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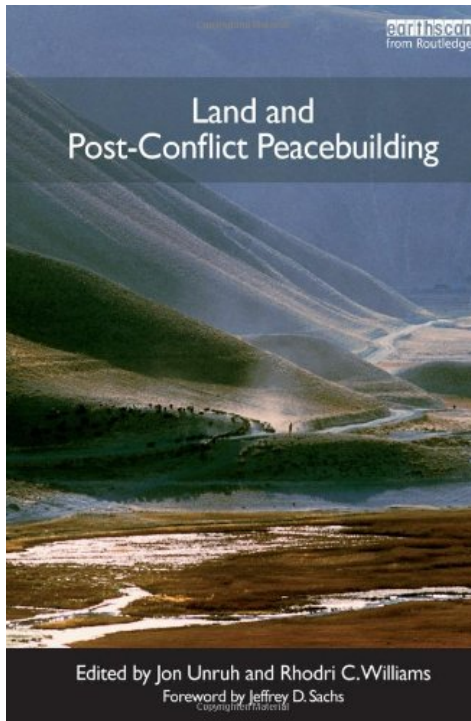
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Land tenure and peace negotiations in Mindanao, Philippines

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Land tenure and peace negotiations in Mindanao, Philippines

Yuri Oki

Mindanao, an island in the southern Philippines, was called a promised land during the American colonial period because of its rich resources and pleasant climate. Mindanao has experienced insurgency since the 1970s, which was long believed to be rooted in ethnic conflict between Christians and Muslims. However, recent quantitative and qualitative studies (Lingga 2007; Matuan 2007) have found another important aspect of the conflict: *rido*, or feuding between clans, families, and kinship groups, which is characterized by a series of violent retaliatory acts (Torres 2007), usually arising out of land disputes.

This chapter focuses on land disputes as an important cause of *rido* and how land and other resources may be managed to make and sustain peace. It is based on a combination of documentary resources and interviews conducted by the author in the Philippines and Japan.¹ The chapter begins by outlining the historical context of conflict in Mindanao and then examines the causes and dynamics of the conflict, the role that minerals and other natural resources play with respect to ancestral domain, and the factors associated with successful peacebuilding. The chapter concludes by identifying lessons learned, focusing on principal attributes of the Mindanao conflict that relate to land tenure.

HISTORICAL BACKGROUND

To understand the conflict in Mindanao, it is important to understand the history of Muslims in the region and the steps that have been taken in the ongoing peace process.

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¹ The names of interviewees have been withheld to protect their privacy.

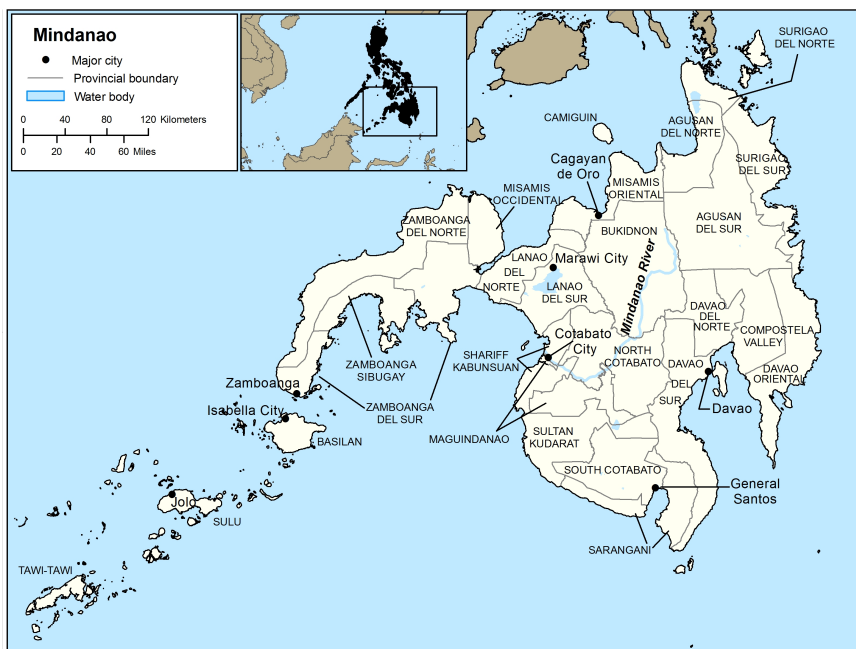
Muslims in Mindanao

The early inhabitants of Mindanao were animists who lived in small communities comprised of extended families. By the thirteenth century, Mindanao had a predominantly Muslim population and was ruled by Islamic sultans and *datus* (chiefs). Muslims in Mindanao resisted Catholic conversion by Spanish colonists who arrived in the sixteenth century—unlike the populations of neighboring Luzon and Visayas, who converted to Catholicism. Mindanao remained a frontier, preserving its indigenous culture until the end of the Spanish period in 1898.

American colonization followed the Spanish era and lasted until Philippine independence in 1946. Immigrants appointed by the American colonial government often resettled on farmlands previously owned by the Muslims in the area. Immigrants raised subsistence crops, and areas containing high-value resources such as copper and nickel were controlled by the American colonial government, even when the land was owned by Muslims and indigenous groups. Indigenous Muslims' rights to the land were jeopardized, and they were unable to enjoy the profits from the extractive resources of Mindanao. Exploitation of Mindanaoan resources continued after Philippine independence; in the 1960s, the government accelerated the resettlement of Filipinos from north to south. Over the years, new settlers have gained power and have established claims to land in Mindanao, while indigenous Muslims have been relocated to the rural areas of the island.

The Muslims in Mindanao are often referred to as Moros, a name given by the Spanish to Islamic inhabitants of the southern Philippines. The name, which originally had negative connotations, was eventually embraced by Muslim groups discontented with exploitation of the resources within their homeland. Use of the term *Moro* has a long history (Majul 1964). Not all Muslims are Moros. The definition of this term has changed over time, and it now refers to Muslims who are radically discontented with the central government of the Philippines and who are involved with the insurgency. *Muslim Moros* is the term used to differentiate Muslims from the radical Moros. These people also long for emancipation from the resource exploitation of the central government and believe that Moros are entitled to autonomy within the boundaries of the Republic of the Philippines.

While many scholars argue that ethnicity and religion are two separate concepts, the mainstream argument in defining ethnicity and religion is that they are often interwoven to complement one other (Gordon 1964). Ethnicity and religion are not considered a single concept in Mindanao. Muslim ethnicity does not necessarily entail the religious meaning of Islam; ethnicity in Mindanao involves the daily practices and beliefs of people with Muslim ancestors, who have been discriminated against since the colonial era. Hence the ethnic concept of "Moro" adds the locality of Mindanao to the conventional understanding of "Muslim." Ethnic attributes such as customs and spoken languages, including tribal dialects, serve as core variables in defining who people are and where they



come from, more strongly than whether they are Christian, Muslim, or from another group. The Muslim community has not shared in profits gained by more recent settlers through exporting agricultural commodities such as bananas, pineapples, and coconuts.

The resettlement policy marginalized the Muslims economically by exploiting natural resources within the boundaries of their homeland. Muslim inhabitants were not included in the resettlement policy, and only immigrants received the privilege of living in the land blessed in resources. The Muslims faced not only economic deprivation but also political disenfranchisement and displacement from their homelands. Land has been and remains the central cause of the conflict in Mindanao. In the mid-1970s, a group of Muslim youth formed the Moro National Liberation Front (MNLF) in response to grievances and frustrations that had accumulated from the time of American colonization and were now directed at the government of the Philippines.

The peace process

The government and armed forces of the Philippines have been confronting the MNLF since the 1970s. In response to the Muslims' demand for autonomy in Mindanao, the Philippine government developed a general autonomy framework, known as the Tripoli Agreement, which both parties signed on December 23,

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1976, under the auspices of the Organization of Islamic Countries.² Subsequent to the Tripoli Agreement, a plebiscite was held in thirteen provinces, but no unanimous agreement was reached, and the Tripoli Agreement was not fully implemented until 1996, during the Fidel Ramos administration.

Republic Act No. 6734, commonly known as the Organic Act, provided for an autonomous area in Mindanao; then a second plebiscite was held to assess the aspirations of Muslims living in areas designated to become part of that area, later to be known as the Autonomous Region in Muslim Mindanao (ARMM).³ In this second plebiscite, only Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi voted in favor of joining the ARMM. The official inauguration of ARMM on November 6, 1990, began a new chapter in the peace process. Military tensions began to lessen in the early 1990s; but despite the anticipation of peace and stability in Mindanao, there was no concrete road map for a peace agreement. After countless peace attempts and failures, the government and the MNLF agreed to establish a special zone focusing on peace and development in war-torn areas, also known as the Southern Philippines Council for Peace and Development, which led to the signing of the 1996 peace agreement between the government and the MNLF.

While people rejoiced about the peace agreement, which ended a thirty-year-long conflict between the MNLF and the government, a group dissatisfied with the decisions made by the top officials of the MNLF split before the 1996 peace agreement to form the Moro Islamic Liberation Front (MILF), which sought the complete independence of Mindanao from the Philippines. Generally, the MILF is thought to be more radical than the MNLF.

The Gloria Macapagal-Arroyo administration began a new policy aimed at ending the conflict with the MILF in 2001. Also in 2001, Republic Act No. 9054 was passed to incorporate Marawi City and Basilan in the ARMM. From 2001 to 2002, the government and the MILF resumed high-level peace talks and signed a general framework for further peace talks building up to a final peace agreement. Yet in 2003, government forces attacked a major MILF camp, and military tensions escalated until both parties called for a ceasefire. From 2003 to 2005, unofficial peace talks were held, and observers from Malaysia facilitated peace negotiations. In 2006 talks resumed in Malaysia, and rough agreement on the issue of ancestral domain was reached. August 4, 2008, would have been a historic day, as it was the day set for the signing of a memorandum of agreement on ancestral domain (MOA-AD).⁴ However, the Supreme Court issued a temporary

² For the complete text of the Tripoli Agreement, see www.usip.org/files/file/resources/collections/peace_agreements/tripoli_12231976.pdf.

³ The plebiscite was held in the following provinces: Basilan, North Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur.

⁴ The full name of the agreement is the Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001. For its complete text, see www.archive.org/stream/MOA-AD-2008-GRP-MLF/MOA-AD-GRP-MILF-2008#page/n1/mode/2up.

restraining order and declared the agreement unconstitutional. The MOA-AD remains unsigned.

CAUSES AND DYNAMICS OF THE CONFLICT

The conflict in Mindanao is rooted in and influenced by complex and interrelated social and economic factors.

Ancestral domain

The term *ancestral domain* refers to land that was owned, before the colonial era, by the indigenous people from whom today's Muslim Moros—as well as the non-Muslim indigenous people of Mindanao, known as the *Lumads*—are descended.

The Spanish colonial government sent Christian missionaries to attempt to convert and control the Islamic sultans. The American colonial administration took a different approach, adopting a migration policy that strongly encouraged Christian Filipinos to migrate and to bring Christian values to Mindanao.

In the 1980s, the Ferdinand Marcos and Corazon Aquino regimes continued this resettlement policy. Once the government adopted the resettlement policy and agricultural reform nationwide, Mindanao became a center of commodity exports and became home to more settlers from Visayas and Luzon.

Mindanao was and is known for the wealth of its natural resources—including both agricultural products such as coconuts, bananas, and mangos, and high-value resources such as coal, natural gas, copper, and gold. Bananas are the major crop, and Mindanao is a hub for distribution to Asian markets such as Japan and Korea.⁵ Local inhabitants have claimed rights over both agricultural land and high-value natural resources found in Mindanao, whether in the ARMM or elsewhere.

The question of which areas of Mindanao constitute ancestral domain is extremely controversial and still under negotiation. Potential domain lands are scattered within Mindanao and are not always contiguous; resolution of their status requires stakeholder consensus. Resolving this issue has the potential to trigger new confrontations between the government and the remaining insurgent groups. There is also a lingering misconception that ancestral domain only involves land claimed by the Muslims; in fact, it also involves land claimed by the indigenous Lumads. Just as the Mindanao conflict has multiple root causes, the issue of ancestral domain has multiple dimensions.

⁵ Bananas constitute 25 percent of the Philippines's commodity exports; more than 50 percent are produced in the giant banana plantations in Mindanao. Dole, Del Monte, Chiquita, and Sumisho Fruits are the dominant plantation owners. Japan has been a major market for bananas and pineapples; 84 percent of the imported bananas and 91 percent of imported pineapples in Japan are from Mindanao (Japanese Chamber of Commerce and Industry of Mindanao 2009).

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In 1997, the Indigenous Peoples Rights Act (Republic Act No. 8371) was passed. It defined rights over ancestral domain and recognized the indigenous cultural community, indigenous people, and their cultural and customary practices.⁶ Under this act, the term *indigenous people* was defined as “inhabitants currently residing within the ancestral land” and “former inhabitants who are descendants at the time of conquest or colonization, that are now displaced or resettled.” Under this definition, the Lumads, descendants of Muslims from the Sultanate era, and Christian descendants of people who settled in Mindanao before the colonial era fall into the category of indigenous people.

Preceding the 1996 peace agreement, the Philippine government and the MNLF had agreed on the establishment of autonomy within the republic for the southern Philippines, as discussed in the 1976 Tripoli Agreement and again in the Organic Act (Republic Act No. 6734), which was signed in 1989. However, in its efforts to implement the Tripoli Agreement, the government proposed a list of provinces to be included in the new autonomous region that was shorter than the list called for by the MNLF. This led to lingering discontent. The ARMM, established partly in response to the 1996 agreement, was intended to address that concern.

The Tripoli Agreement focused on three long-standing issues: the division of natural resources, administrative systems, and public administration. The 1996 peace agreement and the following plebiscite in 2001 established the building blocks for an autonomous region in the southern Philippines comprising five Muslim-oriented provinces and one city. It also empowered the legislative and

⁶ The act specified that the term *ancestral domain* refers to

all areas generally belonging to ICCs/IPs [indigenous cultural communities and indigenous people] comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators (Republic Act No. 8371, ch. II, sec. 3(a)).

It identified *ancestral lands* as

land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots (Republic Act No. 8371, ch. II, sec. 3(b)).

administrative branches of the autonomous government to oversee mining and natural resources in the region.

During negotiations, the MNLF demanded the following: the establishment of sharia (Islamic law) courts in the Philippines; allowing Muslim judges and lawyers in all courts, including the Supreme Court; the establishment of a directly elected legislative assembly in the ARMM; and the right to send representatives to the national legislature representing the ARMM and the Muslims in Mindanao. Most of the demands have been met on paper, but Muslims are still fighting to see them implemented. Only one Muslim judge has sat in the Supreme Court, and this only occurred because he was appointed directly by then-President Aquino. Although the Tripoli Agreement was a significant milestone in the peace process, negotiation of many important details was postponed, and the agreement frequently included language such as “to be determined later.”

The 1976 Tripoli Agreement called for the autonomous region to have its own economic system—including an Islamic bank and financial system—independent of the central financial system of the Philippines, and it clearly indicated that Mindanao’s natural resource management should be under the jurisdiction of the national government:

Mines and mineral resources fall within the competence of the Central Government, and a reasonable percentage deriving from the revenues of the mines and minerals be fixed for the benefit of the areas of the autonomy.⁷

The ambiguity of the term “reasonable percentage” was a factor in negotiations for the August 2008 peace agreement; Muslims insisted on specifying the percentage in the agreement. At the signing of the Tripoli Agreement in 1976, it was clear that both the MNLF and the Philippine government sought control over resource-rich provinces such as Sultan Kudarat, the area between south-central Mindanao and Maguindanao Province, including parts of the Liguasan Marshland,⁸ which has rich natural gas reserves.

Ancestral domain and insurgency groups

The Moro uprising, with goals ranging from self-identification to reclaiming ancestral homeland to independence from the Philippines, began with the MNLF in the early 1970s. After several negotiation attempts, the Tripoli Agreement was signed in 1976. Despite hopes that this agreement would end the Mindanao conflict, differences arose in the understanding of its terms.

After the agreement was signed, the government proposed a thirteen-province Muslim autonomous region. Although it was not clearly stipulated in the

⁷ Sec. 3, item 10.

⁸ The Liguasan Marshland is forty kilometers long and thirty kilometers wide and is located along the Pulangi River. It runs through three provinces: Davao del Sur, Maguindanao, and North Cotabato.

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agreement, the government insisted that the arrangement be subject to a plebiscite. In the first plebiscite, held in 1989, only four provinces joined; in the second plebiscite, in 2001, one province and one city joined. After the first plebiscite, a compromise plan was adopted, and two separate regional governments were established. In 1996, these became one autonomous region, the ARMM.

At the time of the Marcos administration, the central government recruited ex-MNLF commanders as officials in the autonomous government, giving them economic incentives such as market licenses, timber concessions, and export-import licenses. The recruitment continued until the end of the Marcos administration in 1986. Subsequently, the Aquino administration took a robust approach to peace negotiations with the MNLF, aimed at ending the armed conflict and establishing more substantive regional autonomy.

Fighting between the government and rebel forces continued despite the 1996 peace agreement, as the more radical and religious MILF, which split off from the MNLF, continued to confront the Philippines armed forces. Although the World Bank has assessed the MILF as less of a threat than other Islamic fundamentalist organizations in East Asia, it is reported to have ties with the militant groups Abu Sayyaf and Jamaat al-Islamiyah (Schiavo-Campo and Judd 2005).⁹

The MILF has gone further than the MNLF in demanding complete independence for the western part of Mindanao. It is frequently asserted, both by local inhabitants and by foreign aid agencies, that the MILF's intention in demanding Moro independence was not simply to reclaim their ancestral land and pass it on to their heirs but also to gain legal control of the land and its natural resources under both sharia and Philippine law (Schiavo-Campo and Judd 2005; Doyle, Wicks, and Nally 2007).

Ancestral domain and clan conflict

Rido, or clan disputes, can range from small-scale quarrels to false accusations, looting, and even killings. As one of the many root causes of the Mindanao conflict, rido often leads to associations between clan members and fighting between separatist groups.

Protagonists in the Mindanao conflict are members not only of a separatist group but also of a clan. Some clans and clan chiefs have political power over villages or *barangays* (the smallest municipal units in the Philippines) and are capable of carrying out local public administration on behalf of the ARMM government.

⁹ Abu Sayyaf is active in Mindanao and in the Sulu archipelago on the islands of Basilan and Jolo. Jamaat al-Islamiyah, based in Indonesia, has been accused of the 2002 and 2005 terrorist bombings in Bali (U.S. DOS 2007). Both groups are included on the UN Security Council's list of terrorist organizations linked to al Qaeda or the Taliban (UNSC 2010).

Often, MILF members disguise themselves as farmers in the daytime and turn into combatants at night. Combat in Mindanao usually takes the form of ambushes that occur at night or in the early morning. Whether a person is associated with the MILF is not easy to determine, even by local residents, as MILF members generally do not wear uniforms. When in fear for themselves or their families, they may pull out weapons hidden underneath their clothes, instantly becoming combatants.

Mindanaoans, both combatants and noncombatants, have a strong sense of attachment to and respect for their clans, and separatist rebels are often drawn into rido disputes. Surprisingly, rido seems to occur more frequently among rich and educated clans (Makinano and Lubang 2001).

Clan and ethnic groupings differ in different areas of Mindanao. Clans are often ethnically diverse—for example, a Christian woman who married a Muslim man would become a member of his (Muslim-oriented) clan. The high chief of a clan may or may not condone cross-clan marriage. Two clans could be rivals even though they are both Muslim or could trade with each other even if one is Christian and the other Muslim. In addition to Christian- and Muslim-oriented clans, there are also Lumad clans. It is not necessarily the bloodline that defines individuals in Mindanao, but their ethnic affiliation, language, and daily customs.

Mapping the ethnic affiliations of each clan can help donor agencies understand grassroots politics and unravel the complexities of rido. This in turn can lead to understanding of the large-scale conflict between the Philippines armed forces and the MILF. Filipino scholars argue that one of the major causes of rido is competition for access to and control of resource-rich land.

A recent field study (Canuday 2007) described a typical case that involved both large-scale (between the Philippines armed forces and the MILF) and small-scale (rido) conflict. It took place in the barangay of Linantangan—in Mamasapano town in Maguindanao Province, which is part of the ARMM. Linantangan has suffered from feuds between community leaders and the barangay chair,¹⁰ Chair Bangadan. He was forced to leave the barangay as tension over a land dispute escalated into bloody conflict.

As the dispute intensified, both government and rebel groups got involved, broadening the conflict. The Philippines armed forces deployed two battalions to the vicinity of the barangay and began recruiting volunteers to assist in controlling the area around the house of Chair Bangadan.¹¹ Meanwhile, several

¹⁰ A barangay chair is different from a mayor of a city, or high chief, who is usually the most respected person in the barangay. He may hold the title of datu or another word for Muslim tribal chief, which is equivalent to a Western duke.

¹¹ Volunteers are recruited through two organizations: CAFGUs (civilian armed forces geographical units), which are primarily civilian reservist groups affiliated with the armed forces, and CVOs (civil volunteer organizations), which perform a similar function in support of both the armed forces and the police.

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armed groups, including MILF and ex-MNLF combatants, joined forces to strengthen their power over the barangay. Concerned that the Philippines armed forces might gain control and remove Chair Bangadan, MILF members distributed firearms and ammunition to supporters in the community.

In 2005, intense fighting broke out between the MILF and government forces when MILF guerrillas assaulted the patrol base of a Philippines military battalion located in a coconut grove along the main road, resulting in seven armed forces casualties. In response, the Philippines armed forces started a massive ground and air attack. The MILF released a public statement that the assault had not been sanctioned by the central committee and that the decision leading to the attack was made by a few rogue guerrillas outside of the MILF. Such episodes occur frequently.

This is just one example of a smaller conflict escalating into a much larger clash. The Philippines armed forces had stationed a patrol base as a protective measure to guard the families of the barangay chair. However, the MILF saw this as a conspiracy between the barangay chair and the armed forces, and feared that the government could be covertly controlling the barangay.

MINING IN MINDANAO

Ancestral domain involves not only land but also the natural resources it contains. High-value resources include copper, nickel, gold, rubber, timber, natural gas, coal, and crude oil. There is also the potential for hydropower and geothermal power. This section focuses on mining.

In the 1970s, small-scale mines began operating in parts of Mindanao, and many of these operations grew significantly. Such companies include Manila Mining Corporation, operating in Surigao del Norte Province extracting gold, copper, and silver, and TVI Pacific, a Canadian-affiliated mining company operating in Zamboanga del Norte Province extracting copper, gold, and silver. Global mining companies such as the Swiss Xstrata and the Australian BHP Billiton have affiliated operations in Mindanao.

The Philippines ranks in the world's top ten in the mine production of gold and nickel, and is a major producer of copper (Brown et al. 2011). Mining is one of the Philippines' major export industries and revenue sources. Mining policy in the Philippines focuses on exporting low-quality product for further refinement elsewhere. Despite its low-grade mineral ores, the mining sector contributes more than 2 percent of the country's gross domestic product, generating US\$3 billion annually (USGS 2011).

The Philippines is ranked second, after Indonesia, in the Asia-Pacific region in terms of mineral prospectivity (the potential for finding minerals) (Pacheco-Sabando 2009). Notwithstanding its potential for natural resource development, which could benefit the local communities, investment in Mindanao remains low because of its political uncertainty and security concerns. In the past, mining sites have been the target of sabotage by indigenous communities and the MILF.

Insurgent groups sometimes generate revenue by charging a fee for guarding a mining company's facilities and workers.

The Mining Act of 1995 (Republic Act No. 7942) specifies two avenues through which foreign companies can operate concessions in the Philippines: the exploration permit (which also addresses mineral production sharing, coproduction, or joint venture) and the financial or technical assistance agreement (FTAA) for large-scale exploration, development, and utilization of mineral resources. Exploration permits can be for up to eight years, while FTAA's are twenty-five-year contracts and require a minimum investment of US\$50 million for mine development. Under the Mining Act, the contractor can convert an exploration permit totally or partially into a mineral agreement with the government following the submission and approval of a declaration of project feasibility and a work program. The mineral agreements differ from FTAA's in that they involve mineral production-sharing, coproduction, or joint-venture agreements. The mineral agreements are limited to a Filipino citizen or organizations (corporations, partnerships, associations, and cooperatives) with at least 60 percent Filipino capital ownership. Additionally, the government can offer incentives for foreign investment such as tax holidays and waivers of value-added tax or capital duty.

Copper and gold mines in South Cotabato Province had been previously owned by WMC Philippines—an affiliate of an Australian mining company, holding one of only three FTAA's registered in the country in 2000. The copper mine popularly known as the Tampakan mine, containing deposits of an estimated 12.8 million metric tons of copper and 15.2 million ounces of gold, is on the border between the ancestral domain areas of South Cotabato Province, Columbio in Sultan Kudarat Province, and Kibalawan in Davao del Sur Province. In 2005, Xstrata tried to acquire shares in WMC Philippines but failed. Instead, WMC accepted an offer from BHP Billiton Australia.

The nickel mining company Rio Tuba Corporation is a dominant nickel producer in the ancestral domain area of Palawan Island. Although 60 percent of its shares are owned by Filipino interests, 40 percent are owned by interests from Japan, and all production was sold to Japan's Pacific Metals Company in 2000. The mine holds a joint venture agreement with Sumitomo Metal Mining Company, Japan's largest nickel producer. Because of its limited domestic resources, Japan has been the primary market for the Philippines mining industry; a majority of nickel and copper concentrates are exported to Japan through affiliates of major trading companies such as Sumitomo, Mitsui, and Mitsubishi.

Coalbed methane is another resource for which foreign investors see Mindanao as a potential development frontier. Natural gas found in the coalbeds can be utilized for a variety of purposes with lower drilling costs than open-pit coal mines. Most coal mined in the Philippines is subbituminous, a type of coal that is not cost-efficient because of its relatively low density and high water content, but it can be combined with imported coal to generate enough electricity to supply the country. Of nineteen coal districts in the Philippines, seven are located in Mindanao,

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partially in ancestral domain areas (DOE 2007), with an estimated 900 million tons of coal reserve potential.¹²

The Mining Act's encouragement of the opening up of the Philippine mining industry to foreign investment became one of the main motivations for the Muslim Moros, along with Christians and Lumads, to demand rights to their ancestors' land and its natural resources.

Natural resources and the peace process

There can be no peace in Mindanao without resolving the issue of ancestral domain land and its resources. Real progress on this issue has been made in the past—for example, the 1996 peace agreement between the MNLF and the government gave Muslims authority over specific areas of ancestral domain. Yet sporadic armed conflicts between the Philippines military and the MILF continued after the signing of this agreement, despite a ceasefire agreed to in 2003. The peace process has been stagnant since then, and the 2008 MOA-AD has remained unsigned due to legal challenges.

Limited data make it difficult to quantify the socioeconomic costs of the conflict in Mindanao. According to Salvatore Schiavo-Campo and Mary Judd, the direct costs of the conflict appear low compared to those of other civil conflicts (Schiavo-Campo and Judd 2005). These seemingly low costs have served as justification for the international community to abandon the Mindanao conflict, and no UN mandate has ever been assigned to Mindanao. The socioeconomic costs have been underestimated as researchers have difficulty assessing the wide variety of impacts the conflict has on people's daily lives.

Schiavo-Campo and Judd estimated losses from the fighting between 1970 and 2000 at US\$2 billion to US\$3 billion (Schiavo-Camp and Judd 2005). Filipino media reports vary in the number of casualties, making it challenging for researchers to analyze the direct impacts of the conflict.

Complicating the situation, the communist New People's Army (NPA) also targets foreign companies attempting to exploit natural resources in the Philippines. It was accused of setting fire to buildings owned by Sagittarius Mines and firing shots at buildings in the company compound in 2008 (MAC 2008). The controversial Sagittarius Mines, a subsidiary of the Swiss Xstrata, is preparing to open its largest copper and gold mine in Southeast Asia, which is expected to begin operating in 2016. The project is currently undergoing a feasibility study; the mine, located in South Cotabato Province, is estimated to contain 13.5 million tons of copper and 15.8 million ounces of gold (Reuters 2009).

In 2000, President Arroyo produced a presidential manifesto on ending the conflict between the government and the MILF, bringing peace and development to the islands of Mindanao, and eradicating the NPA by the end of her term of

¹² An ongoing study is attempting to estimate the potential more precisely (NEDO 2009).

office in 2010.¹³ The Coordinating Committee on the Cessation of Hostilities, jointly chaired by the Philippines military, the MILF, and the International Monitoring Team,¹⁴ was convened in 2003, subsequent to the establishment of the Office of the Presidential Adviser on the Peace Process. Peace negotiations between the Philippine government and the MILF continued behind the scenes although the Philippines military continued to fight both the MILF and the NPA.

After five years of negotiations, the MOA-AD was finalized and ready to be signed by the president and Ebrahim Murad, the leader of the MILF, in August 2008 in Kuala Lumpur, Malaysia. However, as mentioned earlier, a day before the scheduled signing, the Philippine Supreme Court issued a ruling preventing signing until a consensus of all stakeholders was achieved. A former member of the International Monitoring Team described the events like this:

We . . . flew to Kuala Lumpur the morning of the scheduled signing of MOA-AD. Representatives from MILF were there as well, waiting for the signing ceremony to begin. Soon we found out that representatives from the GRP [government] side were not on the plane. We waited until our cell phones began to ring and found out [about] the restraining order of the Supreme Court and its acceptance by the GRP.¹⁵

In October 2008, the court declared MOA-AD unconstitutional.¹⁶

¹³ Vice President Arroyo assumed the office of the presidency on June 30, 2010, upon the impeachment of then-president Estrada. President Arroyo was reelected for a full six-year term in 2004.

¹⁴ The International Monitoring Team was originally composed of sixty members from Malaysia, Brunei, and Libya. With headquarters in Cotabato City, it monitored the ceasefire and the peace process between the government and the MILF. Japan joined the team in October 2006 and dispatched development experts to facilitate the peace negotiations and the socioeconomic development of Mindanao.

¹⁵ Interview, Tokyo, October 5, 2008.

¹⁶ A report on the Supreme Court's decision stated:

The MOA-AD with MILF would set up the Bangsamoro Homeland with the Bangsamoro Judicial Entity (BJE) as its governing body in parts of Mindanao. Under the agreement, the BJE would have the power to set up its own security, trade, education, elections, and the right to explore and develop natural resources in the said territory. . . . The Court held that respondents' failure to consult the local government units or communities constitutes a departure by respondents from their mandate under EO [Executive Order] No. 3. Moreover, respondents exceeded their authority by the mere act of guaranteeing amendments to the Constitution. EO No. 3 defines the authority of the GRP [Philippines government] Negotiating panel. The contents of the MOA-AD are matters of paramount public concern involving public interest in the highest order. . . . The Court stressed that the MOA-AD cannot be reconciled with the present Constitution and laws. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the BJE, are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence (Rempillo 2008).

For more analysis on the Supreme Court's decision, see Paula Defensor Knack, "Legal Frameworks and Land Issues in Muslim Mindanao," in this book.

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Prior to the Supreme Court order, thousands of local residents, accompanied by local officials and Catholic priests, had demonstrated in the streets of the city of Zamboanga, which was listed as part of the ancestral domain in the MOA-AD. They opposed the MOA-AD provisions for the establishment of independent legal, banking, education, civil service, security, and trade systems by the Moros. Other protests erupted just before and after the Supreme Court order was issued. A petition requesting a halt to the signing of the MOA-AD was submitted to the Supreme Court by the vice governor of North Cotabato, a mayor from Zamboanga del Norte, the mayor of Iligan City, and Ernesto Maceda, a long-time politician and former senate president, who formed a group to oppose the MOA-AD. Opposition to the MOA-AD was based not only on its implications for agricultural land rights but also on the potentially high value of the mineral resources.

The MOA-AD contained lists of barangays and municipalities to be classified as ancestral domain. Among the lands listed was a rubber plantation belonging to the vice governor of North Cotabato. It has been said that the governor used his political power to convince other mayors that their private land would also be subject to dispossession under the agreement. Then he and his allies submitted a petition that the Supreme Court took into account in issuing its restraining order.¹⁷

Rubber is considered the easiest natural resource to extract and most cost-efficient in Mindanao; owners of rubber plantations are zealous about their land rights. Mindanao's fertile soil produces high-quality rubber. Rubber plantations exist throughout the ARMM, including barangays in Zamboanga del Norte Province, which contributes 48 percent of the national rubber production. Zamboanga Sibugay, another province with some barangays potentially on the ancestral domain list, contains a substantial proportion of the rubber plantation area in the Philippines: 19,576 hectares out of 81,925 hectares for the country as a whole. North Cotabato Province has an even larger rubber plantation area, about 23,432 hectares (Philippine Information Agency 2008; *Mindanao Examiner* 2008), and is a frequent site of battles between the Philippines military and the MILF. Another area with rubber plantations is the island of Basilan, site of a key MILF military base and of frequent battles between the Philippines military and the MILF as well as Abu Sayyaf.

Natural resources and insurgency groups

Foreign companies carrying out resource development in the Mindanao conflict zone have had to take intensive security precautions. The mining companies locate their compounds close to the mining site and employ private security guards, ranging from routine gate guards to heavily armed forces ready to protect the compound from attack. In some cases, companies have admitted to paying protection money to insurgent groups; for example, the King King Mine paid

¹⁷ Member of an international donor agency interviewed by the author, December 2008, Tokyo.

roughly US\$2 million to insurgent groups during the lifespan of the project (Doyle, Wicks, and Nally 2007). This practice is illegal, but for mining companies, it can be the cost of doing business in Mindanao.

Political corruption also contributes to the complexity of the Mindanao conflict. The law requires prior informed consent to the development plan by indigenous stakeholders. However, companies often provide information only to the clans with which they are familiar, while disregarding other stakeholding clans (Doyle, Wicks, and Nally 2007). Mining giants such as Xstrata and BHP Billiton have established affiliated companies to extract minerals at a low cost in the conflict zone where ancestral domain tenure has been disputed. By paying protection money to rebel groups, mining giants can operate safely in the conflict-torn areas.

At times, foreign mining companies negotiate with clan chiefs on payments in return for permits to extract minerals.¹⁸ The Philippines has relatively strict laws protecting the environment and indigenous communities, but in many localities these laws are viewed merely as guidelines and are often disregarded (Doyle, Wicks, and Nally 2007).

Judging from interviews conducted from December 2006 to February 2009 in Mindanao and in Japan, such arrangements are almost never exposed, because an informant could be easily identified as rumors travel quickly through small communities. Informants who disclose information that could harm their clans risk violent retaliation against themselves and their families. Betrayal of the clan is considered the most despicable act an individual can perform. As a result, illegal dealings between companies and clans are almost never disclosed.

FACTORS THAT AFFECT SUCCESS IN PEACEBUILDING

Since the beginning of the conflict in the 1970s, civil society organizations have become powerful advocates for peace throughout the island, uniting people of different religions. Moros, Lumads, and Christians have worked together, and at times separately, for peace and stability in Mindanao. The 1996 peace accord fulfilled the MNLF's demand for a Muslim autonomous area but only partially. For example, the current ARMM includes five provinces and one city rather than the initially requested thirteen. The remaining eight provinces contain copper and gold resources, which the central government and foreign investors have long exploited. Additionally, although a general framework for further peace talks has been signed by the government and the MILF, a peace agreement has yet to be finalized.

Support from the Islamic community

The Organization of the Islamic Conference helped to mediate the peace process in the buildup to the 1996 agreement. As a neighboring country, and a

¹⁸ Representatives from nongovernmental organizations interviewed by the author, Davao City, Philippines, February 12, 2007.

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Muslim-oriented country valuing the Koranic principle of mediation, Malaysia has been a core member of the International Monitoring Team, facilitating multiple peace negotiations both before and after the ceasefire agreement of 2003. International organizations and bilateral donors have helped to promote peace and development in Mindanao.¹⁹ But much of the recent mediation effort has been carried out by the International Monitoring Team. Without its presence, the process building up to the August 2008 MOA-AD could not have taken place. Although the failure of this agreement to take effect is discouraging,²⁰ mediation and ceasefire monitoring have helped to alleviate tensions between the Philippine government and army and the MILF.

Stakeholder consensus

The terms of the MOA-AD seem to provide concrete strategies for managing and allocating ancestral domain lands. Annexes list provinces that could be included in a possible expansion of the current ARMM boundaries, known as the Bangsamoro Juridical Entity.²¹ The agreement appears to give absolute autonomy over ancestral domain to the indigenous people. But there are complications.

The areas proposed for the Bangsamoro Juridical Entity fall in two categories. Those in category A are subject to a plebiscite within twelve months of the signing of the MOA-AD, and those in category B are subject to a plebiscite not earlier than twenty-five years after the signing. Category B includes several mining sites that are already in operation, such as the well-known copper mining site in the municipality of Tampakan, being developed by Xstrata. The MOA-AD could possibly secure twenty-five years for foreign investors to operate in the region while the central government continues to receive their royalty payments.

As discussed earlier, the vice governor of North Cotabato, out of anxiety that his rubber plantation would be included in category B of the Bangsamoro Juridical Entity, signed a petition along with several allies asking the Supreme

¹⁹ International organizations with projects in Mindanao include the World Bank, Asian Development Bank, Islamic Development Bank, United Nations Development Programme, and European Union. Bilateral donors include the U.S. Agency for International Development, Australian Agency for International Development, Canadian International Development Agency, and Japan International Cooperation Agency.

²⁰ Mindanao peace negotiators now face the decision of whether to continue to base talks on the MOA-AD or to disregard that document and start from scratch under newly elected President Benigno Aquino III.

²¹ Paragraph 5 under MOA-AD's Concepts and Principles section states: "Both Parties agree that the Bangsamoro Juridical Entity (BJE) shall have the authority and jurisdiction over the Ancestral Domain and Ancestral lands, including both alienable and non-alienable lands encompassed within their homeland and ancestral territory, as well as the delineation of ancestral domain/lands of the Bangsamoro people located therein." It establishes a ratio for distribution of profits, royalties, bonuses, and taxes derived from natural resources extracted from the area: 75 percent to the BJE and 25 percent to the central government.

Court to postpone the signing of the MOA-AD. This petition became a justification for the Supreme Court to issue its restraining order suspending the signing of the MOA-AD pending consent from stakeholders.

Reintegration

Several successful events followed the 1996 peace agreement, most notably the reintegration program, which saw about 6,000 former MNLF combatants join the national army. But many excombatants also joined the MILF, often saying that they cannot ally themselves with an army that used to be their enemy simply because a peace accord was signed. Thus the lingering effects of prolonged civil war threaten achievement of a stable peace. The success of the disarmament, demobilization, and reintegration process following the 1996 agreement was believed to be a milestone in the Mindanao peacebuilding process. An official disarmament ceremony was held for ex-MNLF soldiers who were to join the ARMM government. However, hope for peace vanished after excombatants dropped out of the reintegration program, though there are no data to explain the reason for their departure.

Negotiations continued after the failure of the MOA-AD in 2008. President Arroyo made the disarmament of MILF soldiers a condition of resuming the peace negotiations (Abangan 2008). The MILF refused to disarm before the peace accord was signed, as this would allow the Philippines military to gain strategic superiority. This disagreement widened the rift between the Philippine government and the MILF.

LESSONS LEARNED

In the complex Mindanao conflict, small- and large-scale conflicts are intricately interwoven; all these conflicts share the common issue of ancestral domain. Competition over land tenure has been the major source of conflict—for example, the MILF's demand for complete autonomy over mineral-rich areas owned by indigenous Muslims in Mindanao.

Four salient attributes of the Mindanao conflict directly pertain to land tenure:

1. Local conflict (*rido*) and larger-scale military conflict can affect and aggravate each other in complex ways.
2. Ambiguities in the law have exacerbated the conflict. Issues include an unusual mixture of Islamic and secular law, and discrepancies between the Mining Act and the Indigenous Peoples Rights Act.
3. The mining industry in Mindanao, in which foreign investors are heavily involved, has a complex influence on the conflict and on chances for peace.
4. Widespread corruption has created patron-client relationships that sometimes link ostensible enemies in covert cooperation.

Rido and the insurgency

Ethnic affiliations and clan traditions are key to understanding the conflict in Mindanao and to solving the underlying issue of rido. Researchers have argued that land tenure is the root of the conflict (Lingaa 2007). Seemingly petty disputes over land intensify as perpetrators of rido involve other members of the clan, usually members of their extended families.

A local inhabitant has a greater chance of being the victim of a rido incident than of being the victim of large-scale fighting between the Philippines military and the MILF. But when rido and large-scale conflict intermingle, the result can be complex. For example, a MILF member whose clan is engaged in rido may provide weapons to members of his clan. The MILF can thus use rido to expand its presence and power in the region.

As ancestral domain is land that once belonged or now belongs to the indigenous people, regardless of their ethnic affiliation, it has deep implications as one of the many causes of rido. Ancestral domain provides land for farming and fulfilling basic human needs. At the same time, it is a potential resource extraction site that can be bargained over with the government and foreign investors, a heritable fixed asset for future generations, and a sign of the wealth of the land-owning clan.

As observed in other conflict-torn regions, the complexity of the Mindanao conflict suggests that the transition from conflict to reconciliation is challenging. Peace negotiations are not necessarily concluded in an official manner, such as in the form of an official peace agreement, before entering into a final consolidation phase. For instance, the 1996 peace agreement between the government and the MNLF was concluded while conflict was ongoing. Mindanao experienced both a consolidation phase and a conflict phase even after the 1996 agreement.

Any country suffering from conflict, like Mindanao, struggles to find a way out. Mindanao may be unique in the diversity of the factors that caused the conflict. Rido, the confrontation between the government and Muslim insurgency groups, and the high incidence of poverty in parts of Mindanao are the main root causes. When several variables must be dealt with, conflict analysis becomes a harder task. The analysis can be further complicated when parties do not share the same goals, such as concluding a peace agreement and progressing to the next stage of the peacebuilding process.

Legal issues

The legislature and the judiciary have also played a role in exacerbating the conflict. For instance, in Mindanao, sharia (Islamic) courts function as district courts, and trials in the sharia district courts cannot be appealed to the Supreme Court unless on questions of law or for abuse of discretion committed by the judge of the district court.

The Mining Act, which encourages foreign investment, conflicts with the Indigenous Peoples Rights Act. There can be tension between the goals of achieving economic growth and protecting the rights of indigenous people and their entitlement to ancestral domain. In 2000, the Department of Environment and Natural Resources asked the Supreme Court to clarify legal and constitutional challenges to the Mining Act and the Indigenous Peoples Rights Act, arguing that the contradictions between the two laws were hampering foreign investment. The Supreme Court reaffirmed the Indigenous Peoples Rights Act, allowing indigenous people control over resources within the limits set by the act. However, the act does not provide for indigenous control over high-value resources such as copper and gold, and the Supreme Court ruled in favor of the government's full control over these (Lyday 2000).

Mining

The mining industry in the Philippines is heavily dependent on exporting ore, both to developed countries such as Japan and the United States and to emerging markets such as China. The mining sector also includes a number of transnational mining companies, with home countries in Australia, Canada, Japan, the United Kingdom, and the United States. According to a report by a fact-finding team from the United Kingdom, "in efforts to encourage such foreign direct investment, the Philippines government appears willing to circumvent its own laws protecting the environment and human rights and reduce standards below acceptable international practice. . . . The emphasis on export-driven mining based on foreign investment may diminish rather than improve the possibility of a balanced, long-term, sustainable development strategy" (Doyle, Wicks, and Nally 2007, iii).

It could be argued that the government of the Philippines is exploiting the conflict in Mindanao to gain time for foreign investors to extract the resources, resulting in royalty payments to the government. The benefits of large-scale foreign mining almost never trickle down to the most needy. Mining rarely creates jobs for local residents. Open-pit mining, the most common process in Mindanao, uses sophisticated technologies that are mainly operated by mining specialists and not local trainees.

Nickel strip mining causes severe ecological damage, such as the flattening of mountaintops and the creation of craters with massive amounts of tailings, and can cause serious health issues. Mining involves the use of hazardous chemicals such as cyanide to extract gold from the ore. These chemicals can also cause numerous health issues for nearby inhabitants.

Cathal Doyle, Clive Wicks, and Frank Nally expressed their concern in their fact-finding report that protection money had been paid to terrorist groups (Doyle, Wicks, and Nally 2007), a practice about which former foreign mining company employees had testified at the hearing in the Canadian parliament. Given this testimony, chances are that corruption and the illegal flow of cash will only

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increase the risk of a rent-seeking economy, further marginalizing indigenous people. Moreover, protection money paid by foreign mining giants may produce steady income for landowners, local militias, and police. The situation will consequently strengthen ties between patrons and clients, and in the worst cases will create client-followers (people who do favors for clients in exchange for pay and thus rely on the benefits that clients receive from their patrons).

Minerals found in Mindanao, such as copper, gold, and nickel, may not appear as intriguing as the diamonds that are so often the focus of conflict, but play a crucial role in the conflict. In Mindanao, natural resources contribute to the transition to peace and at the same time, paradoxical as it may seem, exacerbate the conflict. The main concern of stakeholders—such as the government of the Philippines, local bureaucrats, insurgency groups, and indigenous communities—is the income derived either directly from resource development and extraction on ancestral land or as a commission for facilitating an agreement between landowners and mining companies.

Corruption

As seen in the failed 2008 peace agreement, stakeholders sometimes face a choice between securing their vested interests, for example in a rubber plantation or mine, or supporting peace. To protect vested interests, stakeholders may become, caught in patron-client relationships and become part of a rent-seeking economy, hoping to continuously reap benefits from the client, who may be in association with the MILF. Stakeholders caught in the turmoil of the patron-client model must play a two-faced role, publicly denouncing the MILF's insurgent activities while privately dealing with MILF members in order to protect their vested interests. In this respect, breaking the chain between patron and client is a priority.

While conducting interviews about land tenure and Mindanao's resource sector, including the mining industry, it became apparent to this author that qualitative data collection is an extremely delicate matter. Interviewees are cautious about how and to what extent they answer questions, especially when they involve sensitive issues such as patron-client relationships and their specific terms. Contacting informants in public was done carefully, as rumors spread easily in small communities. Interviewees often expressed apprehension that they might be seen by people who could inform others, resulting in harassment, blackmail, and threats against family members. Corruption is a sensitive topic to research due to the security needs of the informants, but it should be publicly addressed by researchers from donor agencies and academia.

CONCLUSION

Mindanao is a case study of the complexity of natural resource management in post-conflict societies. The conflict in Mindanao is more than an outcome of

economic disparity due to a clash between Muslims and Christians. It is not based only on insurgency groups' desire for self-determination, but is also a conflict over the control and management of natural resources, deeply enmeshed with rido or local clan conflict. Poverty in Mindanao is characterized by recurring rido and by heavy reliance on primary commodities.

Peace between the MILF and the government of the Philippines has been a long-standing aspiration of the people in Mindanao. The vested interests of different parties to the conflict have been woven into complex layers for more than three decades. Conflicts of interest occur regularly between local and international insurgency groups, local politicians and bureaucrats, religious leaders, black market businessmen, and other civilians. The challenge is to find a solution in which all parties concerned can benefit.

This chapter has focused mainly on the negative aspects of land and resource management in the Mindanao peacebuilding process. However, it is also true that the quest for peace is uniting the diverse inhabitants of Mindanao. Grassroots groups, nongovernmental and nonprofit organizations, academics, and religious groups have been organizing peace walks, regional gatherings, and symposia to promote the peace process and provide basic necessities to people displaced by the conflict.

Civil society peace initiatives have helped protect human security and defeat fears of violence and deprivation. International donors are actively participating not only as project implementers but as facilitators, bridging the gap between the government (both of the Philippines and of the ARMM) and civil groups. In this regard, encouraging both bottom-up and top-down approaches may lead to effective steps forward in the peace process. In Mindanao, human security is at risk, and fear of violence is widespread, both because of the conflict between the government and the insurgency and because of smaller-scale rido. Mindanaoans have not only been deprived of basic necessities due to the destruction of social capital caused by the intensification of civil war, but they also fear losing their land tenure and cash incomes. Fear of violence and deprivation reinforce each other, making it harder to address agenda items one at a time. Land tenure is merely one component of the conflict in Mindanao.

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