

## RESEARCH ARTICLE

## *'If you are in government, you can still implement traditional law'* Hybridity and Justice Delivery in Lanao, the Philippines

Jeroen Adam

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This article discusses the emergence of hybrid institutional arrangements in the field of security and justice delivery in the provinces of Lanao del Sur and Lanao del Norte in the Philippines. It will be argued that these hybrid institutions cannot be explained by pointing at a weak or fragile state. Rather, over the past few decades, the Philippine state has demonstrated an exceptional capacity to incorporate a range of informal practices of justice delivery within formal state institutions. In the type of hybridity that is emerging, formal state institutions serve as avenues through which highly flexible practices of justice and security delivery are being performed. As a result, control over justice and security provision has been transferred from traditional authorities to elected politicians. Rather than being a process of legitimate and sustainable state formation, this has reinforced an authoritarian political order under which access to justice and security is unevenly distributed. Based on these observations, this article puts forward some questions about a defining axiom within the current hybrid political order literature that views the interaction of informal and formal types of public authority as a prime avenue to enable post-conflict reconstruction and state formation.

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### Introduction

Over the past 15 years, a number of scholars have criticized accounts where an ideal type of Western statehood serves as the unique reference point through which socio-political transformations in most of the world are being understood (Raeymaekers, Menkhaus and Vlassenroot 2008; Lund 2006, 2008; Hagmann and Péclard 2010). Apart from a critique on the normative picture that is being drawn of non-Western states as failing when compared to their

Western counterparts, it is argued by these authors that this so-called weak or fragile states paradigm is analytically unproductive. At best, we might have learned something about what goes wrong, but we have learned little about the manner in which everyday governance is being organized. Rather than starting from these ideal-type models of liberal/Western statehood, it is more useful to start from an empirical analysis about the manner in which public authority is being negotiated in everyday social interactions. In their literature review on public authority in conflict-affected places, Kasper Hoffman and Thomas Kirk (2013: 10–14) refer to this tradition as the 'public authority from below

perspective.' This literature attempts to avoid falling into the normative trap of labeling certain types of governance as either good or bad, or approaching formal state institutions as inherently superior when compared to their informal, non-state counterparts.

This critique of the weak/failed/fragile states paradigm also constitutes the analytical starting point of what we will refer to as the hybrid political order (HPO) literature (Richmond 2007; Boege et al. 2008; Richmond and Mitchell 2012). While the aforementioned literature on public authority from below focuses its research agenda on an empirical analysis of how public authority is being negotiated on a daily basis, the HPO literature wants to take the debate one step further. As stated in an influential paper by Volker Boege et al. (2008), this weak/failed/fragile state paradigm constitutes a pivotal argument for a broader policy agenda that is obsessed with installing one type of Western liberal democracy all over the world. As the authors argue, the diagnosis of a certain illness (failed state formation) logically prescribes a specific medicine; the introduction of a 'western-style Weberian/Westphalian state' (Boege et al. 2008: 2). Yet, these types of interventions are bound to fail as an external and artificial political model is not necessarily compatible with local and historically grown normative ideas about what constitutes legitimate political order, statehood, justice, authority and so on. As an alternative to this universalist pretension of the liberal peace model, great potential is being attributed to culturally specific and kin-based forms of public authority. Rather than perceiving local and historically grown norms and institutions as a hindrance to sustainable state formation and post-conflict reconstruction, these should constitute the very building blocks of these interventions. Yet, as an alternative to the dominant liberal peace model, one cannot rely solely on these local and informal institutions. As the emphasis on the concept of hybridity indicates, the interaction between informal and formal state institutions is viewed as the best way to move forward. This hybridity is not only conceived

of as an empirical reality, it is also understood as a viable policy alternative to the disappointing outcomes that have characterized the liberal peace model. Albeit often in an implicit manner, it is presumed that these local, kin-based institutions contain a high level of legitimacy and social embeddedness as they are accessible to large, and often poor, parts of the population. Based on the legitimacy enjoyed by these institutions, a process of sustainable, democratic and participative state formation/post-conflict reconstruction from below can more easily be initiated.

Ken Menkhaus (2008) explores a case study of this interaction in his research on northern Kenya. Within this region, which is characterized by chronic, low-intensity violence, an alliance rooted in a women's market group came into being with the purpose of settling violent disputes. In the longer term, this informal alliance merged with the formal state resulting in a 'civic-governmental partnership' (Menkhaus 2008: 33). This kind of partnership is an example of an HPO where traditional and informal governance mechanisms merge with formal state institutions. According to Menkhaus, despite some shortcomings, the emergence of these sorts of HPOs — or mediated state arrangements — has resulted in exceptional gains in public security.

A particular point of interest here concerns the direction of this interaction. In the analysis by Boege et al. (2008), a positive assessment is formulated about the virtues of kin-based institutions, while the state is subject to a negative judgment. As a result, a set of international organizations need to redirect their attention towards these kin-based institutions and attempt to bring them within the orbit of the state. In all of this, the state is understood to be a passive organization, displaying little or no agency, disconnected from society and solely driven by an artificial formality. In order to bring this lifeless beast into motion, it needs to be fed with the lifeblood of kin-based institutions. However, as the case study by Menkhaus suggests, the state might have much more agency than generally accounted for. In northern Kenya,

it is not just a set of (inter)national non-governmental organizations (NGOs) bringing these traditional institutions within the orbit of the state. Rather, it is the state itself having an 'unspoken strategy' (Menkhaus 2008: 30) to align itself with these types of informal governance structures. Crucially, despite its relative 'weakness' in delivering security and justice, the state cannot be conceived of as just a passive organization as it deliberately aligns itself with a set of informal organizations/institutions, thereby enlarging its authority and reach.

In this article, this question of 'interaction' and hybridity will be analyzed more closely by studying how justice and security are being organized in the provinces of Lanao del Sur and Lanao del Norte in Mindanao, the Philippines. These provinces have been confronted with violent conflict involving multiple types of armed organizations since the late 1960s. On the one hand, there has been a long struggle for autonomy/separatism by a Muslim minority that over the decades has taken different directions and meanings. Probably the most famous and most recent display of this conflict was the four-month occupation in 2017 of the town of Marawi by an Islamic State (IS)-inspired coalition, with the explicit aim of establishing an independent caliphate in Southeast Asia. On the other hand, both provinces are characterized by high levels of local-level violence due to, amongst others, contested land access or competition over electoral office (Torres 2007; Lara and Schoofs 2013). The actual empirical data have been gathered based on three months of field research in the region between 2013 and 2014. Data were primarily collected through qualitative semi-structured interviews and focus group discussions. Within the selection of respondents and cases, particular attention was paid to the role of customary/traditional authorities and religious leaders in the settlement of violent disputes and the way these are (not) engaged in formal institutions. In addition, focus group discussions and individual interviews were organized in an attempt

to understand the position of the people at the receiving end of justice and security provision. Lastly, participant observation was conducted in ceremonial gatherings concluding processes of reconciliation and third-party mediation. These fieldwork data have been further complemented with an analysis of relevant policy documents, legal texts and published research. Ultimately, 20 semi-structured interviews were conducted with people directly or indirectly involved in conflict management initiatives in the region. These individual interviews were complemented with ten focus group discussions wherein we have attempted to gauge dominant perceptions about the legitimacy, effectiveness and accessibility of different conflict management institutions. In total, this amounts to about 51 hours of interview material, of which roughly 80 per cent has been recorded and transcribed.

In line with what Menkhaus has described for northern Kenya, we witnessed how informal practices of justice delivery have systematically been incorporated within formal state institutions in the provinces of Lanao del Sul and del Norte. This has resulted in a form of hybridity wherein formal governance institutions come to serve as venues for flexible practices of amicable settlement and third-party mediation. Based on this case study, three points will be stressed that are relevant to the broader HPO literature and the manner in which justice and security delivery is being organized. First, the initiative for the incorporation of culturally defined practices of justice delivery within the Philippine state has come from the Philippine state itself. As such, rather than speaking about a process of interaction or negotiation between the formal and the informal, as is dominant within the HPO literature, it makes more sense here to speak about a process of forced incorporation. Second, through this forced incorporation, the local executive replaces and overrules traditional authority, further enabling his/her reach over the community. Third, the contribution of this process of hybridization in the field of justice delivery and security provision

to a deeper democratization of the socio-political landscape is limited.

The rest of the article is divided into four different sections. In the first section, it will be demonstrated how the weak state paradigm is still the dominant lens to explain socio-political developments in Muslim Mindanao, despite conclusive evidence that there are some major analytical deficiencies to this paradigm. In the second section, it will be empirically illustrated how over the past decades, the Philippine state has gradually managed to incorporate existing forms of alternative dispute resolution and informal dispute settlement within state-mandated formal institutions. This incorporation does not imply that these practices have been reworked into fixed and standardized procedures. Rather, one sees how formal state institutions have come to serve as venues wherein the highly flexible nature of these informal mechanisms of dispute settlement are being maintained and even deliberately preserved. In the third section, it will be shown how the local executive has managed to become the pivotal player in this process through direct access to state patronage and control over coercive resources. In the last and concluding section, the broader relevance of these arguments for discussions about post-conflict reconstruction and sustainable state formation will be elaborated.

### **The Weak State Paradigm in Muslim Mindanao**

Despite the extensive critique on the 'weak state paradigm' in wider academic literature, this framework still remains among the most dominant lenses to explain how public authority is being constituted in large parts of Muslim Mindanao and the province of Lanao del Sur and del Norte in particular. At first sight, the arguments behind this weak state paradigm seem evident. From the late 1960s onwards, large parts of western Mindanao, where Muslims constitute the demographic majority, have been confronted with armed groups fighting for more autonomy or even outright separatism. The

best organized among these are the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF). The MNLF was founded in 1972 during the dictatorship of Ferdinand Marcos and has long been the principal oppositionist armed Muslim organization (McKenna 1998). However, the MNLF has been confronted with some major setbacks over the past two decades, including the substantial growth of the MILF, which originally started as a split-off from the MNLF. Importantly, both groups have been in intense peace negotiations with the Philippine government over the years. In the case of the MNLF, these have resulted in a final peace agreement signed in 1996. In the case of the MILF, negotiations have entered a final stage after the signing of the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (OLBARRMM) between the MILF and the current Duterte administration in late July 2018.

Importantly, despite these negotiations and agreements, both groups maintain a considerable fighting force and a process of disarmament, demobilization and reintegration has not been finalized yet. There also still exists a range of smaller and more radical groups, such as the Abu Sayyaf, the Bangsamoro Islamic Freedom Fighters (BIFF) and other outfits profiling themselves as a branch of IS in Muslim Mindanao and the wider Southeast Asian region. Based on this observation about the omnipresence of Muslim rebel groups in the region, it is argued we are confronted with a weak state, as this state does not even manage to uphold its monopoly on the use of violence. Next, there is a strong belief that the distinct religious and ethnic identity characterizing the region has hindered the penetration of formal state institutions. It is therefore argued that, for a majority of Muslims in the Philippines, these state institutions are considered as artificial, alienating and a continuation of colonial rule. As a result, even in those places where there is no direct presence of armed rebel movements, traditional and/or religious institutions are considered

to enjoy more legitimacy when compared to their formal counterparts.

The dominance of this weak state paradigm becomes visible when analyzing conflict management interventions among a range of national and international NGOs. In general, these interventions are rooted in a belief that formal state institutions have limited reach in delivering security and justice. For instance, in a report on peace and development in Mindanao, the United Nations Development Programme openly speaks about a 'deficient implementation capacity' of local state institutions in the region (Oquist 2000: 5–6). Another international organization working in the region, The Asia Foundation, has established a set of interventions dealing with local feuds and killings in Muslim Mindanao. As the baseline analysis upon which these interventions are based states: 'Revenge killings and feuds are typical in small-scale societies where...there is a lack of effective state control and authority' (Torres 2007: 17). As the state was considered to be weak, it logically followed that The Asia Foundation had no other option than working with informal institutions in its conflict management interventions.

Based on an empirically substantiated analysis, it will be argued that this weak state paradigm is inadequate to account for the many subtleties and ambiguities in how justice and security is being organized in the region. In contrast to this framing of the region as dominated by informal, kin-based institutions, qualitative interviews – among others by a wide range of traditional leaders – revealed a surprising consensus that traditional leaders/institutions were not the prime centers of authority and security provision in the region. Moreover, it was regularly indicated in these interviews how, over the past decades, traditional leaders' influence has steadily been waning. For instance, the sultan of Baloi saw in the imposition of 'democracy' and formal 'state-like' governance (both colonial and post-colonial) a sharp decline in the power of the real, true sultans. This 'modern' system has put

another type of actor at the forefront of the political arena: people with resources. As he stated: 'From my own point of view, democracy is designed for the rich people.'<sup>1</sup> This observation was based on an account that ascribed key importance to patronage in the current political arena. Due to the imposition of this modern democracy, this sultan perceived his title as only a 'decoration' and, as a result, felt like he lacked the authority to settle disputes within the community. A similar statement was made by another traditional leader, who stated: 'The traditional leaders now are flower pots.'<sup>2</sup> The sultan of Taporog argued: 'Today, the Sultanates are disenfranchised under the constitution. They reduce us to as non-entities. It is only by name. But before; the word of the Sultan is final. No one can contradict the decision of the Sultan...'<sup>3</sup> Clearly, these statements by sultans and other traditional leaders about their own position stand in sharp contrast to the dominant view on Muslim Mindanao as a place dominated by custom and tradition.

A second rationale for the framing of Muslim Mindanao as a fragile state is the omnipresence of armed rebel groups in society, challenging the state's monopoly on the use of violence and other arenas of governance. However, a more complicated picture emerges upon closer scrutiny. Overall, the portrayal of Muslim Mindanao as a weak or fragile state is inadequate to account for the strong interaction that has grown over the years between the state and rebel structures (Verbrugge and Adam 2016). It is useful to first briefly refer to the influential work by John Sidel (1999) on the emergence of 'bossism' in the Philippines. This analysis starts from a critique on the framework provided by Joel Migdal (1988) about the supposed weak state capacity of most countries in what Migdal referred to as the Third World. For Migdal, the main explanation for this phenomenon lies with a strong society that has maintained a great deal of autonomy against the state/capital. Based on a set of case studies in the Philippines, Sidel turns this argument upside down. Above all, Sidel sees in the Philippines a strong state overruling a



weak society. The term 'bossism' denotes that elected officials monopolize coercive resources at the local level, enable the entrenchment of oligarchic strongman rule and fend off the creation of a democratic space.

Albeit almost two decades later and in a different part of the country with a distinct history, the analysis put forward by Sidel still remains an interesting starting point. First of all, in contrast to the image of the state as a 'lame duck,' we see how the local executive in Muslim Mindanao has considerable control over coercive resources and that these coercive resources are thus not solely concentrated in the hands of rebel movements (Lara 2014). This happens primarily through direct appointments of the local police and control over state-mandated paramilitary organizations by the executive, in particular barangay captains (village headman) at the village level and mayors at the municipal level. Importantly this does not put 'the state' in direct armed confrontation with rebel movements. Rather, what we are witnessing is how the state has managed to incorporate large parts of these organizations – in particular the MILF and the MNLF – within a range of state-mandated coercive organizations under the direct tutelage of the barangay captain or mayor. As a result, the dominant framing of rebel movements as merely informal, oppositionist or non-state becomes irrelevant. Instead, what we observe is how a certain coercive capacity can potentially be deployed under different denominators and for different types and scales of violent struggle. While a set of fighters and commanders identifying as MILF can still be mobilized in a battle against the Philippine state, this coercive capacity is also deployed within a diversity of localized struggles over land access, political office and so on. A short fieldwork encounter that occurred when studying a specific conflict management intervention in a village in the municipality of Aleosan in the province of North Cotabato provides an interesting illustration of the remarkable overlap between rebel and state coercion (Adam and Flaam 2016). This village

was systematically referred to as an 'MILF stronghold' by our respondents; when asked what should be understood as an MILF stronghold, the immediate answer was that in this village, 'even the barangay captain is an MILF.'<sup>4</sup> Intriguingly, the strength of the MILF is not understood as one of a rebel organization challenging or replacing the state. Rather, this strength is understood as the specific capacity to penetrate and ultimately take over state institutions at the local level.

In recent years, large parts of Muslim Mindanao have witnessed a gradual incorporation of non-state forms of coercion within a grey zone between the formal and the informal. Two additional remarks need to be made, further nuancing this weak state paradigm. First, quantitative data about the nature of intra-Muslim feuds in Lanao del Sur has indicated that politics and elections are the most important causes of these feuds (Matuan 2007: 79). If formal authority structures are indeed as weak as generally represented, it is hard to imagine that this would be the number one cause of local feuds in the province. Second, within this same study, some quantitative data were put forward about the actual people mediating in these disputes. The largest group of people mediating in subnational disputes between 1994 and 2004 consisted of politicians (Matuan 2007: 88). Although these data need to be approached with some caution, considering the great overlap between the category of traditional leader and politician, this at least gives an indication that people occupying a political mandate are important in justice and security provision.

### **The Nature of Hybridity in Security and Justice Provision**

This observation that the state cannot just be put aside as an irrelevant actor does not imply the Philippine state needs to be understood as omnipotent and strong. As illustrated above, the Philippine state has not managed to purge these rebel structures through military victory, nor is the Philippine state overruled by alternative rebel structures. Instead,

these have been incorporated within the state to varying degrees.

To some extent, a similar argument can be made about how justice and security provision is being organized. More specifically, we see how flexible practices in dealing with violent disputes have been incorporated within formal state structures. This does not mean that these practices have been transformed into fixed and standardized procedures. Interestingly, when conducting focus group discussions and individual interviews about the organization of justice and security in Lanao, the defining distinction that was made was between formal punitive justice versus amicable settlement/informal reconciliation (Adam and Vanden Boer 2015). The difference between these two practices of justice delivery is obvious. With formal punitive justice, a whole range of formal state procedures is being referred to through which a person is charged and then judged by a court. On the other hand, amicable settlement is understood as a process of informal consultation through third-party mediation. In general, this consultation is concluded through an agreement on the amount of 'blood money' that needs to be paid as a compensation for the harm inflicted. The fundamental issue here is that amicable settlement cannot just be located outside the state but is also practiced through different sets of formal state institutions. This observation is best summed up in one remark that was made in a focus group discussion in the municipality of Poona Piagapo: 'If you are in the government, you can still implement the traditional law.'<sup>15</sup>

As one example, it is useful to refer to the Barangay Justice System (BJS) that was established by the Marcos regime in 1978 through a presidential decree (PD 1508). After the end of martial law in 1986, this BJS was enshrined in the 1991 Local Government Code. Within this BJS, a so-called lupon (committee) is established at the village level, headed by the village chairman (barangay captain) and composed of 10 to 20 members. This decree was meant to recognize, and as such reinforce, the process of amicable settlement, representing a flexible, culturally

sensitive and discrete alternative for the slow and congested formal judiciary. For instance, in the preamble, it is claimed that this PD is intended to 'preserve and develop Philippine culture.' Tellingly, lawyers are also explicitly banned but the agreements are legally binding and can be enforced by a court. As such, PD 1508 has been geared at integrating practices of amicable settlement within formal state institutions, and the barangay captain/municipal mayor came to occupy a pivotal position at the expense of traditional political elites (Siliman 1985; Golub 2003). The reach of this institution seems to be considerable. For instance, in 1998, about 280,000 disputes were handled all over the Philippines, with a large majority of the cases reaching a conclusion (Golub 2003).

Another formal state venue wherein informal practices of justice and security provision are being deployed are the village and municipal level structures: the Municipal Peace and Order Council and the Barangay Peace and Order Committee. This council was originally also set up by the Marcos regime in 1981 through Executive Order 727 (EO 727). Currently, the Peace and Order Council and Committee are composed of the counterparts of government agencies and respectively chaired by the municipal mayor or barangay captain. There is also a mandatory representation of civil society, which can consist of a range of organizations, including traditional and religious ones. This council stands under direct control of the local executive and consists in general of allies/relatives of the incumbent administration. Quite logically, as the major objective of these councils is understood as: 'deliberation of major issues and problems affecting peace and order, including insurgency'; this is one of the foremost places wherein the settlement of violent disputes and feuds is being discussed. The procedural logic through which many of the cases are being settled is of an informal nature and therefore diverse and case specific.

This type of hybridity can also be observed in regular, formal courts. Indeed, even in those instances when a case was referred to a particular court, it was often decided

that the case would be transferred to other agencies where a process of informal consultation and amicable settlement could be organized. As was confirmed by one attorney working in the city of Illigan, different venues existed where what he called 'alternative dispute resolution' was being applied.<sup>6</sup> The advantages this attorney ascribed to this alternative dispute resolution are flexibility, ownership and the swiftness of the whole process. A surprising variety of arenas were mentioned where this alternative dispute resolution could be performed, including annexes to the court, the prosecutor or even police officers. In addition, the Philippines is experimenting with so-called Judicial Dispute Resolution in First and Second Level Courts of the Philippine Judicial System. Through this 'Judicial Dispute Resolution,' it is expected that: 'mediation and conciliation at the level of the judge would contribute significantly to the resolution of mediatable cases, thereby increasing the satisfaction of litigants in the court process and also helping to decongest the dockets of the judiciary' (Philippine Ministry of Justice 2006). Interestingly, in this official manual for judges wishing to successfully use this Judicial Dispute Resolution, it is openly suggested for the judge to: 'Wear regular civilian clothes, not judge's robe.'

There thus exists a wide range of formal state institutions acting as venues through which amicable settlement can be reached. This does not by definition have to contradict formal Philippine law. Our analysis illustrates that the classic dichotomous framing through which security provision and the establishment of public authority in general is understood needs to be questioned. Within this classic framing, the prime dichotomy is one between a formal state field and an informal, non-state field. In general, this formal state field is then understood to consist of a range of fixed procedures written down in formal law, while the informal, non-state field is understood to consist of a set of social norms that are highly negotiable and that are oral in nature. At least for the Philippine case, this

dichotomy is irrelevant, as the Philippine state has systematically incorporated informal practices of justice delivery. As a result, the state is no longer an artificial, indecipherable entity defined by formal procedures but an emotionally lived, daily reality. Access to the state is hereby defined through a set of personalized relationships, of which kinship connections are among the most important. This illustrates how the Philippine state is a proactive agent, deliberately incorporating existing practices of justice and security provision and considerably extending its reach and authority.

### **Informal Third-party Mediation and Access to Justice**

The systematic incorporation of informal amicable settlement and the personalized connections this enables towards the state should not be confused with the emergence of a truly democratic space wherein subaltern populations have enhanced access to justice and security. Instead, what can be witnessed is that the local executive has obtained increased control over justice and security provision, strengthening a quasi-authoritarian form of political authority.

As indicated, in contrast to a framing of Muslim Mindanao as a place where tradition and religion resist state penetration, traditional leaders perceive their own public authority as in decline. At first sight, this might seem contradictory. One could expect that the incorporation of informal practices of justice delivery within state institutions would enhance the societal position of these traditional leaders. Yet, this seems not to be the case. As an answer to this seeming paradox, it is useful to provide some additional empirical analysis about the manner in which informal amicable settlement is being performed. In most cases, tradition and traditional authority are largely reduced to a symbolic decorum within a rather straightforward negotiation about the actual amount of compensation money that needs to be paid. It is against this background that the aforementioned remark from the sultan of Baloi about him feeling as a piece of 'decoration' should



be understood. As indicated by another traditional leader, the sultan of Marawi, the role of traditional leaders within these negotiations is mainly rhetorical, being the one 'knowing the right words.'<sup>7</sup> What is referred to as tradition or custom thus provides some sort of script or ceremonial logic to this process of amicable settlement. The ceremonial quality that is ascribed to traditional leaders becomes particularly manifest when a process of amicable settlement is finished, after which a public manifestation is being organized wherein the parties concerned have to swear not to break the many vows that are an inherent part of the agreement. As the same sultan of Marawi confided after he concluded a large ceremonial gathering, reciting lengthy passages in the Maranao and Arabic language, there was hardly anybody truly understanding the real content of what he was saying. This remark could easily be confirmed by observing the many participants falling asleep, playing with their cell phones or just appearing bored.

The power of traditional authority to influence the actual outcome within a process of third-party mediation thus seems confined, in particular when these traditional authorities have no access to elected office or financial capital. Indeed, for many people, traditional authority as such was considered as anything but special, probably best captured when a resident of the municipality of Binidayan poignantly remarked: 'Traditional leaders are just like us, poor and uneducated.'<sup>8</sup> Rather than 'traditional authority' being the locus of power in this process, politicians were generally understood to be the real powerholders; that is, if they had won the most recent elections. Yet, when traditional authority could be combined with access to elected office (as was regularly the case), tradition could retain its relevance. This combination of traditional and state authority was referred to by the sultan of the Mariato Tara clan as the 'dual position.' As explained by this sultan: 'The advantage of the dual position is that the people respect you, recognize you, they will follow you whatever you say.

If you are PNP (Philippine National Police), mayor...nobody will oppose you because the people have a big respect for you.'<sup>9</sup>

Crucially, the center of power is thus situated within the state and elected office, rather than within a traditional field that too often is devoid of substantial financial or other resources. As another illustration of this dynamic, it is relevant to once again refer to the sultan of Baloi. While the sultan was clearly frustrated about his limited popularity within the community, he also mentioned that there was a particular period when this was not the case. This occurred when his brother managed to win the municipal elections in Baloi in the early 2000s. As described above, mayors in the Philippines have control over considerable state and paramilitary coercive organizations, including so-called civilian voluntary organizations (CVOs), or civilian proxies of the Philippine National Police. In this particular case, when entering office, the mayor appointed his brother, the sultan of Baloi, as head of a CVO consisting of about 100 armed men. One of the prime objectives for the establishment of this CVO was the organization of night-time security on the highway between the towns of Marawi and Illigan. As indicated by the sultan, at least for this period of time, he did not feel 'insulted' as he was able to provide adequate security in his capacity as a sultan (and brother of the mayor).

A similar observation about the pivotal position of the local executive can be made in matters of justice provision and amicable settlement. Notwithstanding the high level of complexity and unpredictability, there existed a large consensus on one aspect of the process of amicable settlement, namely that this was a costly enterprise. First, there is the organization of public meetings, wherein a wide range of authorities are supposed to be present and food and drinks are provided to the whole community. Second, the payment of blood money constitutes a central part of amicable settlement practices and, in general, it is the third-party mediator who is considered to be responsible for

this. For instance, in the municipality of Kapatagan, an arrangement existed within the Peace and Order Council that 50 per cent had to be paid by the perpetrator and 50 per cent by the mediator. Quite remarkably, the 50 per cent share from the mediator was understood as money coming from the Local Government Unit (LGU), therefore directly indicating the close relationship between the role of politicians as mediators and the fact that state resources are directly used in these practices.<sup>10</sup> This is a clear illustration of the interaction between a 'traditional' and informal practice of justice provision within a formal governance structure; in this case the Peace and Order Council. Considering that the state is the foremost source of rent generation in a region that is among the poorest in the Philippines, having access to state resources through elected office was considered to be the foremost condition in becoming a capable mediator. This primacy of state patronage within third-party mediation was also confirmed by the sultan of Tara when he stated: 'The power of the sultan is grabbed by the mayors, barangay captains. They can give money to the offended party. The people lose their confidence in the sultan because we do not have money, can't solve the problems... We lost power and control over people in the barangay.'

As different authors (Kreuzer 2005; Lara 2014) have argued, the political climate in a lot of places in Muslim Mindanao is of a highly authoritarian nature. The aforementioned control over coercive resources and the capacity for state patronage are crucial for the reproduction of these oligarchic structures. It can be argued that the incorporation of informal practices of mediation within the hands of the executive has further enabled some of these elitist arrangements. However, this capacity for justice and security provision needs to be located within a continuous process of negotiation. For many people, the capacity to provide security is understood to be among the most important talents an elected politician has to display. As a result, many politicians/traditional authorities felt huge pressure to successfully conclude a

process of amicable settlement and were very much aware that adequate justice provision is a formidable asset in the build-up of legitimate public authority. This needs to be understood against the background of competitive electoral politics. Those organizations and individuals supporting a specific candidate throughout elections also expect returns in case their candidate wins the elections. These returns can be many, including what is considered as a favorable outcome in cases of third-party mediation. It can therefore be confirmed that subaltern populations are not just 'passive victims' but that a process of negotiation is present in the delivery of justice and security.

However, before heralding the agency of these subaltern populations, some important nuances need to be made. First of all, considering the coercive capacity of the local executive, this negotiation process is an unbalanced one to begin with. Second, justice provision becomes integrated within a highly politicized and divisive political landscape. As one part of the community has supported the incumbent, this group might have some leverage in demanding 'adequate' justice delivery. However, this might not be the case for those groups and individuals belonging to the losing oppositionist camp. As was indicated throughout numerous interviews, access to justice thus tended to be favorable to those in power and having privileged access to the sitting administration. For those not having this privileged access, amicable settlement was often experienced as imposed and unfair.

Another crucial observation is that the most important interventions at incorporating traditional venues of justice provision within formal state institutions were made by the highly authoritarian Marcos regime (Adam 2016). These fitted a counterinsurgency strategy wherein attempts were made to draw legitimacy away from rebel movements as non-state actors of justice provision (Capulong 2012). As an alternative, a whole set of traditional venues of conflict management were incorporated within the state, enabling the local executive to

provide increased security and justice. As such, the overarching logic behind these interventions has never been one of democratization but rather one of reinforcing the public authority of the local executive as a proxy of Manila in a peripheral and hostile borderland. Some important questions can therefore be put forward about the supposedly inherent democratic or emancipatory rationalities of incorporating traditional venues of dispute resolution within formal state institutions.

### **Conclusion**

In their review of the HPO literature, Robin Luckham and Thomas Kirk (2012: 4) notice a remarkable absence of questions of power: 'Whilst new approaches to human and citizen security have challenged the state-centric bias of previous security thinking, they still tend to overlook security's relationships to political power, including its deeply contested nature in hybrid political orders.' Our analysis on hybrid institutions of justice and security delivery in the provinces of Lanao, the Philippines, can be read as a confirmation of this statement. The specific sort of hybridity in the field of justice provision that has come to characterize this region is one where formal governance institutions serve as venues where informal third-party mediation is being deployed. The emergence of this type of hybridity has not enabled the strengthening of traditional authority. Rather, as many traditional leaders indicated, power in the field of justice and security provision has generally been transferred into the hands of elected politicians. In order to understand this transition, it is crucial to study the material bases upon which informal justice delivery has come to rely. Above all, this is a process wherein, through third-party mediation, a consensus is negotiated about the financial compensation for the harm inflicted. Clearly, custom and tradition add symbolic weight. They also provide anchor points in structuring and sequencing this process. However, traditional authority as such lacks the coercive and financial capital that is crucial for

adequate amicable settlement. As access to these resources falls under the control of the local executive, it was the local executive that was considered to be the one responsible for the provision of justice and security.

Overall, these hybrid institutions of justice delivery were considered fast and flexible when compared to formal punitive justice. In any attempt at state formation and post-conflict reconstruction, this is an unmistakable advantage as this considerably reduces the possibility of a further escalation of violent disputes. Some important questions, however, can be put forward about the democratic credentials of these institutions. These potentially cement an elite constellation as a combination of coercive, traditional, judicial and executive authority is concentrated within the executive. The idea of some sort of independent judiciary – rooted in a concept of equal citizenship – is totally absent. This causes a situation wherein access to justice becomes heavily politicized and integrated in a fractured landscape. Those groups/individuals having privileged access to the executive also tend to have a privileged access to justice.

At a more general level, this case study serves as a warning against a dominant current within the HPO literature wherein the emergence of hybrid institutions of justice and security delivery are understood as promising avenues towards stability and post-conflict reconstruction. What is lacking in these accounts is the manner in which certain power imbalances not only exist in these institutions, but also the manner through which these institutions themselves further reproduce these power imbalances. Also, the blending of informal justice delivery within formal state institutions does not by definition enhance the reach of traditional authority and its supposed social legitimacy. As one sultan remarked, this traditional authority has been 'grabbed' or hijacked by formal state institutions and elected politicians, adding to the quasi-authoritarian power of these elected officials. In order to allow for a more equitable and sustainable access to justice, therefore, it seems that alternative policy paradigms need to be elaborated upon.

## Notes

- <sup>1</sup> Interview, Sultan Abubakar M. Ali, municipality of Baloi, 16 September 2013.
- <sup>2</sup> Interview, Sultan Mariatao Tara clan, Marawi city, 16 September 2013.
- <sup>3</sup> Interview, Sultan Farouk Sharif, sultan of Taporog and member of the Lanao Advisory Council, Marawi city, 24 September 2013.
- <sup>4</sup> Focus group discussion, Civil Society Organizations, municipality of Aleosan, Cotabato city, 19 August 2014.
- <sup>5</sup> Focus group discussion, municipality of Poona Piagapo, 17 September 2013.
- <sup>6</sup> Interview, Associate Public Prosecution Attorney, Department of Justice, Illigan, Illigan city, 22 September 2013.
- <sup>7</sup> Interview, sultan of Marawi, Marawi city, 13 September 2013.
- <sup>8</sup> Focus group discussion, municipality of Binidayan, 18 September 2013.
- <sup>9</sup> Focus group discussion, Mariato Tara, Marawi city, 16 September 2013.
- <sup>10</sup> Focus group discussion, Denian Rengco Clan, municipality of Kapatagan, 25 September 2013.

## Competing Interests

The author has no competing interests to declare.

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