

The Philippines: After the Maguindanao Massacre

I. OVERVIEW

The massacre on 23 November 2009 of 57 men and women by the private army of a warlord allied to Philippine President Gloria Macapagal-Arroyo shocked the country and the world. The immediate trigger for the killings was the decision of one man, Esmail “Toto” Mangudadatu, to run for governor of Maguindanao province, which for the last decade has been the fiefdom of the Ampatuan family. Political patronage by successive governments in Manila, most notably by the Arroyo administration, allowed the Ampatuans to amass great wealth and unchecked power, including the possession of a private arsenal with mortars, rocket launchers and state-of-the-art assault rifles. They controlled the police, the judiciary, and the local election commission. In the wake of the massacre, there are opportunities for new measures in the areas of justice, security and peace. The question is whether anyone in a position of power will seize them.

The Ampatuans’ exercise of absolute authority was made possible not only by political patronage from Manila, but also by laws and regulations permitting the arming and private funding of civilian auxiliaries to the army and police; lack of oversight over or audits of central government allocations to local government budgets; the ease with which weapons can be imported, purchased and circulated; and a thoroughly dysfunctional legal system. The family also took advantage of the conflict between the government and the Moro Islamic Liberation Front (MILF) to position itself as a loyal counter-insurgency force, even though it used the green light obtained for arming civilians more to expand its own power than defend the state.

In the aftermath of the massacre, the government declared martial law to facilitate the arrests of the Ampatuans and pursue their private army, which included dozens of police. It lifted it after a week, and it remains to be seen whether any of those arrested will actually be tried and convicted. Fear of retaliation by the Ampatuans extends even to Manila, where a judge withdrew from the case involving the only member of the family indicted for multiple murder, citing the security of his own family.

Domestic and international anger over the massacre, which involved mutilation of the women victims and

constituted the single biggest death toll of journalists ever in a single incident anywhere in the world, could lead to progress on a number of fronts if:

- ❑ the perpetrators are quickly brought to trial;
- ❑ the government ends all private and local funding of police and military auxiliaries; asserts far stricter control over procurement and issuance of firearms; and bans civilian militias;
- ❑ the international community offers assistance in a range of fields from forensic analysis and witness protection to funding an analysis of the Philippines’ security needs; helps freeze the suspects’ assets abroad, if any; and places them on an immigration blacklist;
- ❑ the MILF and the government work together to pursue suspects of the Ampatuan private army to give momentum to peace talks; and
- ❑ the Philippines and international media and civil society keep the case front and centre in the public eye to demand prosecution of the perpetrators and broader reforms, even as the Philippines moves into election season in 2010.

II. BACKGROUND TO THE MASSACRE

On 23 November, 100 armed men of the Ampatuan militia, including officials of the local police force, intercepted a convoy of female relatives of Esmail “Toto” Mangudadatu, who were on their way to file papers for Mangudadatu’s candidacy for the governorship of Maguindanao province. The convoy was accompanied by about 30 journalists. According to a police witness, the members of the convoy were lined up at the site and shot, beginning with the Mangudadatu women. Altogether, 21 women and 36 men were killed.

The massacre was not, as many media reports have described it, the result of a longstanding feud (*rido*) between two powerful clans. To call it a feud is to diminish the role played by Manila in building up a political machine and allowing it to exert absolute authority over a huge swathe of central Mindanao in exchange for votes at election time and military help against insurgents. This was not the inevitable result of historic hatreds, but of

the deliberate nurturing of a local warlord, Andal Ampatuan Sr, who was allowed to indulge his greed and ambition in exchange for political loyalty. He began to change from a small-time politico to an authoritarian strongman in the late 1990s, but his power grew exponentially under the Arroyo government. The massacre happened when an erstwhile ally decided to run for governor on Ampatuan turf.

A. THE RISE OF ANDAL AMPATUAN SR

The Ampatuans have been in Maguindanao for centuries and trace their lineage to a Muslim preacher, Shariff Aguak, who first brought Islam to the area and after whom the provincial capital is named.¹ Many members of the clan are upstanding citizens, who are as horrified by the killings as everyone else; the core of the problem rests with Andal Ampatuan Sr, now under arrest, and his family.

Andal Sr began his rise under the Marcos government, when he was promoted from vice-mayor to mayor of Maganoy, now Shariff Aguak. In 1986, after Corazon Aquino succeeded Marcos as president, she replaced all local elected officials, and for two years, the town was ruled by another Ampatuan. In 1988, however, Andal Sr ran again for mayor and won. His chief rival was gunned down in broad daylight in the public market, and Andal Sr was charged but acquitted after no witnesses came forward.² He proceeded to govern for the next ten years. In 2001 he was elected governor of Maguindanao province.

The following year, on 23 December, his eldest son and heir apparent, then the mayor of Datu Piang town, was killed together with seventeen others in a bombing that the government blamed on the MILF.³ His death reportedly affected his father deeply and made him more determined than ever to ensure the dynasty survived. Andal Sr was re-elected in 2004 and 2007, running unopposed the last time. He used his position to extend the family influence in several ways, one of the most important of which was to create new townships.

The Ampatuans' administrative carve-up of Maguindanao into more and more municipalities enabled more and more progeny to gain political office. It also ensured a

steady stream of funding from the central government through a mechanism known as Internal Revenue Allotment (IRA). In 1995, the province had eighteen municipalities; in 2009 it had 36, most of them led by Andal Sr's sons, nephews, in-laws and other members of his extended family.⁴ No one audited their use of the IRAs or questioned where the funding came from for the huge, pastel-coloured mansions they built for themselves in the country's third-poorest province.

The family got an enormous boost when Zaldy, the second son, was elected governor of the Autonomous Region in Muslim Mindanao (ARMM) in 2005 at the age of 38. Three years later he was re-elected with more than 90 per cent of the vote. In his case, he seems to have had some genuine popular support, although only his family's machine could have produced that kind of victory: no campaign materials of other candidates were visible before the election.⁵ Because the ARMM regional legislature, which the Ampatuans controlled, had the power to create new districts without reference to Manila, the speed of the administrative carving picked up, to the point that one journalist wrote that Maguindanao had the highest "town birth-rate" in the Philippines.⁶

The family's efforts in 2006 to divide Maguindanao and create the new province of Shariff Kabunsuan, with its own Congressional district, ran into trouble, however. ARMM duly authorised it, and Ampatuan allies were promptly elected governor and vice-governor in 2007, the same year Andal Sr was returned to power for his third, and therefore by law last term as governor. In early July 2008, however, the Supreme Court ruled that only the national Congress had the power to create a province. This meant that Shariff Kabunsuan had to be reabsorbed in Maguindanao, and the 2007 elections were nullified, not only for the new province but also for Maguindanao, its administrative parent. Andal Sr was technically out of a job. In fact, though his youngest son was appointed officer-in-charge (OIC) until the next election, Andal Sr remained governor in everyone's eyes, including his own.

¹ The town was called Maganoy until the Ampatuans had it renamed in 2000 in honour of their ancestor.

² Father Jun Mercado, "The Maguindanao Massacre, Part 2", GMAnews.tv, 2 December 2009, <http://blogs.gmanews.tv/jun-mercado/archives/61-The-Maguindanao-Massacre-Part-2.html>.

³ "Clerics Condemn Shariff Aguak bombing", *Peace Monitor*, June 2006.

⁴ For example, Datu Unsay was created in 2003; its first mayor, still in power at the time of the massacre, was Andal Ampatuan Jr, whose nickname is Datu Unsay; the town was created for and named after him. The municipality of Datu Saudi, also created in 2003, was named after the eldest son. The town of Ampatuan, where the massacre took place, was created in 2004.

⁵ Crisis Group interview, church leader, Cotabato, 10 December 2009. See also Jaileen F. Jimeno, "Amid the Fighting, the clan rules in Mindanao", *Philippine Center for Investigative Journalism*, 4 September 2008.

⁶ See Patricio P. Diaz, "Comment: A Riddle and a Challenge", *MindaNews*, 4 January 2007.

He had already been elected three times, however, and this raised the question of who would stand for governor in 2010. In 2008, before the Supreme Court decision, Esmail Mangudadatu – widely known as “Toto” – the vice-mayor of Buluan, one of the few towns in Maguindanao not under Ampatuan control, reportedly came to Andal Sr and expressed his intention of standing. Andal Sr was reportedly furious at the idea that anyone but an Ampatuan would rule Maguindanao. Even if he could not stand – and after the Supreme Court decision, many expected that he would cite his forced resignation as grounds for arguing that he could start the clock over and serve another three terms – Andal Jr was waiting in the wings.⁷ Toto nevertheless decided to pursue his bid.

Of all the sons, Andal Jr, also known as Datu Unsay, was regarded as the most thuggish and volatile, and he was also rumoured to be a drug user.⁸ He did poorly in school and never finished college (his father never finished elementary school, according to a Cotabato source). It was Toto’s challenge to his presumed succession that set in motion the bloody events of 23 November.

B. THE MANGUDADATU FAMILY

Toto’s family belongs to another major Muslim clan and political dynasty that holds sway in Sultan Kudarat, the largely non-Muslim province next door to Maguindanao. Its influence extends into the south-eastern part of Maguindanao, however, including the town of Buluan, the family seat. The Mangudadatus are also warlords, in a way, but more respectable, more sophisticated and better educated ones. In addition, the fact that a Muslim can only be elected in Sultan Kudarat with the support of the majority Christian populace means that the Mangudadatus governed more through consensus than fear.

The patriarch until his death in 2002 was Toto’s father, Datu Pua Mangudadatu, who began his rise to power when Corazon Aquino appointed him mayor of Buluan in 1986. Datu Pua’s son Ibrahim is the mayor of Buluan; Toto is his brother. Pua’s brother and Toto’s uncle is 65-year-old Congressman Pakung “Pax” Mangudadatu, who was governor of Sultan Kudarat from 1998 to 2007 and respected enough to be taken on the government panel negotiating peace with the MILF.⁹ His son, Suharto

(“Teng”) succeeded him. Pax’s daughter Ruth is the mayor of Lutayan town in Sultan Kudarat. She succeeded her husband in the job. When the Ampatuans carved Buluan municipality into three in 2006, members of the Mangudadatu family kept control of two, and one of the new towns was named “Mangudadatu”. Its vice-mayor, Toto’s sister, was one of those killed in the massacre.

Far from being old rivals, the Mangudadatus and Ampatuans were allies, out of shared interests, until Toto’s challenge. The Mangudadatus had supported Andal Sr’s bid for governor in 2001. Both had an interest in using Manila’s patronage to expand their influence. Both saw the value of carving up ARMM to provide more political opportunities for clan members. They intermarried, and legend has it that before his death in 2002, Toto’s father, Datu Pua Mangudadatu, entrusted his children to the care of his good friend, Andal Sr.¹⁰ It was not an irrational act, therefore, for Toto to seek the latter’s blessing for his gubernatorial bid.

That bit of effrontery, however, set the two families on a collision course. Sometime thereafter, the Mangudadatus reportedly blocked the creation of another municipality that the Ampatuans wanted to create, called Adam, after the father of a retired police commander loyal to Andal Sr. In July 2009, a relative of Adam’s was killed, and the Mangudadatu clan was blamed.

C. POLITICAL DEBT AND PRIVATE ARMED FORCES

If the Ampatuans got their start under Marcos and gradually expanded their influence, they reached undreamed of heights of power and wealth under Gloria Macapagal-Arroyo, largely because they helped her win the May 2004 election. That election pitted Arroyo against a popular movie star, Fernando Poe Jr. It was extremely close, and Arroyo’s eventual victory depended on Mindanao. In the now infamous “Hello Garci” scandal that emerged in early June 2005, Arroyo is heard on tape speaking to the election commissioner, Virgilio Garcillano, over several days between late May and mid-June 2004 as the votes were being counted, seeking reassurance that everything would come out in her favour. At one stage, Garcillano is heard telling her, “Maguindanao isn’t much of a problem”.¹¹

⁷ Crisis Group interview, Manila-based journalist, Manila, 6 December 2009.

⁸ Ibid.

⁹ In that role, he argued strongly for the non-inclusion of his province, Sultan Kudarat, in an expanded ARMM under a draft agreement with the MILF on ancestral domain. The MILF argued that Sultan Kudarat should be included on historical grounds. Pax argued that with a 90 per cent non-Muslim population, the province should be excluded.

¹⁰ “Warring Maguindanao clans were once allies”, *Philippine Daily Inquirer*, 24 November 2009. The story of entrusting the children to Andal Sr was also told to Crisis Group by a local NGO source in Cotabato, Mindanao, on 9 December 2009.

¹¹ Yvonne Chua, “Arroyo and ARMM”, *Philippine Center for Investigative Journalism*, 22 June 2005.

That proved to be an understatement. Arroyo won by a huge margin. In two towns, Ampatuan and Datu Piang, Poe received no votes at all, and in Shariff Aguak, he got just five. There were allegations of fake precincts and padded tallies, but the election commission discounted them.¹² The Mangudadatus also were also accused of helping a senatorial ally of the president “catch up” in Sultan Kudarat after he was apparently falling behind.¹³

The alliance between Arroyo and the Ampatuans only grew closer after the 2004 election, and as the latter’s political influence increased, so did their military might. Most Philippine warlords retain a large personal retinue of armed guards, legitimised under a variety of laws allowing for local civilian defence units. Under Marcos, these were authorised to fight the communist New People’s Army (NPA); the Ampatuans exploited the government’s conflict with the Moro Islamic Liberation Front (MILF) to build a private force of over 2,000, armed (mostly) by the government but appointed and paid by the family.

Some of these were technically part of a military auxiliary known as Citizens Armed Forces – Geographical Unit (CAFGU). Officially formed in 1987, but in fact simply a new name for an old institution, the CAFGUs are supposed to be funded, trained and under the direct supervision of the Philippines military.¹⁴ A category known as “Special” CAFGU emerged, however, that allowed private interests and local officials to fund and equip these units as a self-defence measure against insurgents. In addition, supposedly unarmed village defence units called civilian volunteers organisations (CVOs) were formed under the supervision of village heads and became another pretext for private security units.¹⁵ In Maguindanao, the CVOs openly carried guns and sometimes wore army camouflage or police uniforms.

By all accounts, the Ampatuans’ private army mushroomed after 2006. One reason was the intensity of the fighting in Maguindanao, the MILF’s stronghold and home to one of its fiercest base commands, the 105th. As Andal Ampatuan Sr was seen more and more by the Arroyo government as an ally in fighting the MILF, he became the target of several ambush attempts. On 23 June 2006, a bomb attack killed five people in the Shariff

Aguak market; Andal Sr claimed it was aimed at him and blamed the 105th command. He sent his CAFGU and civilian militias, as well as the militias of sixteen of the province’s then 28 mayors, after the suspected perpetrators. The resulting battle, from 28 June to 6 July 2006, displaced thousands.¹⁶

In the aftermath of that fighting, Manila authorised the formation of four new special CAFGU companies for the Ampatuans, each with 88 armed civilians and twelve soldiers.¹⁷ In addition, Arroyo on 14 July 2006 issued Executive Order 546, authorising the police to use the CVOs as “force multipliers” as needed against the rebels, with “local government units” (ie, of provinces and municipalities), mandated to fund them. This order appeared to give governors and mayors the legal grounds for arming their CVOs. These militias were supposed to be under police control, but in Maguindanao, the police themselves constituted a large part of the Ampatuan army, as investigation into the massacre would later reveal, and any supervision came from Andal Sr himself.¹⁸

Weapons for the CAFGUs came from the military, for the CVOs from the police, but the Ampatuan family apparently used their increasingly ostentatious wealth to purchase more sophisticated arms than were available in the police or military inventory, including Israeli-made Galil and Tavor assault rifles, and Singaporean-made Ultramax rifle.¹⁹ They reportedly provided rice and other foodstuffs to the local army battalion, allowing it to use its provisioning budget for other purposes. Military commanders quietly complained that their authority in the region was being bypassed and that Andal Sr only had to pick up the phone to the president and senior officers who ran afoul of the old man would be transferred.²⁰

All this meant the consolidation of Ampatuan power, and by all accounts, Andal Sr used it ruthlessly. There are widespread reports of his ordering the killing of individuals who got in his way but little hard evidence, as fear of retribution kept many silent.²¹

¹² Ibid.

¹³ Ibid.

¹⁴ CAFGUs are considered military reservists. They wear uniforms, receive government-issued weapons and are subject to military justice. There were over 61,000 CAFGUs in 2007, more than half of them in Mindanao, and the 2010 defence budget calls for more to be recruited.

¹⁵ In urban areas these are known as *barangay tanods* (village guards). The term “CVO” is used to refer both to the organisation and to individual members of it.

¹⁶ Carolyn O. Arguillas, “Buffer zones set up to prevent CVO-MILF clashes in Maguindanao”, MindaNews, 10 July 2006.

¹⁷ Crisis Group interview, military officer, Cotabato, 10 December 2009.

¹⁸ Carolyn O. Arguillas “Letter from Mindanao: Arming the barangay tanods”, MindaNews, 9 August 2006. For the investigation, see below.

¹⁹ Crisis Group interview, military officer, Cotabato, 10 December 2009.

²⁰ Ibid.

²¹ “Before backhoe there were chainsaws: CHR probing 200 other murders”, *Philippine Daily Inquirer*, 10 December 2009. The Philippine Commission on Human Rights claims that since

In 2007, Andal Sr and his family delivered again, returning a clean sweep for the administration's senatorial candidates. The turnout was 96 per cent, as opposed to a 65 per cent national average.²² As the post-massacre probe into their activities deepened, police and military searching the Ampatuan compound in Shariff Aguak for arms found thousands of voter identification cards buried in different spots. The municipal election commission officer, whom the army was hoping to question about the cards, died of heatstroke in December 2009 during the pilgrimage to Mecca – a trip paid for, some said, by Andal Sr.²³

Despite all the knowledge of the Ampatuans' power and willingness to use it, nothing prepared the country for the slaughter of 57 people on 23 November. It appears to have been the combination of the old man's anger, his determination to teach a lesson to anyone who dared to challenge the family's control and the existence of a heavily armed militia utterly loyal to its employers that resulted in the carnage.

III. THE MASSACRE

Rumours were rife that the Ampatuans would take some action to try and prevent Toto Mangudadatu from filing his candidacy for Maguindanao governor in the 2010 elections. The filing period, determined by the national election commission, opened on 20 November 2009. In earlier elections, the filing centre for Maguindanao was in Cotabato City. Three weeks before filing opened, however, the commission issued a directive to its local satellite office, ordering that candidacy papers be filed in Shariff Aguak, in effect ensuring Ampatuan control over the process.²⁴

A police officer who was part of Andal Jr's private army and who turned himself in three days after the killing said the Ampatuans had planned an attack on Toto for the day he filed, but they were not sure exactly when that would be. He and other police, army and civilian militia members employed by the Ampatuan family were placed on alert from 19 November.²⁵ For the next three

days, a convoy of six vehicles, including three police cars and a Hummer mounted with a 50-calibre machine gun, left Andal Jr's compound at 8am to take senior members of the Ampatuan militia to a checkpoint along the national highway in the town of Ampatuan, between Buluan and Shariff Aguak, so they could lie in wait.²⁶

Given the rumours, Toto sought protection from the military but was told that any requests for election-related security should be directed to the police or the national election commission.²⁷ Eventually he decided to send his wife and sisters to file the papers, believing that whatever they might do to the men, the Ampatuans would not harm women. Family lawyers and some 30 local journalists decided to accompany them, also as a deterrent against violence.

A. EVENTS OF 23 NOVEMBER

On 23 November, at 9am, six cars in the Mangudadatu convoy left Buluan for Shariff Aguak.²⁸ The Ampatuan militia got word of their departure, so Andal Jr, together with several of his nephews and dozens of heavily armed civilian volunteers, left for the designated checkpoint.²⁹

About an hour later, the Mangudadatu vehicles, plus two unrelated cars that got caught up in their convoy, reached the checkpoint and were ordered to stop. About 100 armed men appeared and commandeered them, while another police car swung around to prevent anyone from turning back. The men, according to eyewitnesses, were led by Andal Jr and Police Chief Inspector Zukarno Adil Dicay, officer-in-charge of the Shariff Aguak police and concurrently deputy provincial director of the Maguindanao police. The latter's involvement showed clearly that the police in Maguindanao province were a wholly-owned subsidiary of the Ampatuan family.

the massacre, it is beginning to receive witness testimony about earlier killings.

²² Solita Collas-Monsod, "History to remember GMA with massacre", *Philippine Daily Inquirer*, 5 December 2009.

²³ "Poll official accused of helping Ampatuans cheat dies", *Philippine Star*, 12 December 2009.

²⁴ Father Jun Mercado, "The Maguindanao Massacre, Part 1", <http://blogs.gmanews.tv/jun-mercado/archives/61-The-Maguindanao-Massacre-Part-1.html>.

²⁵ "How they died: Andal finished them off", *Philippine Daily Inquirer*, 10 December 2009.

²⁶ "Police has strong case against 161 in Maguindanao massacre", *Philippine Star*, 10 December 2009.

²⁷ Freedom Fund for Filipino Journalists et al, "Report of the Humanitarian and Fact-finding Mission to Maguindanao, 25-30 November 2009", <http://pcij.org/wp-content/uploads/2009/12/20091203-FactFindingReport.pdf>.

²⁸ There is some confusion over the number of cars that were part of the original convoy. A leading television news station said seven: the two lead cars, belonging to media people; the next four, Toyotas belonging to the Mangudadatus; and the rear car, also carrying Mangudadatu family members. See Analyn Perez and TJ Dimacali, "The Ampatuan Massacre: a map and timeline", GMA News.tv, 25 November 2009. President Arroyo's proclamation of martial law, however, referred to six vehicles in the original convoy.

²⁹ "Police has strong case against 161 in Maguindanao massacre", *Philippine Star*, 10 December 2009.

Toto's wife, Genalyn, called her husband in panic, as the militiamen began hitting members of the convoy with rifle butts. Andal Jr supervised the removal of documents from the car, before ordering his men to drive the convoy some two and a half kilometres along a dirt road to a secluded area in the hamlet of Malating, in Salman village, Ampatuan.³⁰ The drive took about 30 minutes.

Meanwhile, around 11am, Philippines armed forces were alerted that armed men had stopped the convoy and decided to send in a rescue operation. They had no helicopters, however, because they were in use in ongoing military operations in two other areas of Mindanao (Basilan and Zamboanga), and no soldiers in the area, because the battalion normally stationed there had been pulled back as a confidence-building measure in anticipation of resumption of peace talks between the MILF and government.³¹ Soldiers from the 64th Infantry Brigade, therefore, were ordered to the area. They arrived at the main road around 1pm. and coordinated with Police Chief Inspector Dicap, unaware that he was in on the plot. He told the soldiers he had no knowledge of any abduction.³²

The troops moved toward the area where the armed men had been reported. But because they were afraid of an ambush, they parked their vehicles and entered on foot as a precautionary measure. They only arrived at the scene around 3pm, long after the killings had taken place.

According to the police witness, members of the convoy were lined up at the site, and Andal Jr ordered the shootings, beginning with the Mangudadatu women. Many were shot in the genital area, some in the face. The shooting must have begun around noon, because at 12pm, one of the journalists, Noel Decena, managed to get an SMS to his brother from the site saying, "Pray for us, our situation is critical".³³ As the shooting started, some tried to escape but were shot down by the members of the CVOs.

After everyone in the convoy was killed, Andal Jr and one of his nephews, the mayor of Mamasapano town, departed, according to the police witness, leaving another nephew, Kandor, in charge of dealing with the bodies. A backhoe with Maguindanao government markings arrived shortly thereafter and began burying the bodies in pits; it remains unclear whether the pits had been dug

beforehand. Twenty-four bodies were put into the first, in what a police crime scene investigator called a layered burial: "bodies, soil, bodies, soil, bodies, soil".³⁴ The backhoe then rolled over and smashed flat three of the cars with a total of six bodies inside and stacked them one on top of the other in a second pit. Five more bodies had gone into the third before the military arrived.³⁵

Just as the first soldiers began reaching the area, Ampatuan's men got word they were coming and fled, leaving behind their vehicles, the backhoe and 22 unburied bodies. Two members of the CVOs were captured by the troops and have provided important testimony.³⁶ Those who fled were ordered to report to Shariff Aguak. At 10 p.m. that evening, Andal Jr reportedly told his men to "go separate ways for now" and avoid meeting each other.³⁷ At the same time, a police crime team arrived at the massacre site to begin an investigation.³⁸

B. THE IMMEDIATE RESPONSE

The outrage over the killings was global. It was one of the worst acts of political violence in modern Philippine history, and the largest number of journalists slain on a single day ever, anywhere in the world.³⁹ The murder of the women would have been an outrage anywhere, but in Muslim Mindanao, it was also a violation of an unwritten code that women are not to be harmed by local militias.⁴⁰ But it was worse: according to the president's report to Congress:

³⁰ Ibid.

³¹ Crisis Group interview, military officer, 6th Infantry Division, Cotabato, 11 December 2009. The battalion in question was the 46th Infantry Battalion (IB).

³² "Report of the Humanitarian and Fact-finding Mission", op. cit., p. 12.

³³ "The Ampatuan Massacre: a map and timeline", GMA News.tv, 25 November 2009.

³⁴ "Report of the Humanitarian and Fact-finding Mission", op. cit., p. 12.

³⁵ "Report of Her Excellency President Gloria Macapagal-Arroyo on Proclamation 1959", Office of the President of the Philippines, 6 December 2009.

³⁶ These were Esmael Kanapia, assigned at the office of Mayor Zacaria S. Sangki of Ampatuan town, and Takpan Drilon, assigned to the security detail of Vice-Mayor Rasul M. Sangki, also of Ampatuan. See "Ampatuan's surrender not enough", *Mindanao Times*, 27 November 2009.

³⁷ "Police has strong case against 161 in Maguindanao massacre", *Philippine Star*, 10 December 2009.

³⁸ "Report of the Humanitarian and Fact-finding Mission", op. cit., p. 12.

³⁹ The Committee to Protect Journalists called the massacre "the worst we have on record, and most likely the worst in the history of journalism". See "Philippine groups move quickly to investigate massacre", CPJ Blog, 3 December 2009. Even before the massacre, CPJ had identified the Philippines as one of the most dangerous countries to work in as a journalist because of the high number of killings, most of which have gone unpunished.

⁴⁰ Carlos H. Conde, "Philippine official says victims sexually mutilated", *The New York Times*, 27 November 2009.

Most if not all of the female victims' pants were found unzipped, and their sexual organs mutilated and mangled. Five of them tested positive for semen, indicative of sexual abuse. ... The genitalia of Genalin Mangudadatu [Toto's wife] was lacerated four times and blown off by ... gun fire and her body horrifyingly mutilated.⁴¹

There is no other explanation than that this was vindictiveness carried to the most extreme, and the women became a means of exercising it.

Some of the killers taken into custody expressed more remorse about killing the journalists. According to Justice Secretary Agnes Devanadera, "they are bothered by their conscience, because they thought that only the Mangudadatus would be shot".⁴² Some Moro leaders in Cotabato are convinced that it was only the deaths of the journalists – most of them coincidentally Christian – that brought the massacre to international attention, and that had they not been present, the killing would have been quickly dismissed as Moro vs. Moro violence and swept under the carpet.⁴³

Arroyo was under extreme pressure to arrest the perpetrators, disarm the CVOs and dismantle the Ampatuans' power base, even more so because the family was seen by many as her own "pet monsters".⁴⁴ First with a softly-softly approach, then with more robust measures including the proclamation of martial law on 4 December, the government initiated what some described as the beginning of the end of the Ampatuan reign of terror. The fear engendered by the Ampatuans was such that no judge wanted to issue an indictment against Andal Jr, no official in Maguindanao wanted to register the victims' death certificates, and no company wanted to provide the police with a backhoe to retrieve the bodies.⁴⁵ It was only in the glare of publicity surrounding the killings that Filipinos, though used to the existence of political warlords, began to get a sense of how absolute Ampatuan control in Maguindanao had become.

Other responses were varied. The Moro community around Cotabato and Maguindanao remained highly sceptical of the government's sincerity and motives; some even suggested that the government had masterminded the massacre as a pretext for declaring martial law and as part of a "grand design" to control the 2010 elections. By contrast, many in the Christian community feared the power vacuum that would be created in the Ampatuans' absence. They welcomed martial law and worried about what would happen when it was lifted. The MILF was quietly supportive of the government's moves, not only seeing the fall of a longstanding enemy but also determined to keep its focus on the resumption of peace talks in Kuala Lumpur on 8 December. The international community was unanimous in its strong condemnation of the killings. In all of these responses, there was an awareness that the depth of the outrage over the massacre might create opportunities to make some progress on justice, security and peace. It was not clear, however, if or how these would be used.

IV. THE GOVERNMENT RESPONSE

One of the government's first moves was to declare a state of emergency on 24 November in Maguindanao and Sultan Kudarat provinces as well as in Cotabato city. That enabled the military to be given a role in the restoration and maintenance of order, especially when the police were so compromised. Chief Inspector Dicay and three other officers were dismissed by the Philippine National Police command the same day. The next day, Jesus G. Dureza, Arroyo's adviser on Mindanao affairs, who considered himself friends with both the Ampatuans and Mangudadatus, flew to Mindanao to try and persuade Andal Jr to turn himself in – or at least to persuade Andal Sr to persuade his son to do so.⁴⁶ After some tough negotiating, the mayor surrendered on 26 November and was formally arrested. He maintained his innocence, claiming the MILF were the real killers.

Politically, the government also moved quickly to distance itself from the Ampatuans. Arroyo's political party, Lakas-Kampi-CMD, immediately expelled Andal Sr, Andal Jr and Zaldy Ampatuan, citing their "failure to uphold party ideals and principles".⁴⁷ Party Chairman Gilberto Teodoro, who is running for president in 2010 and far behind in the polls, immediately moved to embrace the Mangudadatus and accompanied Toto, when

⁴¹ "Report of Her Excellency President Gloria Macapagal-Arroyo", op. cit., p. 6. There are conflicting reports about the nature of the women's wounds, which could be clarified by the publication of autopsy reports.

⁴² Conde, op. cit.

⁴³ Crisis Group interview, Moro NGO activist, Cotabato, 11 December 2009.

⁴⁴ Crisis Group interview, Cotabato-based official, Manila, 7 December 2009.

⁴⁵ "Report of Her Excellency President Gloria Macapagal-Arroyo", op. cit., pp. 11-12, and Crisis Group interviews, Cotabato, 9-10 December 2009.

⁴⁶ Jesus G. Dureza, "Maguindanao massacre: the four critical days", 1 December 2009, www.gmanews.tv/story/178290/maguindanao-massacre-the-four-critical-days.

⁴⁷ "3 Ampatuans expelled from admin party", *Philippine Daily Inquirer*, 25 November 2009.

he finally managed to file his candidacy on 27 November, four days after the massacre. From then on, the focus was on identifying and arresting the other perpetrators and disarming the Ampatuan security forces.

A. INVESTIGATION

A police investigation was immediately set in train. An independent fact-finding team that went to the site was not impressed:

Five days after the massacre ... the scene of the crime remained heavily littered with rubbish and possibly the personal effects and the remains of the victims. There was even what appeared to be a tuft of long hair on the ground that could have been a piece of scalp. ... The site did not look like a protected scene at all.⁴⁸

The immediate concern of the police had been the retrieval of the bodies, which was done with a backhoe. Team members suggested that this might have compromised the site and the remains:

In interviews, members of the retrieval team from the military and police admitted that they had to rush their work and pull out of the site before dark set in, because the situation on the first four days was still tenuous, and they had wanted to avoid possible retaliation from the suspects. The retrieval team had chosen to use a backhoe instead of shovels to retrieve the bodies precisely to rush the effort.⁴⁹

It was not only this disturbance of the crime scene that was a problem, however. On 11 December, the Mangudadatu family told the press it had come into possession of a video clearly showing the soldiers who first arrived at the crime scene looting the victims. They took cash, a Rolex watch and jewellery from his wife's body, one said.⁵⁰

In early December, the Philippine Commission on Human Rights (CHR) brought two senior international forensic investigators to the scene, Dr Jose Pablo Baraybay of Peru and Christopher Cobb-Smith of Britain. Their excavations were being conducted, CHR said, in collaboration with the justice department, and all findings would be submitted to government investigators.⁵¹ CHR's focus was on finding a possible 58th body, since one journalist remained missing.

⁴⁸ "Report of the Humanitarian and Fact-finding Mission", op. cit., p. 7.

⁴⁹ Ibid.

⁵⁰ "Mangudadatu clan to file looting raps", *Philippine Star*, 11 December 2009.

⁵¹ "CHR to dig untouched part of Ampatuan mass grave", *abs-cbnNEWS.com*, 1 December 2009.

B. MARTIAL LAW AND ARRESTS

On 1 December, the justice department charged Andal Jr with 25 counts of murder, aggravated by six factors: premeditation; taking advantage of superior strength; treachery; cruelty; in an uninhabited place; and by an armed band.⁵² Later, as more autopsy reports became available, fifteen additional counts were added to the indictment.

On the same day, Toto Mangudadatu filed a complaint against Zaldy Ampatuan, the ARMM governor, alleging that he had failed to protect the "civil, human and political rights" of the massacre victims and calling on President Arroyo to remove him. The interior and local governments department said it would review the case immediately.⁵³

On 4 December, Arroyo declared martial law in Maguindanao through Proclamation 1959, suspending the writ of habeas corpus and claiming that "lawless elements have taken up arms and committed public uprising against the duly constituted government" – in other words, a rebellion was taking place. Referring to the Ampatuan CVOs in her report to Congress, she noted that "heavily armed groups in the province of Maguindanao have established positions to resist government troops" and that "the Ampatuan group has consolidated a group of rebels consisting of 2,413 heavily armed men, with 1,160 of them having been strategically deployed in Maguindanao".⁵⁴

Very few in the Philippines believed that a rebellion was at hand, the government was in danger or armed groups were about to take over Maguindanao. This was the first imposition of martial law since Marcos declared it in 1972 – and proceeded to keep it in place for the next nine years – and many feared the consequences, even though there are now more legal safeguards against abuse in place.⁵⁵ Opposition politicians raised an outcry, some accusing Arroyo of using a false pretext to fix the 2010 election, cover up past election misdeeds or pro-

⁵² Carolyn O. Arguillas, "Mayor Ampatuan faces 25 counts of murder; other Ampatuans subpoenaed to submit counter-affidavit", *MindaNews*, 1 December 2009. www.mindanews.com/index2.php?option=com_content&do_pdf=1&id=7303.

⁵³ "Mangudadatu wants ARMM governor slapped with DILF sanctions", *GMAnews.tv*, 2 December 2009.

⁵⁴ "Report of Her Excellency President Gloria Macapagal-Arroyo", op. cit.

⁵⁵ Under the 1987 Constitution, Congress in a joint session must examine the president's rationale for martial law, and the Supreme Court must review the factual basis for it. Anyone arrested under martial law must be charged within 36 hours or released; under Marcos, people could be detained indefinitely.

tect the Ampatuans.⁵⁶ But the proclamation did enable the army to move swiftly to arrest massacre suspects without warrant, including those like Zaldy Ampatuan who had not taken a direct role in the killings (he was in Manila at the time). Soldiers were also empowered to carry out warrantless searches of the Ampatuan compounds, where some of the huge weapons caches were found.

On the day martial law was declared, Andal Sr, Zaldy, acting Maguindanao governor Sajid Ampatuan, Maguindanao Vice-Governor Akmad Ampatuan and Shariff Aguak Mayor Anwar Ampatuan were all indicted on rebellion charges. By 12 December, 183 suspects had been identified, including Saudi Mokamad, director of the 1507th Mobile Police Group, who surrendered; he was reportedly one of the senior police officers helping Andal Jr in the abduction and killing. Two days later, the Philippine police filed complaints alleging rebellion against some 600 people, including five more members of the Ampatuan family.⁵⁷ The outcry against martial law was sufficiently strong, and the argument for rebellion sufficiently weak, that it looked as though the Philippine Congress and Supreme Court might reject it. But on 12 December, as all of Arroyo's critics were gearing up to fight it, she suddenly lifted it, saying its objectives had been achieved. In one stroke, she disarmed her opponents and ensured there would be no obstruction to the peace process (see below). The state of emergency remained in force for Maguindanao, Sultan Kudarat and Cotabato.

In the meantime, the National Bureau of Investigation continued to file multiple murder charges as more witness testimony became available. By 18 December, some 200 suspects had been charged, including Andal Sr – who nevertheless registered as a candidate for Maguindanao vice-governor in the 2010 elections.⁵⁸

It remains to be seen how the murder and rebellion charges will fare in court, but the prospects do not look good, as the fear of the Ampatuans extends even to Manila. For the safety of all concerned, the Supreme Court authorised that criminal proceedings against Andal Jr be moved to Manila. On 16 December, however, the judge assigned the case stepped down, citing concerns for the security

of his family and staff.⁵⁹ Another judge has been given the case, but many in the Philippines are sceptical that justice will ever be served.

C. OPERATIONS AGAINST CAFGUS AND CVOs

From the beginning, the government was under pressure to disarm and dismantle the Ampatuan army. On 26 November, twenty CAFGU members said to be suspected of having taken part in the massacre were arrested.⁶⁰ The military announced that it was “deactivating” two special CAFGU companies in Maguindanao and disarming all four, more than 350 men.⁶¹ Since each of the CAFGU members had been assigned a firearm, the army was supposed to have a register that matched man to gun, in a way that would help identify perpetrators of the massacre through ballistic tests and assist in the disarmament process. The CVOs were a bigger problem, because while names and weapons were supposed to be registered with police, it is not clear that those registers exist, particularly in Maguindanao.

On 8 December, the military dropped leaflets from planes giving CVOs 24 hours to surrender in exchange for amnesty. A few did so, but the majority remained at large. In the meantime, the size and nature of the Ampatuan arsenal uncovered was staggering. By 10 December, more than 800 sophisticated weapons, including rocket launchers, mortars, explosives and high-powered assault rifles, had been found, together with close to a million rounds of ammunition, and new caches were being discovered daily.⁶²

Senior officers expressed concern that the MILF would be the main beneficiary of the dissolution of the Ampatuan army. Blood ties between MILF members and the

⁵⁶ One argument was that rebellion was a political crime and therefore both bailable and susceptible to amnesty; by charging the Ampatuans with rebellion, she was opening the possibility of their early release.

⁵⁷ They were Rajah Buayan Mayor Jacob Ampatuan, Mamasapano Mayor Banarin Ampatuan, Datu Ulo Ampatuan, Datu Ipi Ampatuan and Salibo Vice-Mayor Datu Kanor Ampatuan.

⁵⁸ It is common among warlord families in the Philippines for an elected mayor or governor, who can only serve three consecutive terms, to take the number two slot for one term before returning to the higher position.

⁵⁹ “Quezon City judge in Ampatuan case told to resign”, *Philippine Star*, 16 December 2009.

⁶⁰ “AFP to disarm 300 CAFGUS in Maguindanao”, ABS-CBN news, 26 November 2009.

⁶¹ *Ibid.* Each of the four CAFGU companies was authorised to have 88 civilians, so the total, if all companies had their full contingent, would have been 352 militia members.

⁶² “Troops move on armed Ampatuan followers”, *Philippine Star*, 10 December 2009, and “Missiles, rockets find stuns military”, *Philippine Daily Inquirer*, 10 December 2009. In one warehouse alone, troops uncovered “6,500 rounds of ammunition for 7.62mm mortar; 134 rounds of high explosive ammunition for 81mm mortar; 131 rounds of high explosive ammunition for 60mm mortar; six rounds of high explosive anti tank for 90mm mortar, three rocket warheads, and 92 rounds of high explosive of ammunition for 57mm mortar”. See “RP troops launch offensive against armed followers of Ampatuan clan”, *Philippine Star*, 9 December 2009.

CVOs would facilitate the latter's absorption, they said, and lead to a tactical alliance: CVO weapons in exchange for MILF protection.⁶³ The fact that many of the CVOs suspected of involvement in the massacre were believed to be hiding in Rajah Buayan and neighbouring areas, near the area of control of the MILF's 106th base command, may have intensified that fear.⁶⁴ A government official in Manila echoed this concern, saying the government would have to move quickly to ensure that the high-tech arsenal of the Ampatuans did not fall into MILF hands.⁶⁵ MILF members denied any interest in the arms, however, and said that while a handful of CVOs and CAFGUs might seek to join their ranks, there was such a history of conflict and bad blood that there was no danger of any mass crossover.⁶⁶

On 9 December, Arroyo issued an administrative order establishing a commission to dismantle private armies before the 2010 elections. Because these have been a staple of Philippine political life since independence, the order was greeted with some cynicism. It will be meaningless unless the laws and regulations that facilitate private armies and allow private funding of armed civilian auxiliaries to the military and police are overturned. One of these is Executive Order 546, which President Arroyo could revoke herself with the stroke of a pen, in what would be a far more significant move than creating a new commission.

D. THE POLICE

The massacre revealed how corrupted the Maguindanao police force had become. Over twenty police were said to be involved; thirteen were in custody as of early December. In response, a national police spokesman announced that all 1,092 personnel would be transferred to "other areas of the South" and replaced with an entirely new force.⁶⁷ That is not what happened, however. According to the ARMM provincial police command, the Maguindanao police are only being shifted from one municipality to another in the same province, with-

out any financial compensation for the move.⁶⁸ Their families will stay at their old homes; the officers will have to find temporary housing in their new place of assignment, perhaps making them more susceptible to blandishment from the remaining Ampatuans or whoever wanted to fill a patronage role and rendering their families more vulnerable to pressure.

V. THE MASSACRE AND THE PEACE PROCESS

The massacre took place just weeks before talks between the government and the MILF, on hold since the collapse of an agreement in August 2008, were scheduled to resume in Kuala Lumpur.⁶⁹ It inevitably affected the atmosphere in which they took place. One of the reasons for the breakdown of the 2008 Memorandum of Agreement-Ancestral Domain (MOA-AD) – that among other things set out the territory envisioned in a Bangsamoro homeland – was the opposition of Christian communities in or near the proposed area. Conservative politicians in Manila also saw it as undermining Philippine sovereignty. After the massacre, a senior church official said the killings had hardened the attitudes of his parishioners. Regrettably, he said, "they feel that left to themselves, the Muslims will be more violent than ever".⁷⁰ He added that as a result, Christian fear of an agreement with the MILF had intensified.

The same reinforcement of a negative stereotype was clear from the wording of a statement by the Zamboanga-based branch of the National Union of Journalists:

The primitive, savage practice of blood feud and vendetta behind the massacre of our colleagues – and the other civilians whose political activity they were covering on that fateful day – is solely the special characteristic of a few ethnic tribes now existing amid our civilised, democratic society in Mindanao. We take this opportunity to appeal to these our tribal brothers and sisters to seriously re-examine their anachronistic and destructive sense or system of justice.⁷¹

⁶³ "Ampatuan private army seeking help from MILF", *Philippine Star*, 7 December 2009.

⁶⁴ On 9-10 December, operations were being conducted in Baital, Bakat, Tabungao, Watu and Basuluk in Rajah Buayan and Sultan sa Barongis. About 100-200 CVOs (now just called "armed groups") were believed to be in each place.

⁶⁵ Crisis Group interview, Manila, 6 December 2009.

⁶⁶ Crisis Group interviews, Cotabato, 10-11 December 2009. Kinship ties between the Ampatuans' men and the MILF are strongest in the area of the MILF's 106th base command, but the area of the 105th has had particularly hostile relations with the Ampatuans.

⁶⁷ "Entire Maguindanao police force to be replaced amid role in massacre", *Philippine Star*, 3 December 2009.

⁶⁸ Crisis Group interview, ARMM police headquarters, Parang, Maguindanao, 11 December 2009.

⁶⁹ See Crisis Group Asia Briefing N°83, *The Philippines: The Collapse of Peace in Mindanao*, 23 October 2008.

⁷⁰ Crisis Group interview, church official, Cotabato, 10 December 2009.

⁷¹ "Statement on Maguindanao massacre from NUJP-Zamboanga Sulu Tawi-tawi", 24 November 2009.

In addition, the wording of Proclamation 1959, excluding “identified areas of the Moro Islamic Liberation Front”, aroused all the conservative fears that the Arroyo government was in effect ceding territory to rebels.⁷² One columnist wrote that the massacre showed that what the ARMM needed was more government control, not less, and that any more autonomy would result in catastrophe.⁷³

From the concerns expressed, it was clear that the massacre presented the MILF, through no fault of its own, with a huge public relations challenge. But it also offered an opportunity to present itself as an enlightened, moderate alternative to the likes of the Ampatuans.

A. THE TALKS IN KUALA LUMPUR, 8-9 DECEMBER 2009

The agenda for the talks, facilitated by Malaysia, included the reactivation of the International Monitoring Team for the ceasefire; the introduction into it of a new Civilian Protection Component (CPC); and the renewal of the mandate of the Ad Hoc Joint Action Committee (AHJAG) “to interdict and isolate kidnap-for-ransom groups and other similar criminal syndicates operating in or near MILF areas”. The talks were also to mark the first appearance of the International Contact Group (ICG), set up to observe the negotiations; act as a bridge and channel of communication among the parties, civil society and the Malaysian facilitator; and provide advice and technical assistance as needed.⁷⁴

The MILF’s focus was on getting as much international participation in the peace process as possible, to provide additional leverage, ensure adequate funding and draw on models from peace negotiations elsewhere.⁷⁵ But

martial law was a major concern, and the MILF insisted that it be lifted before any substantive discussions with the government took place. Its lifting on 12 December paved the way for further negotiations toward what some hope will be a comprehensive compact before Arroyo leaves office after the May 2010 elections (she is constitutionally required to step down).

Given what happened to the MOA-AD and the ongoing concerns outside the Moro community with issues of land and sovereignty, this will be a difficult task, even though the two sides are already exchanging drafts. Election politics will raise additional obstacles.⁷⁶ If the parties succeed, implementation will be another huge hurdle, especially given the fear of an autonomous Moro entity that the massacre apparently has engendered. It would help, however, if the two sides could move more rapidly than usual to get the agreed mechanisms on the ground and working as fast as possible. In the meantime, however, there are steps both should take to address post-massacre concerns.

B. PURSUING THE ARMED GROUPS

The MILF and the government should use the concern about the Ampatuan CVOs to make a concerted joint effort to capture and disarm them. This is the kind of task for which AHJAG was originally designed, but even with its mandate renewed in Kuala Lumpur, it could be months before it is operational.⁷⁷ The MILF has already said it will allow the military to pursue suspects within the areas it controls and will not permit those areas to

⁷² Marichu A. Villanueva, “No martial law in Maguindanao ‘MILF areas’”, *Philippine Star*, 7 December 2009.

⁷³ Fidel O. Abalos, “ARMM: Financing its leaders’ whims & caprices”, *Philippine Star*, 6 December 2009.

⁷⁴ See “Framework Agreement on the Formation of the International Contact Group for the GRP-MILF Peace Process”, 15 September 2009, available at http://fr.hdcentre.org/files/MILF_Peace_Process_FINAL_15_Sep_09%5B1%5D.pdf.

The ICG consists of the UK; Japan; Turkey; the Asia Foundation; the London based NGO Conciliation Resources; Geneva-based Centre for Humanitarian Dialogue; and the Indonesia-based Muslim social organization Muhammadiyah. Saudi Arabia was invited to join but as of December 2009 had not accepted.

⁷⁵ According to an MILF negotiator, in addition to the ICG, the international community is involved in four areas: security, humanitarian affairs, social-economic development/rehabilitation and civilian protection. The IMT deals with security, and includes Malaysia, Brunei, Libya and Japan; Indonesia is to be asked to join. For humanitarian issues, the European Union (EU) and Norway will be invited, and Japan

is active in the social-economic component. Another way of looking at it, he said, is that Japan is a leading economic power, while the UK, on the ICG, is one of five permanent members of the UN Security Council. The Association of Southeast Asian Nations (ASEAN) is represented by Malaysia, Brunei and Indonesia. Turkey, on the ICG, represents NATO and, together with Malaysia, the Organisation of the Islamic Conference (OIC). The Asia Foundation is a U.S. organisation, while the Centre for Humanitarian Dialogue and Conciliation Resources are European. Thus, he said, we have achieved international balance. Crisis Group phone interview, Manila, 12 December 2009.

⁷⁶ While most of the serious candidates for president have expressed a pro forma commitment to peace in Mindanao, some are associated with the opposition to the 2008 agreement. Mar Roxas, a candidate for vice president with Senator Benigno “Noy” Aquino III, reportedly attended a celebration in Zamboanga to mark the first anniversary of the “death” of MOA-AD. Personal communication to Crisis Group, 14 December 2009.

⁷⁷ For the positive role AHJAG played in the past, see Crisis Group Asia Report N°152, *The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao*, 14 May 2008, pp.10-11.

be used as escape routes.⁷⁸ But a very public joint undertaking to pursue the CVOs could help assuage concerns that the MILF was recruiting the fugitive militia members or wanted access to their arms, while at the same time demonstrating to the public its commitment to justice and security.

Both the military and the MILF won public appreciation for their role in releasing elderly Irish priest Michael Sinnott in late November 2009 from a kidnap-for-ransom gang operating near MILF territory and the boundary between Lanao del Norte and Lanao del Sur provinces. Their cooperation in the operation also served to build confidence in each other in a way that strengthens the peace process, especially given the high levels of institutional distrust on both sides.⁷⁹ The same could be achieved with operations against the CVOs, particularly if accompanied by the turning over of any weapons captured to the government.

Cooperation against the CVOs might also help improve the image of Umbra Kato, head of the 105th base command, whose men were responsible for attacks on civilians in the wake of the MOA-AD debacle in August 2008. When military operations against the MILF then resumed, it was in the name of pursuing Kato and two other “lawless” commanders. An MILF supporter said with some bitterness, “the military said it was going to be a surgical operation, and we ended up with 700,000 displaced”.⁸⁰ But that raises another possible area for cooperation: that the Civilian Protection Component agreed on in Kuala Lumpur be activated immediately in areas where the military is pursuing the Ampatuan militia members.

C. OTHER STEPS

Political analysts in Manila expressed the hope that if the CVOs and CAFGUs in Maguindanao could be disarmed, this could encourage the MILF to disarm as a confidence-building measure for an eventual peace agreement. This is a non-starter for the MILF, however. Just as it rejected Arroyo’s calls for DDR – disarmament, demobilisation, reintegration – in the wake of the collapsed MOA-AD, its negotiators point out that disarmament comes after, not before, a peace agreement.

Likewise, the MILF also rejects the idea that it could take advantage of the Ampatuans’ removal to work with the government to put a few of their own people in place, giving them governing experience and demonstrat-

ing an alternative to warlordism. Joining the government in any capacity prior to a peace agreement would be tantamount to co-optation, a man close to the organisation said.⁸¹

While all eyes are now on Maguindanao and its immediate environs, it is important to remember that the peace process can also be affected by what happens in other areas, such as Basilan and Jolo, where army operations against the Abu Sayyaf Group are underway but the MILF also has a presence, and in Zamboanga del Sur, where an 80-year-old MILF commander was arrested on 4 December. He was released two weeks later.

VI. CONCLUSION: OPPORTUNITIES AND DANGERS

Horrific as it was, the Maguindanao massacre opens a window of opportunity for the Philippines to make progress on justice, security and peace. They are all related: advances on justice for the victims of the massacre would aid the security situation and help the peace process, but likewise any setback on one could harm the others. Progress, however, will require a concerted effort by the government, civil society, the MILF and the international community.

A. JUSTICE

The massacre case could be turned into a model of how justice can be improved in the Philippines. Every effort should be made to build the strongest possible case against the suspects, to ensure that those responsible for the planning and execution of the killings are convicted and kept in prison for a very long time. The justice department should actively seek – and donor countries with the relevant expertise should offer – assistance in forensic analysis, case preparation and tracing the remaining fugitives. Given the fear of retaliation by the Ampatuan family, help in protecting witnesses, judges, lawyers and prosecutors is particularly important.

The assistance should extend not just to the murder charges, but also to other possible charges that the government could bring, including illegal possession of weapons; plunder; election fraud; perjury; and failure to protect citizens from human rights violations. Offers of international assistance to the interior and local governments department in analysing money transfers and auditing the use of local government funds (IRAs) could be particularly helpful. If handled properly, the prosecution of

⁷⁸ “MILF lets gov’t troops pursue massacre suspects on turf”, *Philippine Daily Inquirer*, 6 December 2009.

⁷⁹ Crisis Group interview, one of the military officers involved, Cotabato, 10 December 2009.

⁸⁰ Crisis Group interview, Cotabato, 11 December 2009.

⁸¹ Crisis Group interview, Manila, 8 December 2009.

this case could generate sustained public pressure to make not just local Mindanao officials, but also officials across the country more accountable for their actions.

The government should pay particular attention to prison security, to ensure not only that those detained do not escape, but also that visitors are properly screened and that the Ampatuans and their private militia members do not have any influence over other prisoners. At the same time, given the abuses that often occur in the Philippine penal system, it is important that the suspects, including CVOs, be given no cause to claim inhumane treatment, either during their pre-trial detention, or if they are convicted, during their imprisonment. Some outside assistance might be in order here, as well.

The government should systematically follow through on every other reported killing linked to the Ampatuan family, so that the full extent of its crimes becomes known, in the interests of reducing warlordism and advancing understanding where and why justice failed in the past. Technical assistance or on-the-job training to the justice department from donors may be necessary to make it happen.

One of the weakest aspects of the Philippine justice system is its slowness. It would help for the government, perhaps in conjunction with the Commission on Human Rights, to set performance goals for the prosecution, so there is a clear timeline for getting this case to trial as expeditiously as possible. Donors could help by funding an independent evaluation, perhaps in cooperation with Manila's leading law faculties, of how well those goals were met as well as where and why they were not.

There is widespread concern in the ARMM area that even this affair, as extraordinarily brutal as it was, will fall off the front pages as the 2010 elections heat up, and it is important to do everything possible to keep it front and centre. Given the number of their colleagues killed, the Philippines media could help keep the case in the public eye by a box on the front pages of newspapers or a spot on the screen during evening news broadcasts documenting how many days have passed in the quest for justice for the victims. MindaNews, an online news service about Mindanao, has set an example with its "Countdown for Justice", marking the time that has elapsed without result in the earlier slaying of its photo editor. It has now been 60 months.

Foreign governments could encourage the Philippines government to move forward with its declared intention of freezing assets of those suspected and later convicted. Foreign governments – the U.S. would be particularly important – could reinforce the move by freezing any assets held abroad and placing the suspects on an immigration blacklist.

B. SECURITY

The Philippines government could build on the outrage over the massacre to end all private and local funding of police and military auxiliaries, including special CAFGUs; it is a major factor in the creation of private armies. It could move to assert far stricter control over procurement and issuance of firearms. It also needs to find ways of permanently dismantling civilian militias and meeting security needs with professional forces. President Arroyo should immediately revoke Executive Order 546 as one concrete step to prevent a recurrence of a massacre involving CVOs. The use of village guards or any other civilian group as "force multipliers" should be stopped.

The international community, especially those governments involved in supporting the peace process and economic development in Mindanao, should keep the government under pressure to ensure that the commitment to dismantling private armies becomes more than rhetoric. The rationale for armed civilian militias, both the army-led CAFGUs and the CVOs, was that the official security forces were inadequate to cope with the insurgent threat. Now is the time to commission an in-depth study by independent analysts to see what the real security needs are and how to meet them without relying on civilians, so that at least this rationale can be eliminated. Of course, a key way to reduce the need for reliance on civilian forces would be to reach a lasting peace with the MILF, although the armed forces are also engaged in combating other insurgencies.

The government and donor agencies could use the outrage over the massacre to give serious attention to professionalising the police, using Maguindanao province as a test case, but they will have to move rapidly. An emergency plan for screening and retraining this force should be considered, even though it is not the only one tainted by warlordism; the problem is endemic in the Philippines. But the corruption of the force may have gone further in Maguindanao than elsewhere, and a wholesale review of recruitment, training, promotion and weapons acquisition would be useful.

The government could also use the publicity generated by the massacre to put in place far stricter oversight mechanisms for weapons procurement more generally. A retired police officer listed several ways in which firearms can be illegally acquired: surreptitiously doubling or tripling the number certified by the foreign affairs department for purchase; saving and recycling old arms that are supposed to be scrapped when new ones are purchased; selling or absconding with weapons used as evidence in criminal cases; manipulation of "end user certificates" so that the person who is supposed to be

vetted for purchase is fictitious; smuggling through customs; and importing customised weapons through gun clubs which are then made available to militias.⁸² Easy circulation of firearms compounds the problem of private armies.

C. PEACE

As noted above, the MILF and the government have an unusual opportunity to demonstrate that they can work together in pursuing the armed members of CVOs and ensuring that they either surrender or are captured. It would be a huge feat to dismantle the Ampatuan army together, and the MILF can only gain by doing so, especially in the communities most hostile to it. The army's embrace of the new Civilian Protection Component, in its operations in Maguindanao as well as more generally in its operations outside the ARMM, would also be a step forward.

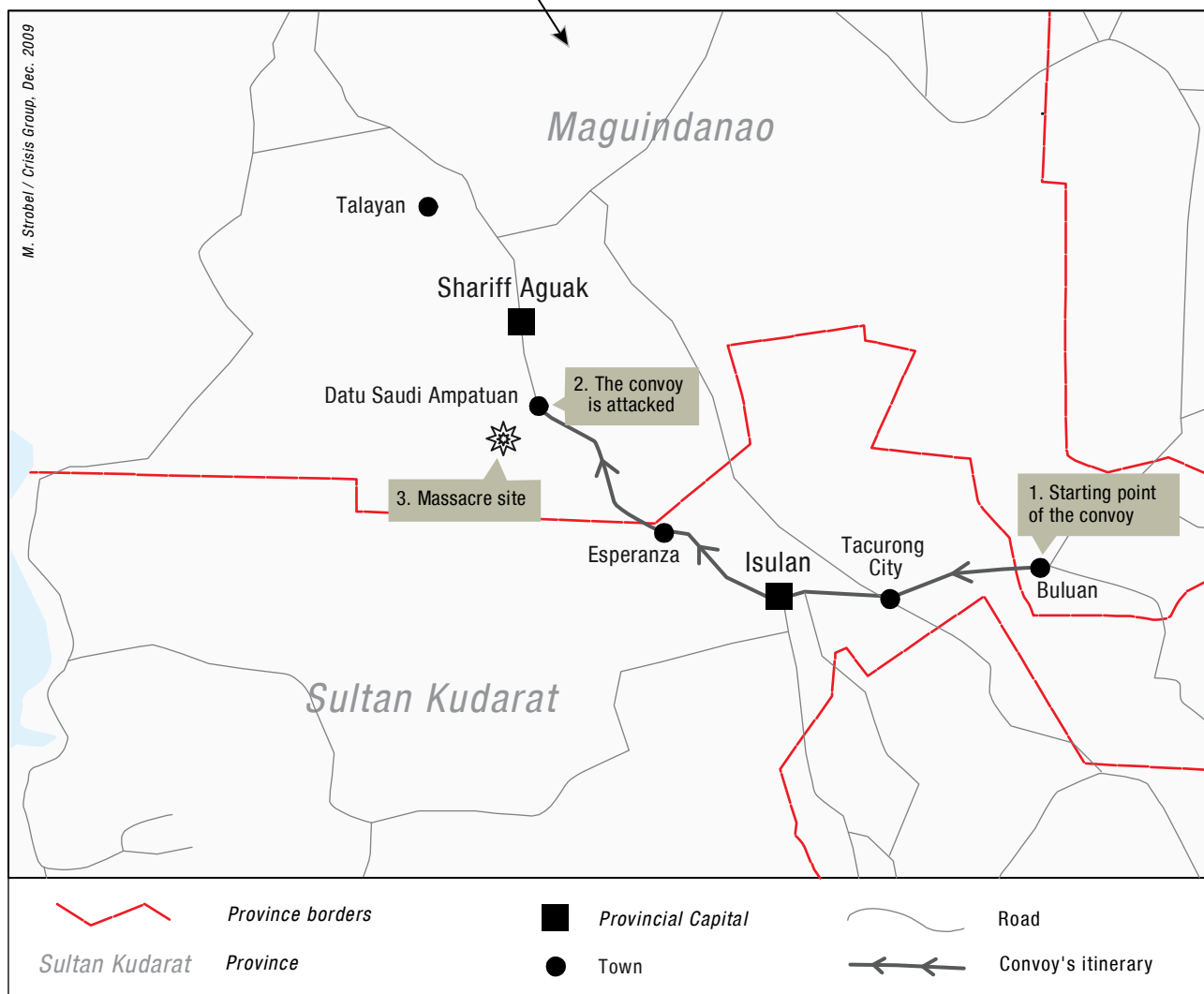
These, then, are the opportunities. The tragedy of the massacre in Maguindanao will be compounded if they are not be pursued.

Jakarta/Brussels, 21 December 2009

⁸²Crisis Group interview, Manila, 8 December 2009.

APPENDIX A

SITE OF MASSACRE IN MAGUINDANAO PROVINCE





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Regional Offices and Field Representation

Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

See www.crisisgroup.org for details.

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