

# Journal of current southeast asian affairs

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Journal of Current Southeast Asian Affairs Williams, Timothy (2010), The MoA-AD Debacle — An Analysis of Individuals' Voices, Provincial Propaganda and National Disinterest, in: Journal of Current Southeast Asian Affairs, 29, 1, 121-144. ISSN: 1868-4882 (online), ISSN: 1868-1034 (print) The online version of this article can be found at: Published by GIGA German Institute of Global and Area Studies, Institute of Asian Studies and Hamburg University Press. The Journal of Current Southeast Asian Affairs is an Open Access publication. It may be read, copied and distributed free of charge according to the conditions of the Creative Commons Attribution-No Derivative Works 3.0 License. To subscribe to the print edition: For an e-mail alert please register at: The Journal of Current Southeast Asian Affairs is part of the GIGA Journal Family which includes: Africa Spectrum - Journal of Current Chinese Affairs - Journal of Current Southeast Asian Affairs - Journal of Politics in Latin America - „ „ „ Journal of Current Southeast Asian Affairs 1/2010: 121-144 „ „ „ The MoA-AD Debacle — An Analysis of Individuals' Voices, Provincial Propaganda and National Disinterest Timothy Williams Abstract: For nearly forty years a violent conflict has been raging in Mindanao where the Moros are fighting for independence from the Philippine state. On August 5th 2008 the peace negotiation panels of the Government of the Philippines and the Moro Islamic Liberation Front were set to sign a Memorandum of Agreement on Ancestral Domain (MoA-AD), a final stepping stone on the way to a comprehensive peace agreement. However, a well-organised wave of protest swept from Christian settlers in Mindanao to the Supreme Court in Manila which declared the agreement unconstitutional. This paper presents a chronology of events surrounding the debate, analyses the arguments used

in support and opposition of the MoA-AD and searches for causes of its demise, before looking at lessons to be learned for the future, especially regarding what President Arroyo can achieve before leaving office this year and what will be left to her successor. Keywords: Philippines, Mindanao, MILF, independence movements, liberation movements Timothy Williams (born in 1987) studies political science and economics at the University of Mannheim, and is a student assistant at the Chair for Comparative Government (Political Science III). E-mail: „ „ „ 122 Timothy Williams „ „ „ 1

Introduction Over 120, 000 people dead by 1996 and three “ all-out-wars” since. Up to 140 million EUR spent yearly by the state. Over half a million citizens displaced since mid 2008. This is the situation on Mindanao in the Philippines where the Moros 1 have been fighting for an independent Muslim state as their homeland (Bangsamoro) since 1972. The conflict goes back to Spanish colonial times, however intensified since Philippines independence in 1946 with the state encouraging Christian Filipinos from densely populated regions to migrate to the South. Here the settlers were given land as part of this internal migration process and resources were systematically exploited. In this unchecked environment the violence between the indigenous population and the new immigrants grew and by 1972 a full-scale civil war broke out. Today the Christians living in Mindanao are the majority in many places and have successfully marginalised the Moros, some Muslim provinces being the poorest in the country and having the highest rates of illiteracy. However, the Christians are no longer the original settlers but their descendants, and this proves problematic as they have inherited their land rights legitimately and cannot be held accountable for the deeds of their

fore-fathers. The Moros on the other hand contest their rights to this land claiming that it was unrightfully taken away from the Muslim population and claiming ownership rights on some tracts of land. The violent conflict was first fought mainly by the Moro National Liberation Front (MNLF) with whom a historic peace deal for more autonomy was signed in 1996, however, neglecting to include the Moro Islamic Liberation Front (MILF), a splinter group of the MNLF. Violence continued between the MILF and the Armed Forces of the Philippines (AFP) continuing the Moro effort for independence. Nonetheless, relatively soon the MILF met with the Government of the Republic of the Philippines (GRP) and started negotiating a new peace deal felt to be more acceptable than the one signed with the MNLF. Talks proceeded and broke down in regular intervals with "all-out-wars" ensuing in 1997, 2000 and 2003. Negotiations were held under the agreement that the MILF would not bring up the topic of complete independence and that the GRP would not negotiate within the framework of the Filipino constitution. In July 2008, it became clear that they were nearing a break-through on the one contentious issue left, territory, and would be able to sign the Memorandum of Agreement on Ancestral Domain (MoA-AD) soon. With this topic solved the 1 Moro, originally a Spanish pejorative term, developed into a term of self-identification for Muslims living in the South of the Philippines. Most live on the island of Mindanao and the Sulu archipelago. „ „ „ The MoA-AD Debacle 123 „ „ „ highest hurdles on the way to signing the Comprehensive Compact, the final peace agreement, would have been overcome. The granting of such autonomy and the holding of plebiscites in many areas on potential membership in the Bangsamoro Judicial Entity

(BJE), as the envisaged region was to be called, provoked harsh reactions. Christian provincial leaders who saw their political and economic power threatened launched a crusade on many fronts, stopping the MoA-AD and achieving a paradigm change of the president. Advocates of the MoA-AD were taken off guard by the hostile advances and many failed to react quickly or wholeheartedly, sticking up more for an agreement supposed to be a milestone in Mindanao peace history. This paper<sup>2</sup> looks at the dynamics specifically surrounding the MoAAD last year, its demise and the resulting consequences, presenting the MoA-AD itself and a short chronology of the circumstances and events surrounding the debacle. Then the fundamental question of why the MoAAD actually failed is posed, followed by an outlook on the future of this conflict and an analysis of what is possible in President Arroyo's last few months of office. <sup>2</sup> What Is It All about? — A Summary of the Memorandum The Memorandum of Agreement on Ancestral Domain (MoA-AD) was not the final peace agreement but a pivotal last step on the road towards it and it outlined the peace panels' consensus on the issue of territory and envisaged the creation of the BJE, thus recognising that the "right to self-governance of the Bangsamoro people is rooted on ancestral territoriality" (MoA-AD 2008: 2). The "legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenures, or their marginalization" (MoA-AD 2008: 8) were to be recognised and re-paid where possible by restoration, or else reparation individually or collectively. The Moros were to have returned to them what was formally theirs. The core area of the BJE would have been the geographic area of the Autonomous Region of Muslim

Mindanao (ARMM) as of its enlargement in 2001. Within twelve months of signing the MoA-AD there would be a plebiscite in 735 Muslim majority areas (category A) on whether each of them would like to join the BJE; a second set of 1,459 villages, known as "Special 2 Intervention Areas" (category B), were to be "the subject of special socioeconomic and cultural affirmative action" (MoA-AD 2008: 4) by the GRP and no earlier than 25 years later, there was to be a plebiscite. The ARMM population was not to be asked whether they wanted to join the BJE as they had already signalled their willing participation in the Moro project. All in all, the Supreme Court's ruling that the "BJE is a state in all but name" (Supreme Court 2008: 40) is quite fitting, as this envisioned legal entity would have control over a great many fields of policy; however, there is no sovereignty guaranteed. The relationship between the BJE and the Philippines central government was to be associative [and] characterized by shared authority and responsibility [whereby the former shall] be empowered to build, develop and maintain its own institutions, inclusive of, civil service, electoral, financial and banking, education, legislation, legal, economic, and police and internal security force, judicial system and correctional institutions, necessary for developing a progressive Bangsamoro society (MoA-AD 2008: 10). On top of this, the BJE could also enter into economic cooperation and trade relations with foreign countries, so long as these do not amount to hostility towards the GRP. However, a few restrictions were agreed upon: profits on total production,

taxes, etc. were to be divided 75: 25 in favour of the BJE and in times of national emergency the GRP could have lifted the BJE's control of natural resources assuming control of them after prior agreement of the respective profit-sharing. Finally also, the GRP was to be in charge of external defence. Local politicians, land owners and businessmen (often encompassing the same people) stood to lose power and to suffer financially as their areas of influence were reduced, should their constituencies vote in favour of joining the BJE. The MoA-AD did not legitimise taking away of lands from Christian settlers for the Moros as compensation lands were only to be taken from not privately but publicly owned territories (MoA-AD 2008: 2); however, large-scale land-owners were obviously nervous about dispossession or severe hindrances in a Moro dominated entity. The Moros stood to gain from better access to lands and resources.

### 3 What Happened When? — A Chronology of the MoA-AD Debacle

Having presented the central points of the MoA-AD, it is a worthwhile endeavour to throw a glance on the chronology of events that took place „ „ „ The MoA-AD Debacle 125 „ „ „ around the failed signing of the MoA-AD. The action primarily takes place in Manila and in those places of Mindanao most likely to have been effected by the MoA-AD: the provinces of North and South Cotabato and Sultan Kudarat, and the towns of Zamboanga City and Iligan City — all with potential BJE areas. This chronological overview will focus mainly on the political arena and on the negotiation arena between the GRP and MILF panels in reaching their agreement, the reception of the MoA-AD and utilisation of civil society resources. After a back and forth of draft agreements between the two peace panels, by the middle of July 2008 it was announced that the MoA-AD should be signed by

the end of the month. This news provoked Emmanuel Piñol, three times governor, now vice-governor of North Cotabato, on July 20 to demand the publication of the MoA-AD draft. One day later the local legislative body of North Cotabato passed a resolution opposing its inclusion in the proposed BJE and supporting Piñol in his endeavours to make the content of the MoA-AD public, mandating him to appeal to the Supreme Court. On July 23, the province of North Cotabato through its Vice Governor Piñol filed the petition to the Supreme Court requesting a prohibition of the signing of the MoA-AD until the text had been published and publicly discussed. One day later he filed a further position requesting a temporary restraining order hindering the GRP peace panel from signing the document pending a Supreme Court decision on its constitutionality. Piñol was joined in his plea at the Supreme Court by Celso Lobregat and Lawrence Cruz, mayors of Zamboanga City and Iligan City respectively, several elected representatives in the provinces of Zamboanga del Norte and Sultan Kudarat, and former Senate President, Franklin M. Drilon, Adel Abbas Tamano, spokesperson of the United Opposition and Senator Candidate 2010, and prominent Senator Manuel Roxas (Supreme Court 2008: 5). At the same time, after solving a few small disputes, the peace panels set the date for the final signing in Kuala Lumpur to August 5. In her State of the Nation Address one week before the scheduled signing, President Arroyo deemed the subject of peace on Mindanao and the MoA-AD-breakthrough only important enough to mention it in the 38th minute and to touch only on the subject very shortly, signalling the low priority of this topic on her administration's agenda (Arguillas 2008a). Amid the growing political hostility towards the MoA-AD,



semi-dormant violence erupted anew when MILF rebels attacked four villages in North Cotabato, then also in Lanao del Norte, forcing thousands to flee their homes. These attacks, however, were led by renegade commanders and were not officially sanctioned and even condemned by the MILF leadership (Mindanews 2008a). In response to the hostilities, Piñol issued a statement „ „ „ 126 Timothy Williams „ „ „ that he had been informed that the AFP would not be protecting North Cotabato from further attacks as they had filed their petition to the Supreme Court and so, in essence, had brought it upon themselves. To ensure local security, he called on his constituents to arm themselves in defence (Piñol 2008a), later adding that the Army would not protect citizens should a temporary restraining order actually be issued (Piñol 2008b). These comments sparked widespread and sharp criticism as it was feared that violence in the area would escalate due to mutual fear and armament. Later the Governor of North Cotabato, Jesus Sacdalan, qualified the comments of his deputy assuring his constituents that the Army was ready to defend them if MILF fighters were to attack (Philippines News Agency 2008a). The opposition to the MoA-AD continued not only at a political and judicial level when the populations of North Cotabato and Zamboanga City were mobilised on the day before the proposed signing of the MoA-AD with thousands holding indignation rallies. Later that same day the Supreme Court did indeed issue a temporary restraining order against the government, forbidding its peace panel representatives from signing the MoA-AD until it had been reviewed as to its constitutionality. Thus, on August 5, the gathering to celebrate the MoA-AD signing in Kuala Lumpur was unable to put pen to paper; besides the two peace panel heads, Mohagher

Iqbal (MILF) and Rodolfo Garcia (GRP), the Malaysian and Filipino foreign secretaries were there, the Presidential Advisor on the Peace Process and the US Ambassador. Due to the fact that the Supreme Court had only issued a temporary restraining order the controversies continued unabated as it was yet unclear whether the Memorandum was going to be shot down completely on the grounds of being unconstitutional or not. Within days violence rose considerably between MILF contingents and government forces and reports were able to confirm that indiscriminate firing and bombings of communities without any obvious reasons were taking place (Senturias 2009). This tendency continued and by mid-October a total of 630, 000 people was reported to have been internally displaced by the violence (Internal Displacement Monitoring Centre 2008). While the MILF and Catholic leaders attempted dialogue, very little common ground was found, apart from the universal wish for peace echoed by every actor in the Mindanao conflict. Furthermore, other prominent Catholic Church leaders of the Bishops-Ulama-Conference, a forum of Catholic, Protestant and Muslim leaders, challenged the involved government members evocatively on the topics of grass-roots consultations about and constitutionality of the MoA-AD in a frank debate (Canuday 2008). On the other hand, Cotabato Archbishop Quevedo attempted to synthesise the conflicting positions and promote the MoA-AD as a working paper rather „ „ „ The MoA-AD Debacle 127 „ „ „ than a final document (Canuday 2008). On the eve of oral arguments at the Supreme Court, the three main petitioners, North Cotabato Vice-Governor Piñol, Zamboanga City Mayor Lobregat and Iligan City Mayor Cruz, held an overnight prayer vigil with several of their constituents outside this judicial

building in Manila, an intercession that the Supreme Court would rule against the constitutionality of the MoA-AD. The day following this symbolic demonstration nearly 10, 000 protestors staged a three-hour rally in Sultan Kudarat also signalling opposition to the controversial document. On August 15, the Supreme Court started the two-month process of hearing and assessing arguments on the MoA-AD's constitutionality, while a significant majority of the members of the House of Representatives signed a resolution urging the administration to renegotiate the highly divisive memorandum with the MILF rebels. On August 16, the government announced that it no longer wanted to sign the MoA-AD irrespective of the Supreme Court's decision on the constitutionality of the agreement and that it must undergo review because of widespread opposition and the outbreak of violence since the beginning of August. A few days later an announcement by the President followed instating a new paradigm for peace that stressed disarmament, demobilisation and reintegration (DDR) of MILF fighters and was focused on community dialogues. The President also released press statements blaming the peace process breaking down not on the Local Governmental Units' decision to suffocate the MoA-AD but on renegade MILF commanders and the lack of control by the MILF leadership over them. On August 31, Malacañang backpedalled further by issuing a statement saying that the Presidential Palace had not given the government peace panel the full authority to sign the MOA-AD. ' Even if the MOA was signed, it would have been useless in the absence of the proper permission from the Palace' (Arguillas 2008b). In this spirit of Mindanao policy realignment four days later the GRP peace panel headed by Rodolfo Garcia was dissolved, along with the

technical committees and working groups. This was received very critically by MILF panel members and civil society actors as many years of negotiations and building of facilitating structures were thus destroyed and that this would obstruct the further peace process (Arguillas 2008c). Despite these proclamations of a dying or dead peace process Presidential Adviser on the Peace Process Esperon relayed to the MILF via the Malaysian facilitator a four-point plan of how to get the peace process back on track — in this context he described the MoA-AD, that the MILF had been describing as a “done deal”, as a “major reference, if and when the talks resume” (quoted in „ „ „ 128 Timothy Williams „ „ „ Mindanews 2008b). Calls from civil society coincided with a demonstration on October 3 when over 1, 000 protestors congregated in Marawi City to call on the United Nations and the Organization of Islamic Conference to intervene to stop the war in Mindanao and for the government to honor the botched [MoA-AD] (Timonera 2008) — the beginning of Pro-MoA-AD mobilisation. The Supreme Court reached its decision on October 14 on whether the MoA-AD was constitutional and ruled that it was not with a majority of eight judges to seven. The minority of seven claimed it to be a moot decision as the GRP had already declared that it would not be signing the document anyway. The Supreme Court stated that it was ruling the MoAAD unconstitutional for a number of reasons: there was no consultation process despite the gravity of implications for the population (Supreme Court 2008: 68); the Executive ventured outside its jurisdiction, not only overriding existing laws on how indigenous people should have access to ancestral domain but also promising constitutional changes that it could not guarantee (Supreme Court 2008: 58); on top of

this, the relationship with the Republic of the Philippines was described as associative which is a term that in the international arena is usually “ used as a transitional device of former colonies on their way to full independence” (Supreme Court 2008: 39). Altogether the Supreme Court found that the furtive process by which the MOA-AD was designed and crafted runs contrary to and in excess of the legal authority, and amounts to a whimsical, capricious, oppressive, arbitrary and despotic exercise thereof (Supreme Court 2008: 68). This decision of unconstitutionality naturally provoked great elation in the camp of the petitioners and other supporters being described as a victory for the people over the overbearing arrogance of national politicians or a victory for the Filipino nation over separatist, particularistic interests. Several bishops, politicians and local constituents celebrated a thanksgiving mass to commemorate the joyous occasion. Parallel to the ongoing political and judicial processes the violence on Mindanao spiralled and the amount of skirmishes rose to 128 just by the end of September — this is especially shocking as the International Monitoring Team (IMT) was still in action but was no longer able to keep the peace as it was credited by many as having done since 2004 (Arguillas 2008d). The violence also did not just intensify but also spread geographically as fighting in the Centre, South and Southwest of Mindanao moved northwards at the beginning of November (Luwaran 2008). Despite (or maybe because of) these developments Malaysia, who not only facilitated the peace negotiations „ „ „ The MoA-AD Debacle 129 „ „ „ but also led the IMT mission, decided against renewing again their tour of duty in the IMT from December. On December 1, it was announced that Department of Foreign Affairs

Undersecretary Rafael Seguis would be heading the new GRP peace panel — although MILF members were very pleased that the peace process would be able to continue and hopefully find a conclusion (Uy 2008). They expressed disappointment and annoyance that the new GRP panel chair was not a member of the cabinet, common practice until then (GMANews. TV 2008). Late in December the remaining panel members were also named as Ronald Adamat, as representative of the indigenous populations; Adelbert W. Antonino, from a political dynasty with an anti-Moro reputation and much political power, to represent the Christians and the Local Governmental Units; Tomas O. Cabili, a Catholic businessman from Iligan City who is also reputed to be unfavourable towards the Moros; and Nasser Pangandaman, the only remaining member from the previous panel. Mary Ann Arnado of the Mindanao People's Caucus was critical of the fact that no delegates of Congress, the Senate or the Supreme Court were on the GRP panel. This would have made it easier to foresee conflicts during the implementation process; thus one would have been able to avoid another debacle like in mid-2008 (Elusfa 2009). In 2009, protests continued in favour of the MoA-AD despite it having been declared unconstitutional with protest marches in Mindanao and Manila outside the Presidential Palace demanding the MoA-AD be signed or at least respected in further talks with the MILF. Also, in mid-March the Mindanao People's Caucus organised an international conference in Davao City with peace advocates from Mindanao and abroad to "signify solidarity and support to the Bangsamoro struggle" (Peace Monitor 2009: 3). In the following months and with the new government paradigm of community consultation, the Bishops-Ulama-Conference (BUC) was asked to

take a more active role in the peace process and organise consultations with over 300 different communities whereby the Catholic, Protestant, Muslim and indigenous people leaders would conduct dialogues in their own respective constituencies; the project "Konsult Mindanaw" has culminated in a report identifying a number of conflict factors on the minds of Mindanawans, including corruption, environmental disasters as a result of logging and clan fighting (Mindanews 2009) and is to be used in further peace talks. As a reaction to these grass-roots consultations by the BUC, the North Cotabato legislative and administration launched their own multi-sectoral consultations, reasoning that it is "incumbent upon us, local leaders, to move around and educate the people of Cotabato province on the issues involved" (Piñol quoted in NCELP 2009). Piñol presented during consultations a six-point position on the peace process of the North Cotabato legislature which he said expresses the "people's desire for peace and support to any effort to bring peace in Mindanao" (Philippines Information Agency 2009). Piñol's consultation project must be criticised as it is hardly a consultation but a presentation of his position and the invited consultees approving this. At the governmental level the new Presidential Adviser on the Peace Process, Avelino Razon Jr. showed interest in resuming peace talks with the MILF. In trying to minimise their concerns on the new Arroyo framework and resolving the MILF objection to DDR now being a pre-condition for talking, he stated that DDR could be just one of the items on the agenda. Besides further peace efforts, the progress in the violence arena is modest. There have been accusations of illegal arrests, evacuation camp liquidations, and general harassment of

Muslim civilians by AFP soldiers (Luwaran 2009b); also burning of houses, looting of properties, indiscriminate shelling, bombing, and terrorizing civilians are trademarks of [...] government forces' policy in their military campaign in Mindanao not only against the [MILF] but also against the entire Bangsamoro people (Luwaran 2009a). To sum up: After several years of secret negotiations the two peace panels were able to agree on conditions of territoriality for a separate Moro entity. As these changes would have brought a change in the power structures on Mindanao, there were naturally people who stood to lose out and they were not to go down without a fight. The MoA-AD could have been the beginning of the end of a decade-long conflict between the Moro rebels and the Filipino state, but the opposition to the MoA-AD mounted a fast and powerful attack against the MoA-AD taking the case straight to the Supreme Court. Eventually civil society groups spoke out in favour of the MoA-AD but the opposition was very active and successfully mobilised many followers. The following chapter attempts to bring together those arguments brought forward by the actors in support of their position towards the MoA-AD.

4. 1 Down with the MoA-AD! A great many actors participated in the opposition against the MoA-AD and a wealth of arguments was brought up. These can be merged into six central statements of rejection:

1. The Republic of the Philippines would be dismembered and its sovereignty violated. The most mentioned point of contention was that the territorial integ-
2. The MoA-AD Debacle 131
3. rity of the Philippines would be undermined and one would be creating a state within a state. A general consensus between
4. oppositionists was that the Philippines is one state of which Mindanao is a
- 5.
- 6.



part and that by establishing the BJE one would challenge this. Furthermore, fears were rife that land would be taken away from Christian settlers and returned to Moros under a more autonomous government. The Filipino population was not consulted. In the end it will be the people of Mindanao and the rest of the Philippines who will be affected by the MoA-AD, and thus it follows that they should also be asked about what they think and want; peace should be " a result of a consensus among all of those whose lives and future will be affected" (Piñol quoted in Philippines News Agency 2008b). Furthermore, as politicians are just the representatives of the people and derive all their power from the people, they " should always go back to the people for consultations on critical and important issues" (Philippines News Agency 2008b). This was accounted for in executive order No. 3 of 2001 that stipulated consultations should be held with the local and Filipino populace and that local government and civil society should be involved. The peace negotiations were not transparent. The negotiations were held in secret between the two parties and the mediator, Malaysia, and moreover the public was not even informed about successes along the way or interim results. The signing of the MoA-AD was also supposed to ensue without the document even being published. In a democracy this should not happen as the populace has a right to know what its representatives are doing. The President was using the MoA-AD as an excuse to retain the Presidency. To accommodate the territorial and political arrangements in the MoA-AD it would be necessary to change the constitution. Especially the political opposition fears that President Arroyo could use this as an excuse for at the same time changing the constitution and enabling her to extend her rule by

another term. The government cannot be trusted. Through many of the arguments one can read a significant distrust of the administration in Manila and further its peace panel. Anything produced by the Arroyo government is thus eyed warily. USA has its hand hidden in the MoA-AD for its own interests. Rumours circulated that US authorities had approached the MILF in an attempt to secure an agreement establishing US bases in the fight against terror in Mindanao once a final peace agreement is signed (Oliveros 2008). Following a categorisation of Archbishop Quevedo (2008a), only the first of these arguments is actually concerned with the MoA-AD itself, the second „ „ „ 132 Timothy Williams „ „ „ and third are opposed to the processes with which it was conceived, thus indirectly delegitimizing the MoA-AD, and the final three are wholly external of the MoA-AD. Furthermore, the first argument is built on a misconception. The loss of territorial integrity can be argued as correct, but it is not true that the descendants of Christian settlers stand to lose land, elaborated on in the next chapter. 4. 2 Long Live the MoA-AD! The defendants of the MoA-AD were unsuccessful in actually saving the agreement; however, they did manage to find plausible responses to most criticisms of their opponents, although they only concentrated on retorting to the first three points not external of the MoA-AD. 1.

Constitutional matters irrelevant. The dismantling of territorial integrity is the grounds on which the Supreme Court ruled the MoA-AD unconstitutional, however proponents argue that constitutional processes do not really belong to the negotiation phase but should be considered later during implementation; furthermore the constitution is open to being changed and “ what may be unconstitutional today, may not necessarily be unconstitutional

a few years from now" (Loong 2008). Changing the constitution has been relatively common in many peace processes around the world. Consultations were not really necessary but nonetheless took place. Second, the query why the Christian population was not consulted a priori. The response was that the constitution does not stipulate this and that other legislation does not require mass consultations before being passed (however, executive order No. 3 should not be forgotten, that suggests consultations on this issue). Advocates continue that there was to be a plebiscite held in new BJE areas within twelve months of the Comprehensive Compact being signed, pertaining that " a plebiscite or a referendum is the ' highest and ultimate form of consultation' to be conducted in the subjected areas" (Malang quoted in Peace Monitor 2008: 2). Besides, both peace panel heads emphasised this criticism was factually wrong, saying they had conducted a series of consultations with Zamboanga City Mayor Lobregat and while these consultations were at a much lower key than the ones conducted by the BUC, they were conducted at every step of the negotiation process — this was also attested to by the Consortium of Bangsamoro Civil Society (Kulat 2008). These claims, however, were scarcely reported in the media and common knowledge was that the panels had negotiated aloof of popular consultation. 2. „ „ „ The MoA-AD Debacle 133 „ „ „ 3. Transparency is not possible in such fragile talks. The second procedural critique was that the negotiations were not transparent. Archbishop Quevedo responds: It remains true that many things cannot be negotiated in public, otherwise the plethora of opinions and suggestions, each one passionately presented and defended, would create disorder out of order. But there is a certain irreplaceable and

indispensable benefit to people's participation through consultation and information dissemination at various points in the peace journey (Quevedo 2008b), 4. and furthermore it makes compromise harder as reports of negotiations are carried to the constituencies immediately and it becomes nigh impossible to allow concessions. Historic right to self-determination. The most central pro-MoA-AD argument is that the Moros have a historic right to self-determination, also enshrined in international law and the Philippines constitution, itself so often cited by the opposition. Moro independence is not seen as dismembering the Philippines or taking away its sovereignty because the Bangsamoro never actually should have been part of the Philippines. " We have been a civilized people long before the Spaniards came. We were a sovereign nation 448 years before the Philippines even became one" (Hataman 2008); the Moros are just taking back what should have been theirs all along. In the end, the MoA-AD did not envisage dispossessing anyone — none of the descendants of Christian settlers would have had to give up any of the land that they had received off the Moros — but the Moros stood to be designated swathes of ancestral domain in state hand that " remain unused, unutilized, or at least uninhabited" (Loong 2008). Losing not only their political sovereignty but also much of their ancestral lands and suffering attempts to assimilate them when the Philippines became independent from the United States of America, is the foundation of a feeling of grave injustice. To a certain degree this could be rectified by granting them their own homeland in which they can rule over themselves. The fact that the Moros are to have a certain form of homeland is indisputable in peace negotiations; that is the reason they have been

fighting their war of insurgency for so long against the Filipino state. GRP peace panel head, Rodolfo Garcia, emphasises the morals of the injustice question: Our team of legal experts can stand up to the legal challenges. The moral dimension, however, had been pushed to the margins and not „ „ „ 134 Timothy Williams „ „ „ been given the merit it deserves. Many are hardly aware of this important dimension. And yet this is the dimension that gives any decent person the moral imperative to act, if justice is to be dispensed; if fear, want, indignity and humiliation can be addressed and corrected (Garcia 2008).

#### 4. 3 A Comparison of the Argumentative Structures

To sum up, the arguments brought forth by the opponents of the MoA-AD focus on the dismemberment of the Filipino state and procedural mistakes made. These arguments follow a legalistic pattern, which is also apparent in their choice of appealing to the Supreme Court rather than say solely to mass mobilisation. Furthermore, the final three arguments are all pragmatic and realist, focusing on general distrust or the anxiety of power structures changing by one actor or another gaining more weight. The moral dimension does not really play into the opponents' arguments when appealing to the sense of Filipino nationalism that forbids the state sacrificing parts of its territory to people who should feel Filipino anyway. The advocates in the debate on the other hand perceive the situation that " the Mindanao problem is not a conflict between Christians and Muslims but rather a conflict between justice and injustice" (Alonto quoted in Peace Monitor 2009: 2). This argument of past injustice that must be corrected is definitely part of the moral dimension along with the historical argument that the land has always belonged to the Moros and they have a right to it. On top of this, this camp

also brings up a legalistic reasoning of the right to self-determination which is found in the constitution and in international law. 5 Why Did It Collapse? — The Dynamics of the MoA-AD's Demise The following chapter answers the central question of why the MoA-AD was unsuccessful. How did a relatively small group of Christian settlers manage to sabotage a peace deal that was negotiated with the national government? 1. Fast and effective opposition reaction. The opposition spearheaded by Emmanuel Piñol launched their campaign fast and ferociously. He reacted quickly to the first reports that there was an agreement in the pipeline and organised a strong response through a combination of judicial action before the Supreme Court, lobbying, coalescing with and pressur- „ „ „ The MoA-AD Debacle 135 „ „ „ 2. 3. 4. ing national politicians in Manila giving his cause considerably more political clout, wooing Catholic clergy and lastly but by no means least motivating his constituency to follow his lead and mobilising popular support through demonstrations. Supporters of the MoA-AD did not react as swiftly as should have been with the first pro-MoA-AD, relatively small demonstration not until October. Civil society organisations concentrated as previously on non-contentious activities such as painting or singing for peace workshops evading all complicated issues. This continual avoidance of any controversial or difficult topics has not helped in furthering the peace process.

Furthermore, the advocates had not been highlighting positive developments of the talks while these were being conducted. Secrecy of the negotiations. Pivotal was also the secrecy of the peace panels regarding the negotiations themselves, triggering Piñol's campaign: his first petition to the Supreme Court demanded the publication of the content of the MoA-AD so that it could

be publicly discussed. While the secrecy was necessary during the negotiation phase, not publishing the deal before its signing gave the opponents ammunition and at the same time gave the advocates no basis at all to support it as they had no way of knowing what they were supporting. Also they were unable to highlight positive developments of the negotiations as they were not informed of these; even if they were informed confidentially, they could not use this information in public discourse without breaking the trust of the peace panels. Arroyo's lack of will and sincerity and a hidden agenda. Gloria Macapagal Arroyo appeared unwilling to stand up for the contentious draft drawn up by her delegated peace panel. Not only did President Arroyo not have the political will to exert pressure on other actors to enforce compliance, not even her cabinet was clearly in favour of the MoA-AD. Furthermore, various actors, including the Senate and the Christian-dominated Congress, were convinced that the President was only using the MoA-AD and the necessary constitutional changes to further her ambitions of charter change and a further term as head of government (Ampatuan 2008) — this naturally cost credibility for her enormously. The secrecy of the negotiations mentioned above strengthened the mistrust against Arroyo and her intentions. Not even all Muslims were on board. Besides the Christian settlers a host of other affected parties were not consulted alleging the BJE would be an amelioration of the status quo for the Moros as a whole and negotiating solely with the MILF, thus excluding its intra-Moro rivals. The MNLF at peace with the GRP since 1996 announced that it was very dissatisfied not to have been involved; also the Muslim Sultans and Datus who wield much

power in Muslim Mindanao were put out (Ampatuan 2008). The envisioned BJE would have curtailed their power and influence in favour of the MILF, thus they were well inclined not to accept it. Also, some groups of indigenous people who have inhabited Mindanao for even longer than the Moros felt partly that their interests were not properly represented. Although in principal sympathetic towards the Moro cause, some indigenous leaders expressed resentment at being included in the BJE without even being asked (Peace Monitor 2008: 2-3). Temporary coalition of the willing in the Filipino spoiler culture. Despite being few in number, the opposition groups made an impact, partly because of unlikely alliances such as Christian-Muslim alliances. As in 1996 when the MNLF signed a peace agreement with the GRP and a coalition was able to considerably water down the actual implementation, the Filipino " spoiler culture" enabled groups to pragmatically form temporary coalitions of the willing in order to block certain changes to the status quo or enforce their own legislation. Because of the crossgroup approach and the sporadic nature of these coalitions, they have a decided force and the ability to paralyse national politics at specific critical moments in time. Despite the centralist structure of the Filipino polity, actors at different levels seem to be able to make themselves semi-independent of the national government's politics; thus one can say that the GRP can negotiate as much as it likes, this is of no help, unless it considers also how it plans on engaging the compliance of the other actors. Supreme Court's essence of being a judicial entity. The Supreme Court, as a judicial institution, was bound by its very being to heed the legalistic argumentation of the opposition more than the moral arguments of the advocates. The



proponents of the MoA-AD in this vein also attempted to incorporate legalistic elements; however, these were outweighed by their antagonists. Events in the violence arena. The deteriorating situation in the violence arena did its part in stabilising an atmosphere that was not conducive to a peace agreement; this was intensified by the uncertainty of how long the IMT under Malaysian leadership would continue its mission to Mindanao. The violent affronts of some MILF renegade commanders was utilised to reinforce distrust between both sides. „ „ „ The MoA-AD Debacle 137 „ „ „ 6 How Will the Conflict Develop and What Can Be Done? — Prospects for the Future It has become obvious in the course of this paper that the conflict about the MoA-AD is structural. The focus is not on the constitution or justice for an impoverished populace. It is about power, the control of territories and their economic resources and of the people living in them. This insight does not bode well for the future. Even if both sides could agree on some solution that is constitutional or receives the necessary constitutional changes, the groups who protested before the Supreme Court will pursue other avenues to achieve their goal of maintaining the status quo on Mindanao. As the humanitarian and social situation on the island, especially in the ARMM, has not improved for the Moros over time, many young people are growing up in a world of extreme poverty and hopelessness. This combined with the huge presence of weaponry and violence during socialisation will serve to recruit a new generation of radicalised fighters for the Moro quest for independence (Werning 2008). These young people have no reason not to engage in fighting for a homeland as they have very little to lose and everything to gain. Furthermore, the conflict continues with support from the other side,

too: even though both sides clearly acknowledge a long-standing and insurmountable stalemate, neither does the Philippine state, the Armed Forces nor Philippine society perceive this situation as especially hurting. At least for the Non-Muslim political actors it can be argued, that they actually do not perceive that they have much to gain from a successful peace which takes the Muslims' grievances into consideration (Kreuzer 2009: 25). This amounts to a bleak perspective for the peace process. Given President Arroyo's lacking interest or will to conclude the peace process and the controversy of any constitutional changes because of suspected ulterior motives of securing an extra term in office, it is unlikely that any real progress will be seen in the peace process before the presidential elections in 2010. The following government will then decide how to position itself towards the results of the MoA-AD and the further peace process. Until the end of her term, however, there is enough Arroyo can still do to regenerate strength for the paused peace process. The collapse of the MoA-AD, combined with extreme tensions, provocations by local and national politicians, outbreaks of violence by renegade MILF commanders and much more, luckily did not lead to the outbreak of an "all-out-war" in August 2008. Nonetheless violent conflict „ „ „ 138 Timothy Williams „ „ „ initiated by the MoA-AD collapse has continued, taking its toll as the number of bodies escalates. For peace negotiations to have a chance of longterm completion, President Arroyo should work towards halting the lowintensity violence giving way to a genuine ceasefire. Ceasefire mechanisms previously in place should be re-evaluated and reinstated, especially the Local Monitoring Teams and the Coordinating Committee on Cessation of Hostilities. Together

these entities held the perpetrators of ceasefire violations accountable by on-the-ground, immediate investigation of MILF-AFP skirmishes. Similar successes could be expected if the institutions were reinstated and as neither side is really profiting from the continuing conflict, the likelihood of participation is high. This negative peace, the absence of violence, is not the positive peace all are striving for; however, it is a step in the right direction and a good use of the lull before the next administration starts. This time should also be used to look into the options for constitutional change, while emphasising that constitutional change need not commence until the next administration has been elected and there is no danger of Arroyo clinging to power. More detailed knowledge on how other countries have changed their constitutions to incorporate such peace deals in the past and a vision of how the Filipino constitution could be changed would enable a better facilitation of peace talks when they proceed under the next administration. After the poor show of civil society organisations standing up for the MoA-AD, it is unclear whether they have learned from the debacle. It is not enough for diverse groups to reiterate again and again how important peace is and organise arts workshops. They must present a unified front, cooperate and interact with the population, addressing the central issues and creating innovative ideas of how to actually forward the peace process, rather than just pointing the finger of blame at actors who are spoiling the peace process. Unfortunately this does not seem very likely at the moment, with only a few groups speaking out on contentious issues and the others not seeming willing or able to change fundamentally. Arroyo's administration could spend the few months remaining creating a supportive environment

for civil society and setting up structures by which representatives could actually contribute to the peace process. One idea would be the involvement of the BUC in peace panel negotiations, another to integrate civil society actors into task groups addressing the most central and difficult issues surrounding the peace process. Together they could attempt to forge a solution, and should they all manage this, it would have to be taken seriously by the peace panels. „ „ „ The MoA-AD Debacle 139 „ „ „ The BUC concluded the Konsult Mindanaw programme in late October 2009 and presented a mosaic of positions accentuating many aspects of the peace process. Several focus groups showed large instances of prejudices against other groups, fuelling misconceptions. Here a re-education strategy could be helpful. Furthermore, measures targeting good governance, combating corruption and illegal activities (such as logging or private clan armies), should help the peace process onwards. The alternative consultations held by the province of North Cotabato pose a certain threat as preliminary publications present overwhelming support in the province population for their parliament's suggested stance. It seems they will attempt to delegitimize Konsult Mindanaw's findings not fitting their agenda. Continual monitoring of emerging results is necessary so that potential spoilers can be combated early on. Further, the executive order No. 3 from 2001 states that the Moro conflict is an interest of the whole Filipino nation and it should be consulted, thus making two levels of consultations necessary: the local and the Filipino people. As yet it is unclear what this means. Even if Konsult Mindanaw results were usefully worked into a peace agreement, a further potential spoiler would be the opposition (who would still want to retain the status

quo) then demanding the whole Filipino nation be consulted as it is a matter of national interest and integrity. Building on executive order No. 3 this would possibly even lead to another Supreme Court case and a further ruling against a document in the peace process. The consequences of this would be even more damning than last time as it would appear the peace panels are only able to produce unconstitutional documents. Although not surprising, as they are negotiating outside of the framework of the constitution, it is important in public perception of the conflict and could serve to delegitimize the peace process along negotiation lines, pushing the GRP to emphasise military action more. Especially now, the opposition is watchful and on self-acclaimed moral high ground having won the case before the Supreme Court. Should the Comprehensive Compact come close to signing in the near future, it is essential both negotiating panels ensure in advance the support, or at least the compliance, of their constituencies and their own people. Forging a peace agreement with each other is necessary but they also need to be able to implement it in their constituencies. Thus, the GRP peace panel must ensure support from regional leaders, national politicians and big business, enforcing their falling in line voluntarily (if they felt well-represented and content with the solution — very unlikely) or through coercion, by downplaying the Local Governmental Units' role, emphasising their prior involvement and pressuring for their support. Likewise, the MILF must engage in discussions with the MNLF, the Muslim Datus and Sultans and also with „ „ „ 140 Timothy Williams „ „ „ the indigenous people of Mindanao, facilitating the support of these traditional elites in implementation and minimising potential spoilers. Exerting pressure on

renegade groups is the joint responsibility of both peace panels, the President and MILF leadership. As the actors creating problems for such peace agreements are mostly at the local level, pressure exerted by an international mediator is only partially helpful. An international mediator would be advised to rally the support of the international community in enforcing any found compromise through international pressure. Support by local governments could be tied to future investment in the region, producing a strong effect on the leaders here, as they are very often related to or themselves the leading businessmen; leverage could be exerted against the Moros by connecting aid to implementation of a peace solution. This could be combined with extra government or international financial packages for cooperative areas — a lucrative incentive for both Muslim and Christian support. To counter the argument of secrecy brought forward by the MoA-AD opponents, a more open and transparent peace process would be conducive. The actual negotiations should not actually be held publically, but periodic publication of results and a positive marketing of these would greatly enhance the legitimacy of any final deal — concessions will then not appear suddenly and all at once, but will be brought forth bit by bit. Furthermore, if other groups are consulted during this time and are constantly updated on the negotiations, it will make it considerably harder for them to turn around later and protest against the whole result. In this whole process, it is important for the next administration to anticipate further in advance what spoilers can be expected and to pre-empt them, either through creative marketing, portraying them as trouble makers who are following their own self interest, or by actively incorporating them into

the peace process. As the year 2008 showed, the peace panels are able to reach agreements that are on the whole mutually acceptable, however, small groups in their constituencies will never be happy with any agreement — while the Christian settlers will not move away from the status quo, some MILF commanders will not accept anything less than independence. For the future it is absolutely central that peace negotiators focus not only on the content, but also on foreseeing potential spoilers and ensuring that their groups are willing to implement the results through coercion or the promise of benefits. Furthermore, civil society actors must learn that their responsibility in Mindanao is to get their hands dirty and start engaging in serious discussions about what can actually be changed and exerting pressure on all sides of the debate to implement any solutions found. For the moment President Arroyo should set about the task of stopping the violent encounters between MILF and „ „ „ The MoA-AD Debacle 141 „ „ „ AFP troops and preparing the negotiation table for her successor by strengthening civil society, looking into constitutional options, foreseeing and stalling spoilers and creating new structures for heightened transparency. With this preparation and a breath of fresh air brought in by Arroyo's successor, it is possible that a new attempt can be started at gaining peace for Mindanao from 2010. References Ampatuan, Taharudin Piang (2008), Southern Philippines: The Way Forward for Stalled Peace, in: S. Rajaratnam School of International Studies Commentaries, 31. 01., online: (June 22, 2009). Arguillas, Carolyn (2008a), SONA 2008: Mindanao peace process mentioned in seconds only; no mention of ARMM poll postponement, in: Mindanews, 28. 07., online: (January 13, 2010). Arguillas, Carolyn (2008b), The government

peace panel had no authority to sign?, in: Mindanews, 31. 08., online: (January 13, 2010). Arguillas, Carolyn (2008c), GRP peace panel dissolved, in: Mindanews, 03. 09., online: (January 13, 2010). Arguillas, Carolyn (2008d), GRP vs MILF armed skirmishes: from 8 in 2007 to 128 as of Sept. 30, 2008, in: Mindanews, 30. 09., online: (January 13, 2010). Canuday, Jewel F. (2008), Church leaders, cabinet officials debate on MoAAD, in: Mindanews, 14. 08., online: (January 13, 2010). Elusfa, Romy (2009), New Government Peace Panel Members ‘ Lack Supporters and Mandate’, in: Philippine Human Rights Reporting Project, 20. 01., online: (January 13, 2010). Garcia, Rodolfo (2008), PEACETALK: GRP-Moro Conflict: Is there an end in sight?, in: Mindanews, 24. 09., online: (January 13, 2010). „ „ „ 142 Timothy Williams „ „ „ GMANews. TV (2008), MILF wants ranking Cabinet member to head govt panel, 26. 12., online: (January 13, 2010). Hataman, Mujiv S. (2008), On being a Moro and a Muslim, in: Wyzemoro Blogs, 07. 08., online: (January 13, 2010). Internal Displacement Monitoring Centre (2008), Over 600, 000 people displaced by conflict in 2008, 29. 12., online: (July 14, 2009). Kreuzer, Peter (2009), Enduring Civil War in the Philippines. Why the way to peace always leads to renewed warfare, paper for the 2009 World Convention of the Association for the Study of Nationalities Columbia University 2325 April 2009, Frankfurt: Peace Research Institute Frankfurt. Kulat, Ismael G. (2008), Speak out: Open Letter to Sen. Mar Roxas, in: Sun. Star Cagayan de Oro, 25. 08., online: (June 25, 2009). Loong, Don Mustapha Arbison (2008), The MOA is NOT dead, in: Luwaran, 12. 11., online: (January 13, 2010). Luwaran (2009a), MILF: AFP is embarking on war of attrition VS Moros, 14. 05., online: (January 13, 2010). Luwaran (2009b), AFP arrests, atrocities against civilian



communities continue, 19. 05., online: (January 13, 2010). Luwaran (2008), AFP and MILF clash at Lanao del Sur town, 11. 11., online: (January 13, 2010). Memorandum of Agreement on Ancestral Domain (2008), in: Mindanews, online: (January 13, 2010). „ „ „ The MoA-AD Debacle 143 „ „ „ Mindanews (2009), FGDs identify other sources of armed conflict, 02. 11., online: (January 13, 2010). Mindanews (2008a), Hundreds flee as suspected Moro rebels attack 4 villages in North Cot, 29. 07., online: (June 28, 2009). Mindanews (2008b), Esperon to MILF: peace process continues; MOA-AD will be major reference, 14. 09., online: (January 13, 2010). MoA-AD see Memorandum of Agreement on Ancestral Domain NCELP see North Cotabato E-Legislative Portal North Cotabato E-Legislative Portal (2009), Sangguniang Panlalawigan starts consultations on peace process, 12. 05., online: (January 13, 2010). Oliveros, Benjie (2008), The MoA, the Cha Cha, and the U. S. Ambassador, in: Bulatlat, 28. 08., online: (June 15, 2009). Peace Monitor (2009), Renewed hope, 1, online: (January 13, 2010). Peace Monitor (2008), Stumbling blocks along the road to peace, 2, online: (January 13, 2010). Philippines Information Agency (2009), Tagalog News: Cotabato vice gov leads peace consultations, 28. 05., online: (January 13, 2010). Philippines News Agency (2008a), Cotabato gov assures constituents Army would defend them when attacked, 07. 08., online: (July 15, 2009). Philippines News Agency (2008b), North Cotabato Vice Governor Emmanuel F. Pinol's statement on MOA-AD, 14. 10., online: (June 22, 2009). Piñol, Emmanuel (2008a), Statement of Vice Gov. Manny Piñol on the Mindanao Crisis, in: North Cotabato E-Legislative Portal, 02. 08., online: „ „ „ 144 Timothy Williams „ „ „ (January 13, 2010). Piñol, Emmanuel (2008b),

Statement of Vice Governor Manny Piñol, Aug. 4, 2008: " A TIME TO SHOW OUR COURAGE", in: North Cotabato E-Legislative Portal, 04. 08., online: (January 13, 2010). Quevedo, Orlando (2008a), Let the MOA-AD Speak for Itself, 19. 08., online: (January 13, 2010). Quevedo, Orlando (2008b), Will People Accept the MOA-AD?, 09. 08., online: (January 13, 2010). Senturias, Al (2009), PEACETALK: Reflections on the Study Mission on IDP Situation in Maguindanao, in: Mindanews, 25. 05., online: (January 13, 2010). Supreme Court (2008), G. R. 183591, Manila, online: (January 13, 2010). Timonera, Bobby (2008), Maranaos call on UN, OIC to help end war, in: Mindanews, 03. 10., online: (January 13, 2010). Uy, Veronica (2008), Seguis in peace panel a ' gift' — MILF, in: Inquirer. net, 12. 04., online: (January 13, 2010). Werning, Rainer (2008), Neue Kriegswolken. Im Süden der Philippinen erleidet der Friedensprozess einen schweren Rückschlag. Kämpfe zwischen Regierungstruppen und der Moro Islamischen Befreiungsfront (MILF) eskalieren, AG Friedensforschung an der Uni Kassel, online: (January 13, 2010).