ancestral domain. This requirement alarmed potential investors and in 1998, NCIP passed an administrative order which exempted firms that already had contracts prior to the approval of the act's implementing rules and regulations. There are also reports of the commission assisting mining companies in securing consent.⁷⁶

Another weakness is that the Philippine state claims ownership over all natural resources. The 1987 constitution states that "with the exception of agricultural lands, all other natural resources shall not be alienated".⁷⁷ Likewise, IPRA distinguishes between rights of ownership to land and rights of ownership to natural resources within an ancestral domain. Indigenous communities only enjoy "priori-

cluding transfers of it. Other important dimensions to these rights include their duration and the ability to enforce them.

⁷³ NCIP has seven commissioners selected from different regions across the Philippines. There are regional and provincial offices countrywide, except in the ARMM (see below). The agency has quasi-judicial powers to arbitrate disputes involving indigenous lands. IPRA, Sections 62 and 69.

⁷⁴ Other rights include the right in case of displacement; the right to regulate entry of migrants; the right to safe and clean air and water; the right to claim parts of reservations; and the right to resolve conflict. IPRA, Section 7.

⁷⁵ Section 56 states "Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected". This reassures existing owners that they will not lose their properties. See also Erlinda Montillo-Burton, "The Quest of the Indigenous Communities in Mindanao, Philippines: Rights to Ancestral Domain", submitted to the Working Group on Minorities, Commission on Human Rights, United Nations, 12-16 May 2003.

⁷⁶ See "Mining in the Philippines: concerns and conflicts", Fact-finding mission to the Philippines, led by UK parliamentarian Clare Short, July-August 2006; "Breaking promises, making profits: mining in the Philippines", Christian Aid and PIPLinks, December 2004; Michael Teodoro G. Ting Jr et al, "Modernity vs Culture: Protecting the Indigenous Peoples of the Philippines", *European Journal of Economic and Political Studies*, vol. 1, no. 1 (2008).

⁷⁷ Article XII, Section 2. It was on this basis that the constitutionality of IPRA was challenged in the Supreme Court. See Marvic Leonen and Andrew Gerard Ballestros, "A Divided Court: A Conquered People? Notes on the Supreme Court Decision on the Constitutionality of the Indigenous Peoples Rights Act of 1997", LRC-KsK Friends of the Earth Philippines, 2001.

ty rights" over natural resources; therefore, they have less control over these than the land in their ancestral domain.⁷⁸

The MILF thinks the Lumad are wrong to pin their hopes on IPRA because of these problems in the law.⁷⁹ It demands clear ownership over both land and natural resources and under the terms of the failed 2008 agreement with the Arroyo government, the Bangsamoro were to receive 75 per cent of the income and revenues from natural resources. These provisions are clearly a vast improvement on IPRA.

Countrywide, few indigenous communities have ancestral domain titles because NCIP processes the applications extremely slowly and there are often conflicts over the land being claimed. This has sown divisions within and between tribes, as those who applied earlier have benefited. As a Lumad leader in Bukidnon province observed, "you only have your rights [as an indigenous person] if you have your claim. And you can only claim your land with the permission of the government".⁸⁰ There are also allegations of imagined ethnic identities being used to secure titles. As a government official commented about ancestral domain claims, "it's a lot of constructed identity embodied in law that privileges the more organised groups".⁸¹ The flaws in IPRA's implementation have discouraged tribes from applying and increased their scepticism and mistrust of government agencies.⁸²

Lumads in the ARMM have been unable to receive ancestral domain titles. Although legislation to set up the autonomous region was passed in 1989, many powers have never been devolved to it from the central government. IPRA's status in the autonomous region remains unclear. There is no NCIP office, only an Office for Southern Cultural Communities, an anachronistic agency that never had the authority to grant ancestral domain titles.⁸³ The office

⁷⁸ See IPRA, Section 57. For legal analysis of these issues see Vicente Paolo B. Yu III, "Undermining Indigenous Land Rights: The Impact of Mining Rights on Private Land Rights of ICCs/IPs in the Philippines", *Philippine Law Journal*, vol. 74, (2000).

⁷⁹ "In the final analysis, only the surface of the lands of the IPs in their ancestral domains belonged to them [under IPRA]. But even then, their lands are steadily encroached or virtually acquired by outsiders". Jubair, *The Long Road to Peace*, op. cit., p. 110.

⁸⁰ Crisis Group interview, Malaybalay, 1 May 2011.

⁸¹ Crisis Group interview, government official, Manila, 6 May 2011. Said another Mindanawon who has been involved in the peace process with the MILF, the CADT process is not really about recognising tribal territory but is about "a certain number of people who belong to a tribe saying this land is theirs". Crisis Group interview, Mindanao, 29 April 2011.

⁸² Special Rapporteur, "Mission to the Philippines", op. cit., pp. 10-11. Crisis Group interviews, Lumads, Caraga region, 19-22 August 2010; and civil society member, Manila, 27 April 2011.

⁸³ During the colonial period and since independence, various administrations have set up dedicated offices for indigenous affairs. Prior to the passage of IPRA, there was an Office for

has limited resources at its disposal; programs targeting the Lumad must be implemented through other government agencies, notably the Department of Environment and Natural Resources.⁸⁴

Under the act that expanded the powers of the ARMM in 2000, the regional government is responsible for protecting the ancestral domain and lands of the Lumad.⁸⁵ However, NCIP's powers were not expressly devolved. In 2003, the regional assembly passed Resolution No. 269 after which the commission and the regional governor signed a memorandum of understanding to make IPRA the legal framework for indigenous rights until the autonomous region passed its own legislation.⁸⁶ In 2008, the regional assembly passed Act No. 241, which reaffirmed the policies on indigenous peoples set out in national legislation and international law. But the Office on Southern Cultural Communities remains too weak to support the Lumad in the autonomous region with ancestral domain claims.⁸⁷

IPRA's status in the autonomous region remains ambiguous for political reasons. ARMM is so weak and dependent on the central government for funds that it is unlikely to act effectively in terms of indigenous rights even if the regional assembly did pass the necessary legislation. Nor is there

Northern Cultural Communities (ONCC) and an Office for Southern Cultural Communities (OSCC). However, it was the Department of Environment and Natural Resources (DENR) that was more innovative in assisting indigenous communities with tenure security at the time. Following Republic Act 6734 which created the autonomous region in 1989, the OSCC's powers were devolved to the regional office in Cotabato City. After IPRA was passed in 1997, the ONCC and OSCC were merged to create NCIP, but no further devolution to the ARMM occurred, hence the anachronism of the autonomous region's OSCC. In the Teduray areas of Maguindanao province, the DENR is running its Forest Land Use Plan to issue documents called "individual property rights" for up to three hectares of cultivated land. Crisis Group interview, local government official, Upi, Maguindanao, 4 May 2011.

⁸⁴ Crisis Group interview, OSCC staff, Cotabato City, 5 May 2011.

⁸⁵ Scholar Dennis Esraga describes this act, Republic Act 9054, as "the single most lethal law that invalidates whatever ammunition IPRA has in its arsenal to advance the rights of Philippines' IPs". "Ancestral Domain Claim: The Case of the Indigenous People in Muslim Mindanao", *Asia-Pacific Social Science Review*, vol. 8, no. 1 (2008), p. 39.

⁸⁶ See Memorandum of Understanding between NCIP and ARMM, 30 October 2003 and ARMM Regional Legislative Assembly, Resolution No. 269, 15 August 2003, copies on file with Crisis Group. Further bureaucratic steps necessary to change the OSCC into an NCIP office were never completed.

⁸⁷ See Elena Joaquin Damaso, "Honoring Mamalo: Turning a Paradox into a Paradigm Shift – Recognition of Non-Islamized Indigenous Peoples' Rights in the ARMM", Institute for Autonomy and Governance, Notre Dame University, Cotabato City (2011).

political will given the low level of representation of Lumads within the regional government.⁸⁸ The real power resides with the president, who could issue an executive order, and with NCIP in Manila.⁸⁹ However, for the latter, devolving power and funds to the autonomous region may not be a priority given its limited resources.⁹⁰ For the president, indigenous rights are likely a much less pressing concern than the security issues in Central and Western Mindanao.⁹¹

The Aquino government has embarked on an ambitious agenda to improve governance in the autonomous region. Until mid-term elections in 2013, the regional government will be run by a caretaker administration that will implement reforms. It could take steps to ensure ancestral domain titles can be issued in the region.⁹² But this is unlikely. There is no constituency within the reform ARMM movement to push the issue.

The Lumad of Central and Western Mindanao look to IPRA as the primary means of safeguarding their land and resources, as well as their right to self-governance. But they realise it is deeply flawed and a final peace settlement with the MILF may not respect its terms. Lumad leaders also know from experience that the government and the MILF may go back on their promises. The Teduray in Maguindanao and the Erumanen-Menuvu in North Cotabato have responded to this situation in different ways.

⁸⁸ Crisis Group interview, government official, Manila, 6 May 2011.

⁸⁹ Crisis Group interview, Erumanen-Menuvu *datu*, North Cotabato, 3 May 2011.

⁹⁰ Several interviewees noted that because NCIP commissioners change every three years it is difficult to pass an "en banc" resolution, which is one way of approving the implementation of IPRA in ARMM. Crisis Group interviews, Cotabato and Manila, 5-6 May 2011. The NCIP commissioner for Central Mindanao, Santos Unsad, who is a Teduray himself, said at a forum in Cotabato City in March 2011 that his efforts to lobby his fellow commissioners to devolve NCIP powers to the ARMM received "a cold shoulder". See "The Struggle Continues: Uphold the Rights of Indigenous Peoples", *Autonomy and Peace Review*, Institute for Autonomy and Governance, Cotabato City (April-June 2011), p. 51.

⁹¹ Indigenous people play a bigger role in the government's efforts to end the communist insurgency as many have been recruited into the New People's Army (NPA) or work on the other side, as paramilitaries for the Philippine army.

⁹² The Aquino government has postponed the elections in the ARMM until 2013 so that it can appoint a caretaker administration of officers-in-charge to "clean up" the corrupt and deeply dysfunctional autonomous region. On how this fits into the administration's broader vision for peace in Mindanao, see Crisis Group Briefing, *The Philippines: A New Strategy for Peace in Mindanao?*, op. cit.

IV. THE TEDURAY: INDIGENOUS RIGHTS IN THE ARMM

The Teduray, the largest indigenous group in the ARMM, are resigned to being included in a Bangsamoro homeland because they are pragmatic about their political situation. They realise opposition to inclusion would not help them safeguard their interests.⁹³ Yet, as a community leader said, the Teduray are unhappy they were included in the ARMM in the first place; they say the blame lies with the Cory Aquino government, which failed to recognise their traditional territory and their tribal-based self-governance when it set up the autonomous region.⁹⁴ They support a final peace agreement between the government and the MILF which may well expand the powers and territory of the Bangsamoro homeland; they also want to claim their ancestral domain and safeguard their right to self-governance.⁹⁵ But the Teduray are facing two obstacles: the unclear legal status of IPRA in the autonomous region and internal divisions.

A. WHO ARE THE TEDURAY?

Around 60,000 Teduray live in the uplands of Maguindanao province. Their traditional territory runs through the heart of Cotabato City from Pedro Colina Hill to the ARMM government's buildings and then out past the airport towards the hills to the south. Most live in North and South Upi and the newly created municipality of Datu Blah Sinsuat on the coast.⁹⁶ This area is also populated by Christian settlers, who arrived from Luzon and the Visayas in the 1920s, as well as by Muslims. Some Teduray have converted to Christianity – for the most part they are Episcopalian – or to Islam. Teduray leaders call those who continue to practice traditional beliefs “intact”.⁹⁷ Two smaller tribes, the Lambangian and the Dulangan Manobo, live in the southern part of Maguindanao province towards the border with Sultan Kudarat and often ally themselves with the Teduray.

Politically, the Teduray are weak. Until 2001, the municipality of North Upi was run by the Sinsuat family, who are Maguindanaon. It was only then that the Teduray managed to elect one of their own, Ramon Piang, as mayor. There is also a Lumad deputy governor for ARMM, but his role is symbolic at best.

Because of the strength of Maguindanaon clans in local government, the Teduray have been unable to exert control over areas they consider sacred. For example, those living around the Mount Firis complex have been displaced for decades, and the land has been carved up between the municipalities of Datu Unsay, Datu Saudi, Guindulungan, Shariff Aguak and Talayan.⁹⁸

Unlike other tribes who are further away from the insurgency's heartland in Maguindanao and Lanao del Sur, the Teduray know the MILF well.⁹⁹ Some of them have joined the Muslim insurgent organisations, fighting with the MNLF in the 1970s and 1980s. Recently, Teduray leaders say those members of the community who join the MILF have converted to Islam – unlike in the past, when those in the MNLF were “intact”.¹⁰⁰

B. TEDURAY MOBILISATION

Despite IPRA's non-implementation in the autonomous region, the Teduray have applied for recognition of their ancestral domain, which they estimate to be 289,268 hectares.¹⁰¹ They say their claim will simply formalise native title and pacts made with Maguindanaon elders centuries ago. Community leaders point out this is only a portion of their traditional territory because “we want to be practical about our current situation” and are not seeking to exclude others.¹⁰² They simply want to ensure they cannot be displaced.¹⁰³ But the application for the claim has gone no-

⁹³ Crisis Group interview, Moro civil society leader, Cotabato City, 4 May 2011.

⁹⁴ Timuay Alim Bandara, “Lumad struggle for ancestral domain and self-governance in the ARMM”, undated.

⁹⁵ Crisis Group interview, member of the government peace panel, Manila, 5 May 2011.

⁹⁶ A Teduray activist said all eleven *barangays* in South Upi are Teduray-dominated, as well as eighteen of 35 in North Upi and five of thirteen in Datu Blah Sinsuat. Crisis Group interview, Cotabato City, 8 October 2011.

⁹⁷ Crisis Group interviews, member of OTLAC (Organisation of Teduray and Lambangian Conference), North Upi, 4 May 2011; and Teduray leader who has worked with NCIP, Manila, 30 June 2011.

⁹⁸ Damaso, “Honoring Mamalo”, op. cit.

⁹⁹ Crisis Group interview, senior figure in the Catholic Church in ARMM, Cotabato City, 4 May 2011.

¹⁰⁰ Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011. One notable full-blooded Teduray member of the MILF was the late Sheikh Abukhalil Yahya (Abdulrahman Campong) who studied Islam at al-Azhar University in Egypt and was once the chairman of the MILF Supreme Sharia Court.

¹⁰¹ If the Teduray are eventually awarded a title for their claim, it is unlikely to be for such a large area once land disputes are resolved and delimitation is completed. Crisis Group interview, NCIP official, North Cotabato, 7 October 2011. Under DENR Administration Order No. 2, the Teduray tried to claim 56,000 hectares in 1994. Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011.

¹⁰² Crisis Group interviews, Teduray leader who has worked with NCIP, Manila, 30 June 2011; and Teduray activists, Cotabato City, 8 October 2011.

¹⁰³ Crisis Group interview, member of the Timuay Justice and Governance (TJG), Cotabato City, 1 July 2011.

where. In June 2011, NCIP in Manila indicated that \$50,000 had been earmarked to begin processing it. But it may not be possible to begin work in the ARMM without the agreement of the regional government.¹⁰⁴ The commission has little incentive to address the problems of IPRA's status in the region because there is only one main beneficiary: the Teduray.

They have tried for a long time to secure recognition of their ancestral domain. After the DENR passed Administrative Order No. 2 in 1993, it became possible to issue Certificates of Ancestral Domain Claim (CADC). These gave indigenous communities rights to the land they claimed but did not grant them titles. Although well over 100 certificates were issued, the Teduray never received one before the scheme was replaced by the current system in 1997.¹⁰⁵

The Teduray have set up several organisations to advance their cause and have revitalised their traditional system of governance known as the *Timuay*, which literally means "one who is capable of gathering others together". Another important role is that of *Kefedewan*, who administer conflict settlement processes according to customary law.¹⁰⁶ This revival of tribal practices was formalised in 2002 through the creation of the Timuay Justice and Governance (TJG).¹⁰⁷ The community is governed by tribal laws including a constitution (*Ukit*), a civil code (*Téqudan*) and a penal code (*Dowoy*).¹⁰⁸ After it was created, the TJG began negotiating with the regional legislative assembly to have their customary law recognised.¹⁰⁹

In terms of the Teduray stance on the peace process, the Organisation of Teduray and Lambangian Conference (OTLAC) has played an important role. Set up in 1999 as a mechanism to coordinate among different groups, it brings together the TJG, the Teduray-Lambangian Women's Organisation, youth associations and several other groups.

Its membership also includes Teduray who are affiliated with Muslim insurgent organisations.¹¹⁰ When the agreement on ancestral domain collapsed in 2008, the conference organised study sessions to counter the misinformation about it among the Teduray. As an activist involved with OTLAC described:

It was a problem that 80 per cent of my tribe [did] not understand the MOA-AD. [People were saying:] "They will get our ancestral domain! We must arm ourselves for war with the Moros!" ... [The conference's leaders said,] "We are in the same mosquito net as our Moro brothers ... we must come to a consensus where everyone gets justice".¹¹¹

The conference had played such a role previously, for example, in coordinating consultations before dialogues with the MILF and in drawing up position papers to clarify their stance on the peace process. When the peace process restarted under the Aquino administration, a new position paper was drawn up with the assistance of the Mindanao People's Caucus, an NGO. It first notes the need to affirm the ancient peace pacts, and points out that the Teduray, Lambangian and Dulangan Manobo:

- ❑ Estimate their traditional territory to encompass 289,268 hectares and note the non-implementation of IPRA in the ARMM;
- ❑ Support the Bangsamoro quest for a broader territory, peace and development, provided that their ancestral domain "within the Bangsamoro Nation" be recognised and that they [are] free to practice and promote their tribal identity;
- ❑ Shall have "priority rights" in the use and management of natural resources within their ancestral domain, including strategic minerals and forestry resources;
- ❑ Wish to have equal opportunities and representation in local and regional government alongside the Bangsamoro, while also enjoying autonomy to practice traditional and customary law within the Bangsamoro nation; and
- ❑ Request the support and assistance of the government and MILF in setting up a panel of indigenous people within the ARMM who will represent their communities' concerns in the peace process.

Teduray and Lambangian leaders have pressed the government to move on their unified claim. In June they passed a letter to President Aquino. Ideally, they hope that they will be in a better position if they have a title for the land

¹⁰⁴ Crisis Group interview, NCIP official, Manila, 30 June 2011.

¹⁰⁵ Since then, CADCs are no longer issued and existing ones are converted to CADTs. See Castro, *op. cit.*; IPRA, Section 52(a); and Crisis Group interview, NCIP officials, Cagayan de Oro, 2 May 2011. The CADC program, like many aspects of then President Ramos's social reform agenda, overlooked the indigenous peoples in the ARMM. Crisis Group interview, OSCC staff, Cotabato City, 5 May 2011.

¹⁰⁶ See Rey Danilo C. Lacson and Ester O. Sevilla, "Timuay at Datu: Indigenous self-governance in Teduray and Maguindanaon Societies", in Yasmin Arquiza (ed.), *The Road to Empowerment: Strengthening the Indigenous Peoples' Rights Act* (2007), p. 44.

¹⁰⁷ Although rooted in traditional governance systems, the TJG structure, entailing secretaries and treasurers etc, also introduces several new elements. *Ibid.*, p. 59.

¹⁰⁸ Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011.

¹⁰⁹ Act No. 241 passed by the regional assembly in 2008 singles out the TJG in Section 6 on self-governance.

¹¹⁰ Crisis Group interviews, Teduray activists, Cotabato City, 8 October 2011.

¹¹¹ Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011.

they claim by the time a peace settlement is signed.¹¹² They are leery of counting on promises alone. A Teduray leader who is involved in the TJG pointed to the marginalisation of the Lumad deputy governor in the autonomous region, saying, “these are the experiences we have with our Bangsamoro brothers”.¹¹³

There are serious tensions, however, among Teduray leaders because of accusations of wrongdoing, such as the misappropriation of funds.¹¹⁴ Although they all broadly agree on what is best for the Teduray community in the long term, in the short term these personal differences manifest themselves in disagreements over tactics. One divisive issue is how best to push forward the ancestral domain claim. Some think it is better to focus on NCIP while others want to pressure the government to take it up in the context of its negotiations with the MILF.

Relations with the MILF are another bone of contention. In June 2011, Timuay Melanio, the chairperson of OTLAC, became a consultant to the insurgents’ negotiating panel, which angered other Teduray leaders. One of them noted that Melanio’s decision was personal, and the MILF did not understand that he does not wield real power as OTLAC’s chairperson and therefore his appointment did not mean the community’s views were being taken on board. Nonetheless, it “was not good for OTLAC, it was not based on consensus”.¹¹⁵

Despite these differences, all Teduray seem to believe that pursuing the ancestral domain claim was the right idea and lament the fact that their distinct identity is inadequately recognised by the Philippine state because “we are not a threat to the nation”.¹¹⁶

V. THE ERUMANEN-MENUVU IN NORTH COTABATO

The role of the Erumanen-Menuvu¹¹⁷ in a clash between two Moro rebel commanders shows the limits of Lumad claims in the face of more powerful economic and political forces. Although the conflict unfolded between late 2010 and early 2011 in Kabacan and Matalam municipalities, in an area the tribe says is part of its ancestral domain, different members of the community ended up on opposing sides. Even if the Erumanen-Menuvu had had a title for the land they claim, they might have still ended up as pawns in a larger struggle between Moro commanders. As it transpired, many of their houses and farms were destroyed and the tribe is no closer to securing a title.

In such areas, which could well be included in an expanded Bangsamoro homeland, it would be wise to begin sorting out competing land claims sooner rather than later. There is already violent conflict over land and a peace settlement that is perceived as unjust – whether by Lumad or Christians – could escalate tensions further. The clash in Kabacan and Matalam illustrates that NCIP is completely unable to protect Lumad ancestral domains in this part of North Cotabato. The weaknesses of IPRA in such conflict-affected areas point to the need for a specific mechanism to resolve land disputes involving indigenous peoples in Central and Western Mindanao.¹¹⁸ The government and the MILF should consider the possibility of setting up a joint body which would also include indigenous and settler representatives to mediate land disputes on a trial basis. Taking steps now to deal with land conflict could build support for the peace process if a new mechanism could prove itself effective.

A. WHO ARE THE ERUMANEN-MENUVU?

The Erumanen-Menuvu live in North Cotabato and are one of several tribes in the province.¹¹⁹ They are not a majority in any municipality.¹²⁰ Because IPRA applies, in theory, the Erumanen-Menuvu can receive titles for their ancestral

¹¹² They have fewer expectations regarding representation of indigenous peoples in the new sub-state. Crisis Group interview, Teduray leader who has worked with NCIP, Manila, 30 June 2011.

¹¹³ Crisis Group interview, member of the TJG, Cotabato City, 1 July 2011.

¹¹⁴ Crisis Group interview, Teduray activist, Cotabato City, 8 October 2011.

¹¹⁵ Ibid.

¹¹⁶ Crisis Group interview, member of the TJG, Cotabato City, 1 July 2011.

¹¹⁷ There are several different spellings, including Arumanen-Manobo.

¹¹⁸ Another failed scheme is the Comprehensive Agrarian Reform Program that was set up in 1988. It is poorly suited to dealing with historical land claims as individuals currently working the land have priority. Gutierrez and Borrás, “The Moro Conflict”, op. cit., pp. 30-31.

¹¹⁹ There are five other major tribes: Obo-Manobo, Tinananen, Kulamanen/Matigsalog, Bagobo-Tagabawa and B’laan. “IP Situation”, NCIP provincial office, North Cotabato, 18-19 June 2011.

¹²⁰ According to the census data from 2000, there are only 60,000 Lumads in the province (roughly 6 per cent). Approximately 20 per cent is Moro and the rest is Christian.

domain. In practice, the tribe has received only one, in 2003, in the villages (*barangays*) of Gawasan and Bentangan, Carmen municipality, for 5,680 hectares. The tribe has made six other applications which are under consideration.¹²¹ One of these is a unified claim in Matalam and Kabacan for 20,000 hectares, which includes the area where violence erupted in 2010-2011. Processing is currently on hold as opposition from both municipalities prevents the commission from granting titles in an area with unresolved conflict.¹²²

It is hard to delineate traditional Erumanen-Menuvu lands in North Cotabato because indigenous and Maguindanaon inhabitants have been repeatedly displaced from their homes over the last four decades. Before, the two communities lived and farmed alongside each other and intermarriage was common. Relations soured in the 1970s because of the actions of Christian settlers, particularly the armed thugs known as the *Ilaga* who harassed and killed the Maguindanaon and took their land, at times with the support of local officials.¹²³ Although some Erumanen-Menuvu were victims of the *Ilaga* themselves, others either joined or worked for them as guides when they attacked Maguindanaon areas.¹²⁴ Even today, many Moros resent this complicity on the part of some Erumanen-Menuvu.¹²⁵

Although some Erumanen-Menuvu are Muslim, speak Maguindanaon or are sympathetic to or are even members of the Muslim insurgent organisations, many are alarmed by the proposal of an expanded Bangsamoro homeland. They reacted strongly to the inclusion of areas perceived as their traditional territory – regardless of whether they have the legal documents to prove it – in Category A of the failed 2008 agreement.¹²⁶ The tribe's leaders say their voices are never heard in elections, so they knew they would

be unhappy with the results of the planned plebiscites.¹²⁷ Unlike the Teduray, who have never benefited from IPRA, the Erumanen-Menuvu were worried that a Muslim-controlled government in an expanded Bangsamoro homeland would strip them of these rights rather than just fail to implement them. A community leader pointed out that there were no guarantees; at most, the MILF had promised to set up a separate department or agency for indigenous issues.

Because of Erumanen-Menuvu opposition to the MOA-AD, some Moros suspected they were aligning themselves with prominent Christian opponents such as Manny Piñol, the former vice governor of the province who challenged the constitutionality of that agreement. In fact, there is no love lost between Manny Piñol and the tribes in North Cotabato because the former has allegedly grabbed their land for his own benefit.¹²⁸ An Erumanen-Menuvu leader alleged that Piñol tried to persuade his community to join forces with him against the MILF, even offering to arm young tribesmen.¹²⁹

As peace talks restarted in February 2011, the Erumanen-Menuvu drew up a position paper which emphasised their land rights. It outlined traditional boundaries and specified “that territories within the identified boundaries must not be a part of the areas to be included in the negotiations for the creation of a Bangsamoro homeland and that there shall be no incursions, annexations or intrusions into each other's ancestral domains”. It then lists three additional demands, that tribal governance and justice as well as ownership and control of resources be recognised and respected within their ancestral domain; and that there be mutual respect for culture, religious practices and sacred places.¹³⁰ Although it is difficult to tell how representative such position papers are, a *datu* who was involved in the drafting insisted the one submitted in February reflects broader views within the tribe.¹³¹

¹²¹ “Profiles of Certificates of Ancestral Domain Claims, Region XII”, NCIP provincial office, North Cotabato, provided to Crisis Group on 7 October 2011. These are in the municipalities of Carmen, Pigcawayan, Libungan, Midsayap, Pikit and Aleosan.

¹²² An additional complication is that the documentation for the CADT application that had already been done was lost. Crisis Group interview, NCIP official, Kidapawan City, 7 October 2011. “Report on the alleged MNLF-IP conflict in Matalam, North Cotabato”, NCIP document, 24 November 2010, copy on file with Crisis Group.

¹²³ Moros often say that *Ilaga* is supposedly an abbreviation for “Illongo Land Grabbers Association”. It also means “rat” in the local language.

¹²⁴ See Guiamel Alim, Jose Bulao Jr and Ismael G Kulat, “Understanding Inter-ethnic Conflicts in North Cotabato and Bukidnon”, in Wilfredo Magno Torres III (ed.), *Rido: Clan Feuding and Conflict Management in Mindanao* (The Asia Foundation, 2007), pp. 165-179.

¹²⁵ Crisis Group interviews, members of Moro civil society, Cotabato City, 3-4 May 2011.

¹²⁶ Crisis Group interview, senior figure of the Catholic Church in ARMM, Cotabato City, 4 May 2011.

¹²⁷ Crisis Group interview, Erumanen-Menuvu *datu*, Carmen, North Cotabato, 3 May 2011.

¹²⁸ Crisis Group interview, military official, Cotabato City, 4 May 2011.

¹²⁹ Crisis Group interview, Erumanen-Menuvu *datu*, Carmen, North Cotabato, 3 May 2011. Others with experience in the region agree that indigenous peoples often have little common ground with the Christians. Crisis Group interview, priest who has worked extensively with Lumad communities, Manila, 27 April 2011.

¹³⁰ “Position paper of the Arumanen, Iyanen, Ubu-Manuvu, Kirinteken, Matigsalug, Kulamanen, Libunganen, Pulengiyen, Mulitaan, Simuniyen, Divevaan and Tinananen concerning the GRP-MILF peace negotiations based on the traditional peace agreements of Apu Mamalu and Apu Tabunaway”, signed in Kabacan, North Cotabato, 19 February 2011, copy on file with Crisis Group.

¹³¹ Crisis Group interview, Erumanen-Menuvu *datu*, Carmen, North Cotabato, 3 May 2011.

While the position paper is firmly opposed to inclusion in an expanded Bangsamoro homeland, there are other voices. Another Erumanen-Menuvu leader who advocates on behalf of the Lumad pointed out that the way forward is to distinguish between “ancestral domain as a tenurial instrument” and “ancestral domain as an exclusive idea”, meaning that the fight to secure titles for traditional territory should not be driven by a desire to exclude others from the land.¹³² But these ideas are far from being put into practice on the ground.

B. CONFLICT ERUPTS IN SNAKE FISH

Between October 2010 and mid-February 2011 in Kabacan and Matalam municipalities, close to 1,900 families were displaced, two civilians and seven combatants were killed and tens of schools and houses were burned.¹³³ The conflict was widely and inaccurately reported by the media as a fight between the MILF and their indigenous allies on the one hand, and the MNLF on the other.¹³⁴ In fact, the roots of the conflict lay in unresolved tensions stemming from the murder of an MILF commander’s father more than twenty years before and a scheme to develop plantations in an area claimed by both Lumad and Moro rebel commanders. The decision of some Erumanen-Menuvu to get involved in the conflict has done nothing to advance the tribe’s efforts to receive a title for their land.

The dispute was between two families. Kineg Inalang is the MILF governor of Kapalawan province.¹³⁵ His father, Amai Kugaw, had been murdered years ago by MILF fighters who were banished from the area. Kineg’s son, Commander Nano, is also active in the MILF as a fighter. Kineg was in a land dispute with Dima Ambel of the MNLF, who has close ties to the killers of Kineg’s father. Violence escalated in October 2010 when Dima Ambel began hosting men implicated in this murder who had recently returned home.

On 5 April 1988, Amai Kugaw, a prominent member of the Maguindanaon community in Carmen, North Cotabato, with ties to the MNLF,¹³⁶ was killed by a group of MILF fighters which included Taya Abubakar “Hannibal” and

Sambuto Pendtamanan.¹³⁷ The killing was to be resolved by the MILF’s Islamic courts and in the interim, the perpetrators were banished. The court never reached a decision on the case.

In September 2010 Hannibal returned to the area. He was hosted by Dima Ambel of the MNLF, to whom he is related.¹³⁸ His return was interpreted by Kineg and his supporters to be motivated by Dima Ambel’s business interests in the area.¹³⁹ With the backing of Sambuto Pedtamanan, Muslim families and some tribal leaders who had been “bought off”, he had signed a deal with a foreign company to develop 3,000 hectares of land.¹⁴⁰ The mountainous part of this area is known as Snake Fish and is inhabited by Lumads.

On 6 October 2010, the Erumanen-Menuvu in Snake Fish came under fire while they were working on their farms. The Menuvu said that it was Dima Ambel’s field commander, Matog Lumambas, who was behind the shooting, even if the former repeatedly denied this was the case.¹⁴¹ Although the reason remains unclear, it is likely the Lumad were being harassed in order to displace them from the area. This was notwithstanding an agreement with a now deceased Menuvu elder who had given Matog the right to farm in some parts of Snake Fish in exchange for providing security.

The Erumanen-Menuvu warriors fought back against Dima Ambel’s forces. Kineg sent his men to support the warriors. His mother was herself indigenous and a number of the rank and file MILF beneath him are as well.¹⁴² As a result, a group of tribal warriors from Carmen, North Cotabato came to the assistance of the Menuvu on Snake Fish.¹⁴³

¹³² Crisis Group interview, Erumanen-Menuvu leader, Manila, 30 June 2011.

¹³³ “Bantay ceasefire field report”, Mindanao Peoples Caucus, undated; and “Progress Reports on Armed Conflict in Kabacan, North Cotabato”, National Disaster Risk Reduction and Management Council, 15 March 2011.

¹³⁴ For example, “Land claims eyed [as] cause of trouble in North Cotabato”, *Gold Star Daily*, 10 February 2011.

¹³⁵ This is not an official Philippine province but rather an area delimited by the MILF.

¹³⁶ Crisis Group interview, member of Moro civil society, Cotabato City, 3 May 2011.

¹³⁷ The third individual reportedly involved was Jack Abas, now a division commander of the MILF’s Bangsamoro Islamic Armed Forces Eastern Mindanao Front. “Bantay ceasefire field report”, op. cit.

¹³⁸ He had been living in Pagalungan, Maguindanao, for a number of years. Crisis Group interview, member of civil society, Cotabato City, 3 May 2011.

¹³⁹ “Bantay ceasefire field report”, op. cit.

¹⁴⁰ In *barangays* Semone, Simbuhay and Tamped in Kabacan, and Tamped 2 in Matalam. Ibid and Crisis Group interview, Erumanen-Menuvu leader, Carmen, North Cotabato, 3 May 2011.

¹⁴¹ “Bantay ceasefire field report” and “Report on the alleged MNLF-IP conflict in Matalam, North Cotabato”, both op. cit. The fact that Noel Pedtamanan, the son of Sambuto Pedtamanan and a low-ranking MILF member, had joined Dima Ambel’s forces on Snake Fish was interpreted by Kineg’s supporters as a violation of the MILF decision to ban Kineg’s father’s killers.

¹⁴² Crisis Group interview, military official, Cotabato City, 4 May 2011.

¹⁴³ They are under Ongelio Mandadtem aka “Timuay Bungalos”. “Bantay ceasefire field report”, op. cit.; and Crisis Group interview, Moro civil society member, Cotabato City, 3 May 2011.

The situation calmed down for the next two months, but on 9 January 2011, Kineg's son, Commander Nano, who is an MILF fighter, launched an attack along with the Menuvu warriors against Dima Ambel's forces in Snake Fish, who then counter-attacked. This prompted a first wave of evacuees.¹⁴⁴ When violence flared again on 27-28 January, hundreds more evacuated.¹⁴⁵ In response, on 29 January, the MILF and MNLF sent delegates to the area to try to broker a ceasefire between Kineg and Dima Ambel.¹⁴⁶ However they could only agree to a joint meeting to discuss the possible ceasefire on 6 February, and even afterwards, the fighting escalated, peaking on 9 February.

The conflict was resolved by an agreement brokered by the mayor of Kabacan. He asked the Philippine military to secure the area and prepare it for the return of civilians once Kineg withdrew his forces. The MILF Central Committee may have also leaned on Kineg to do so.¹⁴⁷ Dima Ambel had appealed to the MILF to order Kineg to leave the area so that the rightful residents and landowners, including himself, could return.¹⁴⁸

The unresolved tensions over the death of Kineg's father and competing land claims over Snake Fish proved a combustible mix. Personal animosity and business interests blurred organisational and tribal loyalties, with MILF, MNLF and tribal warriors on both sides. The underlying issues that allowed violence to escalate all remain in place.

The various roles of Erumanen-Menuvu in the Snake Fish clash – as victims, fighters, businessmen and land claimants – underscore their complex involvement in North Cotabato politics. That some members of the tribe forged alliances with Commander Matog under Dima Ambel of the MNLF, while others were allied with Kineg of the MILF demonstrates the deep divisions within the community. The incident also points to the need to address

indigenous fears about being displaced from their land and losing control over their resources. Clearly some Erumanen-Menuvu communities feel the need to rely on Moro commanders for support, even though these individuals may not have their interests at heart.

The clash over Snake Fish shows the limits of tribal claims. Even if the Erumanen-Menuvu had had a title, it would have meant little in the face of a blood feud between two powerful men and the vested economic interests in the area. Granting ancestral domain titles is not a panacea. In the long term, such disputes need to be resolved through legal processes and for this to be possible, tribes and other landowners will of course need valid titles for their land. But in the interim, the government and the MILF should think about mechanisms for addressing these sporadic eruptions of violence over land. It is unwise to defer resolution of these problems until after a peace deal is signed. Fears held by Muslims, Christians and Lumads alike over who will control the land and its resources after a settlement with the MILF are not going to go away any time soon.

¹⁴⁴ 3,500 people left *barangay* Semone for Carmen municipality. "Bantay ceasefire field report" and "Progress Reports on Armed Conflict in Kabacan, North Cotabato", both op. cit.

¹⁴⁵ This time mainly from *barangay* Nangaan.

¹⁴⁶ At this point Dima Ambel signed a letter to the central committees of both insurgent groups asking them to call for a ceasefire because "many lives and properties of the Bangsamoro people are wasted". Letter from Dima Ambel, undated, copy on file with Crisis Group.

¹⁴⁷ Reportedly they were angry with Kineg for violating a 2003 decision to preserve peace in the area. Crisis Group interview, member of Moro civil society, Cotabato City, 3 May 2011.

¹⁴⁸ He argued that because of *rido* (land conflict) between Kineg and his enemies, he and others had been displaced from their land since 1988. Petition, "Asking/demanding the Central Committee of the MILF to grant us permission to return to our residence", document signed by residents/landowners, including Datu Dima Ambel and Hannibal, undated, copy on file with Crisis Group.

VI. CONCLUSION

The MILF and the government, if they were willing, could use the peace process to address the historical injustices suffered by Lumads as well as Moros. If the final agreement between the two parties were constructed and implemented on such a basis, it would stand a better chance of achieving lasting peace. The MILF would stand to benefit, as it would prove the sceptics wrong who believe the rebels would run roughshod over minority rights. The Philippine government would as well, as it is in its interest to ensure constitutional and legal protections for minorities are respected in a new Bangsamoro homeland.

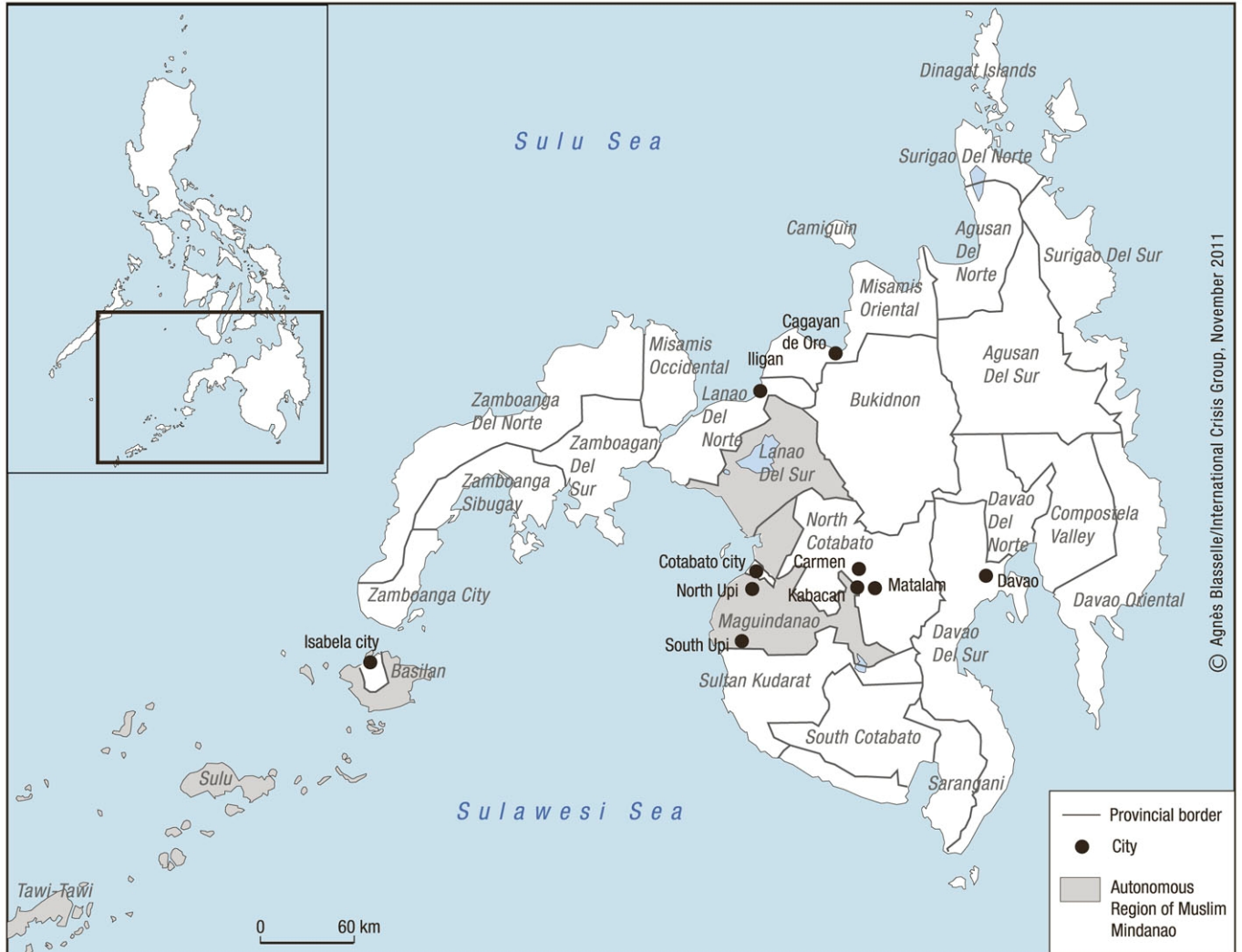
But there are many obstacles. For the Philippine government, indigenous rights are simply not a priority in Central and Western Mindanao, and some might say, anywhere in the country. Nevertheless, many tribal leaders continue to look to Manila when it comes to their concerns about the peace process. It should prove this faith is not unwarranted by accelerating the processing of applications for ancestral domain titles in areas that could be affected by a settlement with the MILF. In particular, Manila needs to work with the ARMM government to ensure that the NCIP can consider the Teduray claim.

As for the MILF, its leaders have taken the lessons of the failure of the MOA-AD to heart, but despite concerted efforts to reach out to the Lumad, mistrust remains. The negotiating panel could lessen the suspicions by tackling head on how their proposed sub-state would resolve the issue of overlapping ancestral domain claims or clarifying whether IPRA would apply. Consultations and promises of representation are not enough. Lumad leaders know that the MILF views them as bit players in Mindanao geopolitics and until there is a shift in perspective, they are unlikely to be championing the Bangsamoro cause.

Jakarta/Brussels, 22 November 2011

APPENDIX A

MAP OF THE SOUTHERN PHILIPPINES



APPENDIX B

GLOSSARY

ARMM	Autonomous Region of Muslim Mindanao
<i>barangay</i>	village
BJE	Bangsamoro Juridical Entity
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title
<i>datu</i>	highborn Muslim leader or tribal chieftain
DENR	Department of Environment and Natural Resources
GRP/GPH	Government of the Republic of the Philippines
ICC/IP	Indigenous Cultural Communities/Indigenous Peoples
IPRA	Indigenous Peoples Rights Act
<i>lumad</i>	indigenous or autochthonous
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement on Ancestral Domain
NCIP	National Commission on Indigenous Peoples
OSCC/ONCC	Office for Southern Cultural Communities/Office for Northern Cultural Communities
OTLAC	Organisation of Teduray and Lambangian Conference
RA	Republic Act
TJG	Timuay Justice and Governance