



# SPECIAL REPORT

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## ABOUT THE REPORT

The Philippine Facilitation Project of the U.S. Institute of Peace was initiated in 2003 with the support of the presidents of the United States and the Philippines and the U.S. Department of State. Its mandate is to help expedite the peace process in Mindanao. The project is guided by a group of senior advisors, many of whom have served as U.S. ambassadors to the Philippines. The Institute is committed to working with the Philippine government, the Moro Islamic Liberation Front, and the government of Malaysia to expedite and implement a just and strong peace agreement in Mindanao.

This report synthesizes the presentations of participants in a meeting in Davao City, Philippines, on May 24–27, 2005, sponsored by the United States Institute of Peace. It was written by Astrid S. Tuminez, senior research associate.

**The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate specific policy positions.**

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*Astrid S. Tuminez*

## Ancestral Domain in Comparative Perspective

### Summary

- Ancestral domain—the territory, economic resources, and governance of minority ethnic groups and indigenous peoples—is the third and final item on the agenda for peace negotiations between the government of the Republic of the Philippines and the Moro Islamic Liberation Front. The experiences of other minorities elsewhere in the world can be instructive in formulating a stable and peaceful accommodation that satisfies both parties.
- Native Americans in the United States, Maoris in New Zealand, Inuit in Canada, and Tamils in Sri Lanka have lost ancestral and traditional land to majority governing groups. Treaties, enforceable in court, help protect the rights of Native Americans, Maoris, and Inuit; negotiations are ongoing in Sri Lanka.
- To prevent or end civil war, minority groups must be included as full citizens in a unified nation. Despite a signed peace agreement in Sudan, difficulties persist as the North and South attempt to create national cohesion. Native Americans in the United States and Inuit in Canada have no desire to separate from their countries, but they have had to struggle for justice and equality in their national societies.
- Tensions and conflict in divided societies often arise because groups have deep-seated prejudices about each other and feel threatened. The majority Sinhalese in Sri Lanka fear losing control to the minority Tamil. The majority Protestants in Northern Ireland fear losing their political and socioeconomic advantages if the country should unite with the Republic of Ireland, as desired by the minority Catholics. Attempts to marginalize or exclude minority groups lead to continued violence.
- Minorities and indigenous peoples are often willing to fight to gain control of their economic resources and governance structure. Landowners in Bougainville, Papua New Guinea, fought to secede when they felt they did not receive a just share of the benefits from a copper mine in their territory. Maoris, Inuit, Native Americans, southern Sudanese, Tamils, and Catholics in Northern Ireland have resorted to violence and/or legislative and judicial procedures to express their grievances.
- Genuine devolution of political and economic power to redress minority disenfranchisement has been a condition for lasting peace.

## ABOUT THE INSTITUTE

The United States Institute of Peace is an independent, nonpartisan federal institution created by Congress to promote the prevention, management, and peaceful resolution of international conflicts. Established in 1984, the Institute meets its congressional mandate through an array of programs, including research grants, fellowships, professional training, education programs from high school through graduate school, conferences and workshops, library services, and publications. The Institute's Board of Directors is appointed by the President of the United States and confirmed by the Senate.

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- Past conflicts over ancestral domain have shown that factors in a peaceful resolution must include negotiations for a peace treaty that includes specific implementation provisions; recognition and respect for minority cultures and values; some minority ownership or interest in ancestral lands and the resources thereon; unity within the minority group; assistance from outside, neutral parties; a long-term perspective in negotiated settlements; and recognition of potential adverse consequences for other groups affected by any settlement.

## Introduction

On May 24–27, 2005, the United States Institute of Peace hosted a two-and-a-half-day workshop on ancestral domain in Davao City, Philippines. Ancestral domain is the third and final item on the agenda for peace negotiations between the government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF). It is arguably the most important and thorniest issue yet to be resolved between the two parties prior to a political settlement. Ancestral domain refers to the Moros' demand for territory that will constitute a Bangsamoro homeland, sufficient control over economic resources in that territory, and a structure of governance that will allow Moros to govern themselves in ways that are consonant with their culture and with minimal interference from Manila.

Underlying the talks on ancestral domain is the desire of the Moro ethnic groups, collectively known as the Bangsamoro, for a measure of restorative justice. They have lost lands that had belonged to their fathers since time immemorial. Decades of conflict and marginalization have inhibited their socioeconomic development. As a people, the Bangsamoro are seeking arrangements that will facilitate genuine self-determination, economic development, and cultural and social renaissance. But Moro leaders, particularly those represented by the MILF, are cognizant of demographic and territorial realities in Mindanao that pose obstacles to their aspirations. Recognizing these realities, they have relinquished claims to all of Mindanao, Sulu, and Palawan as Moro ancestral domain. Their final demands, however, are not yet publicly known. By the same token, the extent to which the GRP can accommodate these claims remains to be seen.

The workshop sought to facilitate an exchange of experience and expertise from other countries on matters related to ancestral domain. The Institute invited international scholars and practitioners to speak about relative successes, failures, challenges, and lessons from other cases in which ethnic or religious minority groups have fought over and negotiated arrangements on territory, natural resources, and governance. The cases included Inuit of Nunavut (Canada), Native Americans of the United States, Maoris of New Zealand, Bougainville in Papua New Guinea, and religious or ethnic minorities in Northern Ireland, Sudan, and Sri Lanka.

Workshop organizers recognized that the situation in Mindanao could not be compared exactly with the experiences of other countries. As Richard Murphy, former U.S. ambassador to the Philippines and senior advisor to the Institute's Philippine Facilitation Project, noted, "[There] are many unique elements to Moro grievances and the difficult historical relationship between the Moros and the Philippine government." But, he continued, "there are also likely to be challenges and positive precedents that will resonate between the case of the southern Philippines and the experience of other groups in other countries. There might be potentially valuable lessons to learn. These lessons, if learned and applied, could perhaps help pave the way towards peace and its dividends, and bring an end to the dreadful costs and consequences of violent struggle."

The workshop was attended by nearly forty participants, who included government and Moro representatives, Philippine scholars, and civil society leaders. Participants did *not* discuss official negotiating positions and spoke only in their capacities as scholars, experts, or observers. The U.S. Institute of Peace hopes that ideas generated at the workshop and summarized in this report may stimulate further creative and constructive approaches to ancestral domain.

## **“Strangers in Our Own Homeland”: A Common Narrative**

The term “ancestral domain” is not a common international reference, but parsing the phrase into “territory, economic resources, and governance” quickly makes it a familiar concept to minorities around the world. Referring to the Native American experience, for example, Walter Echo-Hawk, a participant from the Pawnee tribe, alluded to the common experience of “colonialism, loss of homelands, destruction of traditional ways of life and habitat, warfare, disease, and marginalization” as factors that have turned minorities and indigenous peoples in many places into “strangers in our own homeland.” Loss of territory, discrimination, absence of full citizenship rights, cultural erosion, and violent conflict are common elements in the narrative of many minority groups around the world.

### **Land**

Many indigenous peoples have lost their ancestral and traditional lands. Native Americans in the United States, for example, lost the armed conflict against white settlers and consequently lost their lands and way of life. However, their forefathers left a legacy of legal, cultural, and political rights embodied in 500 treaties signed between the U.S. federal government and Native American tribes. Today, Native Americans have jurisdiction over ninety million acres of land. The U.S. government has trustee status and retains legal title to the land, but the tribes have civil and criminal jurisdiction over their territories, run their own tribal governments, own the water and minerals on and under the land, and significantly control decisions regarding development. Although tribes still face challenges in safeguarding their rights and control over traditional territories, they have recourse to courts, Congress, and public opinion to protect their interests.

The Maoris of New Zealand also suffered when European colonial policies and military conflict destroyed their traditional laws and collective land tenure and ownership. They signed the Treaty of Waitangi in 1840 with European settlers, but the Europeans violated the treaty’s provisions on Maori rights, possessions, and citizenship. Maoris lost control of their lands over time and saw traditional cultural structures erode. However, in the past two decades, Maori culture has enjoyed a renaissance. A rethinking of the Waitangi Treaty has occurred in New Zealand, leading to a process that allows Maoris to assert claims for breaches of the treaty and seek restoration of their tribal lands. Martin Mariassouce, a Maori participant, noted that the Maoris have managed to arrest their people’s cultural and economic decline, but still face many challenges. These include pursuing remaining land and intellectual property claims, improving the socioeconomic lot of their people, developing entrepreneurial and management skills, and becoming competitive in such fields as information technology and tourism.

Terry Fenge, a consultant who worked on Inuit negotiations with the Canadian government for ten years, spoke about the Inuit experience. Inuit, who number 155,000 worldwide, are an indigenous people who have been colonized by five countries: Great Britain, Canada, Russia, Denmark, and the United States. In Canada, Inuit number approximately fifty-five thousand. They retained “aboriginal title” to their lands because, unlike other indigenous peoples in North America, they had not signed treaties ceding their land and natural resources to the government. The Canadian government was unconcerned about Inuit aboriginal titles until oil and gas exploration and other development on Inuit land became an issue. Anxious to avoid legal uncertainty over land ownership that might hamper investment and development, the Canadian government initiated negotiations with Inuit in 1973 that resulted in four comprehensive land claims agreements: James Bay and Northern Quebec (1975), Beaufort Sea region (1984), Nunavut (1993), and Labrador (2005). The largest of these agreements—Nunavut—extinguished Inuit aboriginal title to approximately 20 percent of Canada in exchange for giving Inuit of Nunavut their own

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territorial government, monetary compensation, a significant degree of control over land use and development, ownership of approximately 18 percent of their ancestral domain, a royalty share on development of any land in Nunavut, and rights to harvest marine and terrestrial wildlife throughout their settlement area, including in national parks.

The Tamils of Sri Lanka, who have traditionally populated the north and east of the country, have a land grievance sparked by their minoritization in the east. Jehan Perera, a Sri Lankan participant, elaborated that the eastern portion of Sri Lanka used to be 60 percent Tamil, but that percentage decreased to 40 percent in the 1980s due to Sinhalese settlement. Resolution of Tamil grievances related to land, language, governance, and other matters is still a work in progress. Although the Tamils and the majority Sinhalese subscribe to an ongoing cease-fire, they remain some distance from reaching a comprehensive agreement. Federalism has been proposed as a resolution to the conflict, but the two sides have put forward different and irreconcilable versions. The Tamil guerillas, known as the Liberation Tigers of Tamil Eelam or LTTE, have proposed an interim self-governing authority on Tamil lands, but the Sinhalese government views their proposal as overreaching. In the meantime, the devastation wrought by the tsunami of December 2004 (which killed forty thousand people) created an opportunity for the Tamils to pursue relief and reconstruction efforts over a specified, limited territory, working with both the government and Muslim parties. This development could be a harbinger of a more constructive path toward Tamil self-government and an end to the devastating conflict in Sri Lanka.

## Nationhood and Citizenship

In addition to land, the problem of nationhood and citizenship is at the heart of ancestral domain claims. Many minorities have fought for their own territory and governance structures because they have never felt themselves members of a cohesive nation or full citizens of the state in which they lived. Ambassador Francis Deng, former Sudanese minister for foreign affairs and former special representative of the UN secretary-general on internally displaced peoples, remarked that in his twelve years as a UN special envoy, he had observed many deeply divided countries “in desperate need to build cohesive nations.” A central task for states is to create a country where all groups have a sense of pride and belonging. Stability and peace are most likely in cohesive nations where minorities enjoy the rights of full citizenship.

Sudan illustrates the problem of a divided nation. Arabization, Islamization, and enslavement were the central dynamics that led to a divided North and South. People in the North who were Muslims, Arabic-speaking, and could claim Arab culture and descent were, in Deng’s words, “elevated to a position of respect and dignity,” while “a non-Muslim black African was deemed inferior, a heathen, and a legitimate target of enslavement.” The first war in Sudan, which started in 1955, ended in 1972 with autonomy granted to the South. But autonomy could not work as long as the national government was making decisions in which the southern Sudanese had no voice. The abrogation of autonomy by the North provoked renewed violence. Today, despite a signed peace agreement, in which the South will have its own government and army and participate more equitably at the national level, Sudan continues to face challenges in creating national cohesion. North and South have temporarily put aside their differences, but if the experiment of nation-building fails, the Sudanese peace agreement allows the South to decide after a six-year interim period whether to remain in a united Sudan or to secede.

Inuit and Native Americans have experienced different challenges of nationhood and citizenship, but both groups are relatively well integrated into their states. Inuit, despite being a minority beset by social ills and displaced by modernity and urbanization, have always been proud Canadians. Secession is not on the Inuit agenda. They have wanted to preserve traditional rights to their land, gain control over their economic resources, and

***Stability and peace are most likely in cohesive nations where minorities enjoy the rights of full citizenship.***

benefit from development of their ancestral domain. Within the context of a sovereign and united Canada, Inuit were able to negotiate arrangements that enhanced their rights and benefits as Canadian citizens. Native Americans in the United States have fought over time for equality with the larger American society, but, in Echo-Hawk's words, accept that they are "not going anywhere, that the U.S. is their home." Native Americans want respect for their traditions and identity and have worked for "true dual citizenship," that is, to be free to belong to their own tribe and also to belong to the United States as citizens. Their struggle has focused on getting their rights recognized, enhancing their prospects for prosperity like other Americans, and exercising their right to self-government over their lands and people without interference from state and local authorities. Native Americans enjoy sovereign status as "domestic dependent nations," but Congress has tremendous power to limit or redefine their rights. Thus, the struggle for justice continues, but Native Americans are reassured that American society is moving (albeit slowly) toward appreciation and respect for the rights of its native peoples.

## Threat Perceptions and Conflict

Tension and conflict in divided societies often arise because groups have deep-seated beliefs and prejudices about threats from other groups. In Sri Lanka, fears are deep among the majority Sinhalese, who believe that the minority Tamils pose a grave threat to Sinhalese interests. To the Sinhalese, Tamils symbolize invaders who have destroyed large, powerful Sinhalese kingdoms. Sinhalese perceptions of the Tamil threat are exacerbated by the fact that, although there are only three million Tamils in Sri Lanka, just across the border in India are fifty million more Tamils. Thus, the twelve million Sinhalese feel overwhelmed. Over nearly twenty years of civil war, from 1983 to 2002, the Tamils have also proven to be ferocious fighters, launching deadly suicide attacks and decimating in one incident half of the Sri Lankan airlines passenger fleet and several air force craft on the ground in Colombo.

Sinhalese Sri Lankans have been highly reluctant to accommodate Tamil demands. In their view, giving an inch to the Tamils in the form of autonomy would lead to the slippery slope of Tamil domination. When a cease-fire was signed in 2002, it was done in secret because the Sinhalese population would not have supported it. Instead, government leaders presented it as a *fait accompli*, hoping that the working of the cease-fire would dampen threat perceptions and cultivate public support for peace. Tamils and Sinhalese have inflicted grave violence on one another, and both sides need to modify deep-seated fears to allow reconciliation to occur.

Northern Ireland also illustrates the relationship between mutual threat perceptions and conflict. Northern Ireland's population consists of 40 percent Catholic nationalists who are interested in joining with the Republic of Ireland, and 60 percent Protestant unionists who want Northern Ireland to remain in the United Kingdom. These groups disagree fundamentally on Northern Ireland's future. The Protestant population has been politically and socioeconomically dominant, while Catholics have been marginalized. Seven attempts to solve the conflict occurred between 1972 and 1991, but all failed. Roger MacGinty, a participant from Northern Ireland, noted that these failures were due largely to the principle of exclusion. Those who considered themselves democratic players did not want to negotiate with militant armed groups, whom they characterized as terrorists. The exclusion of groups perceived as threatening and unworthy of a seat at the negotiating table meant the continuation of violence. More successful negotiations occurred only when inclusion replaced exclusion. The signing of the Good Friday Agreement in 1998 ended the violence that had wracked Northern Ireland. A lack of trust still mars relations between nationalists and unionists, but the peace agreement has provided hope for overcoming mutual threat perceptions.

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## Economic and Political Self-Determination

Conflict over ancestral domain is often rooted in frustrated aspirations by minorities and/or indigenous peoples to control their economic resources and governance structures. This was the case in Bougainville, the most remote of Papua New Guinea's (PNG) nineteen provinces. Bougainville is geographically, culturally, and linguistically distinct from most of PNG, which itself gained independence from Australia only in 1975. Ron May, an Australian participant, noted that the roots of violence in Bougainville can be traced to the opening of one of the largest copper mines, administered by Australia, in the 1970s. Many younger Bougainvillean landowners felt that they deserved a larger share of revenue from the mine. They believed that the mine brought economic benefits to the rest of PNG while imposing heavy environmental and social costs on Bougainville. In addition, Bougainvilleans viewed as inadequate the autonomy arrangements granted to them by PNG in 1976. A violent secessionist conflict began in 1988, followed by negotiations in 1997 that culminated in a peace agreement in 2001.

Frustrated economic and political aspirations are themes that also resonate with Maoris, Inuit, Native Americans, southern Sudanese, Tamils in Sri Lanka, and Catholics in Northern Ireland. Some of these groups have used violence to highlight their grievances and achieve concessions from the state. Others have used negotiations, legislatures, and court systems to address their needs. In no case has a "quick fix" for minority economic and political aspirations been possible. Long years of talks, negotiations, and even failed agreements characterize many of the cases. Inuit of Nunavut negotiated with the Canadian government for twenty years before achieving an agreement. Maoris worked for fifteen years before the Waitangi Tribunal was set up to address their claims. In Northern Ireland, an agreement was reached only in 1998, despite attempts to resolve the conflict since 1972. In all cases, genuine devolution of political and economic power to redress minority disenfranchisement has been required for peace. In Sri Lanka, where peace remains elusive, devolution of political and economic power will certainly be required for the Tamils to end their violent struggle.

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### **"Guideposts Home": Lessons from International Experience**

The workshop highlighted some lessons from the experience of other countries in dealing with ancestral domain.

#### ***A peace treaty is only the beginning.***

Often, in lengthy negotiations, negotiators and policymakers fixate on reaching an agreement, devoting less energy to questions of implementation. However, nearly all international participants urged that the specifics of implementation be tackled as early as possible. Is an agreement fair and practicable? Do any groups feel coerced into the agreement? Does an arrangement create new minorities? If big questions cannot be resolved, can small but verifiable steps be agreed upon? How can people's expectations be managed? What should be done when, how, by whom, and at what cost? Because the issues involved in ancestral domain—land, economic resources, and governance—are complex, principals in negotiations must be as specific as possible about the mechanisms, time line, and methods of accountability for implementing an agreement.

In the Inuit case, implementation was discussed last in the negotiations. In hindsight, negotiators should have thought about implementation from the beginning. The final Nunavut Land Claims Agreement is accompanied by a thick manual on implementation. It spells out who will do what, where, when, and at what cost over a ten-year period. Despite these details, implementation has run into problems. Inuit have used both Canadian courts and the court of international public opinion to prod the Canadian government into action. A 1983 constitutional amendment prevents the Canadian government

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from unilaterally amending agreements with the Inuit, thereby giving very strong assurance to the Inuit that the agreements will be honored.

Native Americans have experienced numerous violations by the U.S. government of treaties signed. They have used federal courts to protect their rights over ancestral domain, but court decisions have not always been fair toward their interests. Congress, which has plenary authority to legislate over Native American affairs, has expanded their rights on some occasions and abrogated them on others. Safeguards against the unpredictable direction of prevailing political winds would help clarify and strengthen Native American rights and diminish the need for litigation and other battles over treaty implementation.

In Northern Ireland, implementation has stumbled against the problem of managing public expectations. Leaders on both sides of the conflict have become vulnerable as people clamor for their peace dividend during the implementation phase. Another problem has been that the peace agreement in Northern Ireland contained few mechanisms to censure violations or compel adherence. An important lesson is that minimal or no costs for defaulting may create the hazard of parties signing agreements that they do not intend to keep.

In Sudan, after many years of brutal war, Deng noted that “most people don’t know what to do with peace.” One cannot assume a deep commitment by all parties to the agreement signed. Ambivalence and tensions were evident even at the signing ceremony. Peacemaking is a long process, and in Sudan, progress may be incremental and cumulative. The value of the signed agreement is that it has created space for North and South to repair relations and determine if they can stay together in one country. The implementation of the agreement will determine whether or not secession will continue to threaten Sudan’s territorial integrity.

### ***Reconciliation is required for peace.***

Workshop participants discussed the psychological aspects of negotiations, including the need to change prejudicial mindsets, cultivate mutual sympathy between parties in conflict, and nurture reconciliation. Reconciliation must be emphasized from top to bottom, or from the official negotiating table down to the grassroots. David Fairman, a consensus-building expert, highlighted some key steps in the “preparation phase” to de-escalate conflict over land and deeply held beliefs about rights to land. Preparation requires understanding both your own group’s values, needs, beliefs, and emotions and those of the other group. It also entails moving beyond preconceptions and acknowledging the needs, rights, and legitimacy of the other side.

Respect at the negotiating table is critical for reconciliation. In Sri Lanka, negotiation dynamics were smoother when the government referred to its counterparts in the LTTE as “partners.” When the government later began calling the LTTE “terrorists,” progress was stalled. In Northern Ireland, a notable obstacle to reconciliation has been tensions between each group’s leaders and the communities they represent. Sometimes the challenge is not to shake hands with the enemy, but to garner enough support from your own people so that you can “make that handshake with the enemy.” Engaging civil society and religious institutions has helped. The Anglican, Presbyterian, and Catholic churches, for example, have played a constructive role by disavowing violence, protecting human rights, and supporting peace talks.

The value of interpersonal relations can be pivotal in promoting reconciliation and gaining critical support for an agreement. In Canada, for example, a visit to Nunavut in April 1990 by the minister of Indian Affairs and Northern Development to sign the Nunavut agreement-in-principle proved important. Inuit leaders welcomed the minister and took him and his wife out on the land for a few days, enabling them to sample the traditional way of life. The minister, who developed an appreciation for Inuit life and culture, supported a fair deal between Inuit and the Canadian government. In New

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Zealand, the power of an official apology has been proven. Validated land claims at the Waitangi Tribunal have been accompanied by an official apology to Maori claimants. To Maoris, according to Mariassouche, "this is worth more than money; this is the core of democracy." In the United States, the government continues to issue formal apologies to black leaders of the civil rights movement and blacks who were harmed grievously by past official policies.

### ***Ownership of land is not the same as control of resources.***

Inuit experience shows that the absence of formal or legal ownership of land does not preclude control over natural resources. Inuit chose to cede to the government of Canada their aboriginal title to land and natural resources in exchange for defined rights and benefits, including title to about 18 percent of their ancestral domain. They selected favored hunting and fishing areas, burial and other culturally important sites and areas with potential mineral deposits. Inuit also have significant management "rights" over the rest of their ancestral domain. They have the right of first refusal on development of sports and hunting lodges, the right to negotiate benefits with developers of mineral resources, and the right to receive royalties on land relinquished to the Canadian government.

In the Native American case, tribal lands are held in trust by the U.S. government, but functionally, tribal governments manage these lands as private property. Tribes have power to own, manage, and regulate tribal land, water, and natural resources, including those underneath the soil. Tribal governments can also set zoning controls. The U.S. government retains power over the property through taxation, environmental regulation, and other forms of legislation.

Maoris and Bougainvilleans possess surface, but not subsurface, title to their traditional lands. However, they retain a measure of control over the development of resources underneath the soil. In Bougainville, major development projects cannot proceed without Bougainvillean approval. The Australian-run copper mine that became the focal point of Bougainvillean discontent was closed down even though, at its height, it produced 46 percent of PNG's exports and 17 percent of its revenues. New mine development requires compensation to Bougainvilleans whose rights to surface land would be disturbed.

Compromise is often necessary in negotiating control over natural resources. In Sudan, the southern Sudanese agreed to a fifty-fifty sharing arrangement of oil revenues with the North, even though the oil belonged to the South. This compromise paved the way for an arrangement whereby, in the future, should the South elect to secede, it would keep 100 percent of the oil revenues. The North, in essence, has an incentive to improve relations with the South so that it can continue to benefit from the South's natural resources. Meanwhile, the North pledges to strive to make the unity option attractive to the South.

### ***Effective negotiations and governance require unity and professionalism.***

In negotiations and in the subsequent effort to establish governance arrangements for a minority group, unity and professionalism are critical. Maoris, Bougainvilleans, and Native Americans all offer lessons in intragroup dynamics. Among Maoris, generational and tribal differences exist on governance matters and policy preferences. There are seventeen Maori members of Parliament, but they differ in their philosophies and do not share a uniform affinity with Maori culture, language, and values. In governance, Maoris still need to catch up in accounting skills, information technology, and entrepreneurship.

In Bougainville, communities, even villages, fought violently among themselves while waging a secessionist conflict against the PNG government. Bougainvilleans were split between separatists and those who wanted to stay within PNG. A first step in the peace process required building unity among factions in Bougainville. Traditional leaders, younger people, and women's groups played an important role in bringing about accommodation among rebels, civilians, and the resistance movement that preferred to stay in PNG. This made possible the signing of an agreement in 2001. Bougainvilleans were granted many powers in their autonomy agreement with PNG, but they are able to exercise these powers

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only slowly and sequentially. As Bougainvillean capacity to govern increases, their self-governance powers will also expand.

Internal unity has also been a challenge to Native Americans. Historically, weak tribal alliances and intense intertribal warfare caused Native Americans to succumb to the “divide and conquer” strategies of European colonizers. Today, unity can sometimes remain elusive among the 500 federally recognized tribes that have separate governments, constitutional documents, and procedures. Native Americans need to work together to react to legislative proposals that affect their rights. Toward this end, they have established intertribal councils on timber, fishing, and other natural resources. Many Native American leaders recognize that, without unity, their initiatives would be “dead on arrival.”

In contrast to other minority groups, Inuit have benefited from intragroup unity. In the 1970s, Inuit sat down to discuss what they wanted their future to look like. They were clear, united, and consistent in their vision and position. They solicited lawyers to translate their vision into documents that could be proposed and discussed at the negotiating table. When an agreement was signed, the challenge for Inuit was to enhance their governance capabilities. Pursuant to the 1993 Nunavut Agreement, the government of Nunavut came into effect in 1999. The long-term challenge is to ensure that Inuit are able and qualified to take up the positions in this government commensurate with the fact that they comprise 85 percent of the territory’s population. At present, Inuit hold approximately 40 percent of the positions in the government of Nunavut.

In Northern Ireland, former militant groups realized that they needed training and skills other than waging war to be able to govern effectively and transform their violent struggle into electoral politics. They needed to learn how to build political parties. They needed skills to become more articulate and credible representatives of their people.

### ***Outsiders can be helpful.***

Outside friends can catalyze agreements on ancestral domain and peace. In Bougainville, the assistance of New Zealand, Australia, and the Pacific Island Forum helped lead to the 2001 peace agreement and continues to contribute to the agreement’s implementation. Outside funding allowed Bougainville to set up its autonomy; create governance institutions; conduct elections; and undertake reconstruction, reconciliation, and trauma counseling. New Zealand’s neutral and culturally sensitive role has been especially useful. Instead of cordoning the parties in hotel rooms to negotiate, the Maoris challenged Bougainvilleans to football and *hakka*, a Maori dance of welcome and daring. Maoris also started peace talks with prayer, which resonated with Bougainvilleans. The United Nations was involved in the early stages, sending a small but important observer mission to oversee weapons disposal. The Pacific Island Forum, including Fijians, Tongans, and others, put together a helpful international monitoring group.

In Northern Ireland, powerful outsiders such as the United States, the United Kingdom, the European Union, and the Republic of Ireland were indispensable to the success of negotiations and implementation. These outsiders guided the peace process and brought in critically needed grants and investments. They provided good offices for negotiations. They delivered technical assistance, especially on controversial matters that the parties in conflict would have found difficult to resolve themselves. Technical committees of experts from neutral countries such as Finland and South Africa were organized to tackle sensitive issues—the decommissioning of weapons, victims’ rights, police reform, and human rights. Outsiders also set up transparent mechanisms and rules, conducted public consultations, and made unpopular decisions. Negotiators in Northern Ireland also looked outside for “best practices” and borrowed heavily from the lessons offered by the South African and Oslo peace processes.

In Sri Lanka, an important lesson is that no amount of outside intervention can help if the principals are not ready for peace. India’s failed intervention in 1985–1990 illustrates this. Indian policymakers believed that they could impose a solution to the conflict, while the Sinhalese and Tamils each separately believed that they could still win the war.

***Today, unity can sometimes remain elusive among the 500 federally recognized tribes that have separate governments, constitutional documents, and procedures.***

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***In Sri Lanka, an important lesson is that no amount of outside intervention can help if the principals are not ready for peace.***

The tragic result was that the Indian army occupied part of Sri Lanka and fought the LTTE for one and a half years. In retaliation, the Tamil Tigers assassinated Indian leader Rajiv Gandhi in Tamil Nadu.

Intervention in Sri Lanka by Norwegians from 2000 to the present has been timed more propitiously. Initially, the Norwegians delineated the framework for talks by stipulating that Sri Lanka's territorial integrity was not negotiable. They have also gone to great lengths to show respect for the LTTE. They have provided technical help and acted as a buffer during periods of high tension and confrontation. They have also served as a witness to bad behavior. Some drawbacks exist, however. Sometimes a buffering actor can hinder badly needed direct communication between the parties in conflict. Or an outsider may appear inconsistent in policing bad behavior, including violations of cease-fires and of human rights.

In the Sudanese case, the U.S. Institute of Peace supported various initiatives involving a group of resource persons from Africa and such prominent international personalities as former presidents Jimmy Carter of the United States and Olusegun Obasanjo of Nigeria. Six months before the presidential elections that brought George W. Bush to power, the Institute supported a task force convened by the Center for Strategic and International Studies to develop a concerted U.S. policy for Sudan. Initially, the task force did not see Sudan as a country of vital interest to the United States, except for its involvement with international terrorism, destabilization of its neighboring countries, and the humanitarian crisis resulting from the civil war in the South. By the end of its deliberations, the task force had set the end of the war as the highest priority. President George W. Bush put Sudan and the end of the war high on his policy agenda. Working closely with Italy, Norway, and the United Kingdom and within the framework of the initiative undertaken by the neighboring countries of the Inter-Governmental Authority for Development, the United States was able to broker the Comprehensive Peace Agreement between the government of Sudan and the Sudan People's Liberation Movement and Army (SPLM/A), which was signed in Nairobi on January 9, 2005.

### ***A good agreement keeps the grandchildren in mind.***

***A serious approach to ancestral domain and peace must shun the temptation to gain short-term tactical advantages to the detriment of longer term, strategic solutions.***

A serious approach to ancestral domain and peace must shun the temptation to gain short-term tactical advantages to the detriment of longer term, strategic solutions. In Sri Lanka, political parties jockeying for temporary advantages have attacked genuine problem solvers in the civil war as "traitors." The Sri Lankan government and LTTE, despite a cease-fire, have each sought tactical advantages and prevented the formation of an effective partnership. The government, for example, wooed the international community and attended aid conferences by itself to talk about reconstructing war-torn Tamil areas. This move, understandably, aggravated the LTTE. For its part, the LTTE killed Tamil political opponents despite the cease-fire, recruited children for its army, killed military intelligence officials, and committed human rights violations. These dynamics help explain why a workable agreement has not yet emerged in Sri Lanka.

But in cases where long-term, grand, strategic solutions are not possible, achieving short-term operational compromises may lead to genuine progress. In Northern Ireland, Bougainville, and Sudan, final governance arrangements for the minorities in conflict were deferred. In the latter two cases, a deferred referendum on final political status was agreed upon. In Northern Ireland, accommodation was reached on day-to-day matters—for example, taxation and health care. In Bougainville, Bougainvilleans gained their own police force, taxation powers, public service, correctional institutions and court structure, traditional dispute resolution mechanisms, and criminal code (subject to national monitoring). Bougainville also gained the right to join international forums and to apply for foreign aid as long as doing so did not undermine PNG's position.

### ***Opportunities for self-help must be seized.***

Minority groups must create and seize opportunities to help themselves while long-term arrangements on territory, economic resources, and governance are being negotiated. In

New Zealand, Maori women resolutely decided to stop the destruction of their culture. They began teaching Maori language to children even before the Waitangi Tribunal was set up to officially redress Maori grievances. The women refused to accept a fate of alcoholism, drugs, unemployment, and jail for their children. Taking responsibility for themselves was a lesson the Maoris took seriously.

Native Americans, too, have seized opportunities to help themselves. They have built casinos on their reservations, using some of the income for Native American education, art, museums, and per capita distributions to tribal members. Although casinos are only a limited solution, they have allowed some tribes to move beyond the stereotype of the “lazy, dirty, alcoholic” Indian. Prosperity and wealth are themes that Native Americans want to develop. Those with resources from casinos have diversified into other businesses, and have become political players by making financial contributions to politicians and organizations that protect Native American interests.

### ***Thinking beyond labels can be constructive.***

The quest for self-determination is a dream that cannot be denied to minorities. Simultaneously, the quest to preserve territorial integrity cannot be denied to states. Labels such as secession, self-determination, territorial integrity, federalism, autonomy, free association, and independence can be loaded with negative connotations. It may be useful for parties in conflict to think beyond labels and focus on underlying, fundamental interests. What are the most important matters in negotiating ancestral domain? The first is societal consensus: any agreement reached must have sufficient public support. The second is accommodation—and even celebration—of differences. Compromises are possible to meet the underlying needs of each side. It is also important to appreciate and nurture the cultural and historical legacies of minority groups because these enrich the national fabric. Third, the goal of “unity in diversity” and full citizenship for all inhabitants of a state must be paramount. When minority identities are acknowledged and accepted, and when minorities feel they have the same rights as other citizens, a peaceful and stable state becomes possible.

### ***You cannot please everyone, but fight a good fight.***

Ancestral domain settlements can become problematic if they create new oppressed minorities or provide fodder for big spoilers. One of the most serious problems that arose, for example, with the Nunavut Agreement was not with the Canadian government, but with an adjacent indigenous group that objected to the boundary of the Nunavut Settlement Area. Negotiators must anticipate potential opposition to an agreement and deal with it early. Appropriate dispute mechanisms should be established. Spoilers must be anticipated. If at all possible, potential spoilers who could be won over to an agreement should be given adequate attention.

Inuit first identified the mining industry as a potential spoiler. But they found common interest with the mining industry, which wanted certainty to legal title and clear development rules. Inuit convinced mining executives that they could be as good landlords as the government. They discussed environmental, social, and commercial arrangements, and eventually, the mining industry came to support an Inuit deal. Canadian federal agencies were also potential spoilers. Inuit leaders had to find allies in these agencies and help them understand the merits of the Inuit position so that they could be presented clearly to government departments. Finally, potential spoilers came in the form of ideologues who opposed collective, indigenous group rights. Inuit leaders mounted tours to present their case before editorial boards and other opinion leaders. They understood the need to fight a battle for hearts and minds. The final effect of these efforts is not clear, but several lessons became apparent: there is no substitute for effective political leadership; a minority group must be articulate in making its petitions; drafting agreements using internationally accepted principles appeals to a broader public; and international allies, including foundations and intellectual communities, can play a supportive role.

***The women refused to accept a fate of alcoholism, drugs, unemployment, and jail for their children.***

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***The Moro narrative of a marginalized minority resonates strongly with the history, grievances, and quest for self-determination of minority groups elsewhere.***

***The first set of challenges is technical and legal and involves the details of “getting to yes” on ancestral domain.***

## Conclusion

This report has emphasized international perspectives and experience on ancestral domain. However, the Institute workshop also discussed the Bangsamoro experience, without directly addressing topics related to official ancestral domain negotiations. The Moro narrative of a marginalized minority resonates strongly with the history, grievances, and quest for self-determination of minority groups elsewhere. By putting ancestral domain on the table, the GRP and MILF have taken a courageous step, indicating their recognition of the need for a long-term strategic solution to the Bangsamoro situation. The GRP and MILF are confronting difficult themes. Yet they are not doing so in isolation; others have tackled similarly contentious issues with varying degrees of success. Lessons may be drawn from both successes and failures elsewhere.

Common questions arise in the Bangsamoro situation and in the cases of other minorities. What arrangements can guarantee full citizenship rights to the Moros and address their underlying grievances? How can the GRP and MILF address the needs of their constituents without playing a zero-sum game? Do the Moros have a vision of self-governance in a Philippines to which they could belong fully as citizens? Does the government have a credible plan for enhancing Moros’ sense of Filipino citizenship? Have both parties learned lessons from past peace agreements, and are both prepared to hammer out a settlement that would effectively address the Moro quest for self-determination?

Genuine progress has occurred in the GRP-MILF peace process. The two-year-old cease-fire—guarded by local and international monitoring teams—has enhanced public confidence in the possibility of a lasting peace. Reconciliation is taking root at various levels, including the grassroots (with the establishment of peace zones) and influentials and opinion makers (e.g., the Bishops-Ulama forum and civil society institutions). Serious international attention is focused on the conflict in Mindanao, and many outside friends stand ready to render assistance during the peace talks and in the potential implementation phase of an agreement. Malaysia is playing a useful role as the official facilitator of talks. The passage and implementation of the Indigenous Peoples’ Rights Act, while not yet highly applicable to Bangsamoro ancestral domain, sets a hopeful precedent in the recognition and protection of minority territorial, economic, cultural, and human rights in the Philippines.

Progress in Mindanao indicates that the government and the MILF are forging their own “best practices” in confidence-building and conflict management. They could learn from international experience, but should also stand ready in the future to share their success with other groups and countries that are in conflict. They also need to address remaining substantive challenges. The first set of challenges is technical and legal and involves the details of “getting to yes” on ancestral domain. What constitutionally viable arrangements can be offered to the Bangsamoro? Clearly, most of Moro ancestral domain can no longer be restored. What forms of compensation can be offered instead of land? Compensation does not necessarily mean cash. Besides Philippine government resources, which are meager, can outside friends of the Philippines as well as Philippine business interests be convinced to assist in Bangsamoro development as a form of compensation? How will the rights of non-Moro indigenous groups and minority Christian populations be protected within a Bangsamoro homeland? What democratic procedures—including a referendum or charter change toward federalism—might be considered, and how can they be appropriately structured to address the needs and wishes of the Moro majority?

The second set of challenges is operational and has to do with implementation. Few in the Philippines would aspire to the same level of implementation that characterized the 1976 and 1996 peace agreements in Mindanao. What can be done to ensure a more robust, punctual, and verifiable implementation of an ancestral domain agreement and a subsequent political settlement? What can the GRP, MILF, civil society, and outside actors do now to preempt potential spoilers? How can post-agreement violence be prevented? In the Bangsamoro community, unity is needed among a critical mass of leaders and their

constituents. How can Moros forge a unified vision of their future and translate this vision into practical proposals? How can domestic and international actors help diminish chaos and give the Moros time to build institutions for effective governance and development in a Bangsamoro homeland? What can GRP and Moro leaders do to reduce the violence that is attributed to interclan rivalries and criminality? A peace agreement, no matter how beautifully framed, will not work if the situation on the ground is mired in violent dynamics.

The third challenge is perhaps the most difficult: how can national reconciliation or a massive change of heart and mind be effected? This question does not concern theoretical idealism, but quotidian reality. Observers of the Moro experience can attest to the deep prejudice from which Moros have suffered for centuries and continue to confront daily. Bad blood between Muslims and Christians from the colonial era has been revived by battles of the past few decades. When do people recognize that violence is not accomplishing their goals? How can the government, Moros, and Christians in Mindanao be persuaded to do the right thing and fundamentally alter the narrative of Mindanao and of Moros in the Philippines? What is at stake is not short-term interests, but the future of Moro and Christian children and the international reputation of Philippine government and society.

For too long, the conflict in Mindanao has hurt individuals, communities, and the entire country. At this juncture, forces for peace must focus on reconciliation. Priests, ulama, civil society organizers, historians, teachers, youth leaders, military commanders, guerillas, civil servants, celebrities, and all interested parties must work to change prejudicial attitudes and mutual threat perceptions between the majority Christian and minority Moro populations of the Philippines. A crying need exists, in the words of a Philippine historian, to “create a new generation with as little bias as possible.” If this effort succeeds, the Moros will no longer feel like “strangers in their own homeland.” A transformed, stable, and prosperous Mindanao for all groups living in it can become reality.

***A peace agreement, no matter how beautifully framed, will not work if the situation on the ground is mired in violent dynamics.***

***All interested parties must work to change prejudicial attitudes and mutual threat perceptions between the majority Christian and minority Moro populations of the Philippines.***

# Appendix A

## *List of Workshop Participants*

### **Philippine Government Representatives**

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An online edition of this report can be found at our website ([www.usip.org](http://www.usip.org)), together with additional information on the subject.

## Of Related Interest

The Philippine Facilitation Project has also produced the following publication:

- *The Mindanao Peace Talks: Another Opportunity to Resolve the Moro Conflict in the Philippines* (Special Report 131, February 2005)

For book sales and order information, call (800) 868-8064 (U.S. toll-free only) or (703) 661-1590, or fax (703) 661-1501.



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