

## Can the wrongs be righted? Prospects for remedy in the Philippine oil palm agro-industry

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### Abstract

State-based and corporate remedies are increasingly offered as solutions to intractable issues provoked by land-based investments, such as the oil palm agro-industry. In this paper, we critique this shift towards procedural governance fixes, drawing on theories of the legitimizing function of corporate responsibility and mechanisms of elite capture in agrarian states. We contrast the ambition of remedy with local reality in one controversial oil palm project in Palawan Province, the Philippines, showing how it was operated by companies, banks, agencies and politicians who lacked either the capacity to rein in the project once it became evident it was causing harm to farmers, or an interest in doing so. Our findings add to understanding of the shifting nature of elite capture through transnational agro-industry, as this is one of the first detailed examinations of the growing oil palm sector in the Philippines. They also show how the remedies discourse remains rooted in colonial doctrines and neoliberal constructs and thus is prone to deflect attention away from more appropriate harm prevention strategies. We argue that functional remedies will only arise once states and companies confront competing land and resource claims and relinquish more control over new procedures to local and indigenous communities.

**Keywords:** Palm oil; Access to Remedy; Accountability; Southeast Asia; Philippines; Palawan.

## 1. INTRODUCTION

Dispossessing local and indigenous communities of their land and other natural resources has often-times been a persistent feature of agrarian development and large-scale development projects. This is especially so when land-based investments are pursued as means to move local and national economies out of poverty, supposedly necessitating privatization of land ownership and the development of capitalist markets (e.g. de Schutter, 2011). It is well known how dynamics of injustice are propagated in agrarian export-oriented economies that still characterise many Southeast Asian nations, including the Philippines, when landed elites and their national or international corporate partners can exploit legacies of poorly performing policies, overlapping resource tenure regimes and unresolved land claims (Borras and Franco, 2005; Novellino and Dressler, 2010). The continued unfolding of the oil palm agro-industry, throughout Southeast Asia, is particularly emblematic of these governance failures (Casson and Obidzinski, 2002; McCarthy et al. 2012; Cramb, 2013; Pichler, 2015).

In the past decades, typical responses to these concerns have been varied but often included a mixture of neoliberal fixes, comprising of a ‘spectrum of governance approaches ... to synergize protection of vulnerable populations and highly-valued natures from the destructive effects of markets’ (Anthias and Radcliffe, 2015: 257). These approaches are characterized by assumptions of an alignment between local and indigenous values and state conservation interests and the possibility to protect areas through legislative and regulatory mechanisms, such as collective land titling. Across the world, including in the Philippines, these efforts have generally been conceived within what Bryan (2012) denotes the ‘territorial turn’; that is, attempts at making space governable by reconciling overlapping land and resource claims through spatial delineations of territory. Whereas the notion of neoliberal fixes originates in the Marxist-inspired literature on the commodification of nature (e.g. Castree, 2003) we use it here, as do Anthias and Radcliffe (*ibid.*), to critique a broader range of governance approaches that have emerged alongside such marketization.

In this paper, we argue that attention must now be paid to a new kind of governance fix, cast within what we may – responding to Bryan (2012) – term a non-territorial ‘procedural turn’. While resting on similar neoliberal premises, the procedural turn aims to compensate for the failures in past territorial reforms. As we outline below, it does not presume final resolutions on the delineation of territory and material rights but offers procedures by which competing claims can supposedly be (re)mediated. In making this argument, we draw on Åhrén’s (2016)

distinction between material and procedural rights: Material rights concern the ownership or use rights to resources traditionally used (i.e. a right to property). In contrast, procedural rights concern the right to participate in decision making – such as through the right to give or withhold ‘free prior and informed consent’ (FPIC). As such, procedural rights do not guarantee actual control over lands and resources. Rather, it provides the *potential* for exerting influence in decision making that effects these resources, but premised on the degree of control relinquished by the state (or private actors).

One of the most visible expressions of the procedural turn is in the governance of transnational business, such as in the oil palm agro-industry. Here, a milestone has been the launch of the United Nations Guiding Principles on Business and Human Rights (hereafter the Guiding Principles), unanimously endorsed by the UN Human Rights Council in 2011 based on the work of the Special Representative on the topic of Business and Human Rights (SRSG) Prof. John Ruggie (UN HRC, 2008). Ruggie himself has clearly stated that he views the Guiding Principles as offering a novel ‘heterodox approach’ in that it does not place new substantial expectations on states or corporations, but provides procedure for implementing already existing standards and material rights, such as connected to the governance of territory (Ruggie, 2013). This is notably through offering ways to remedy harm when local and indigenous territorial rights are not respected.

## **1.2 Objective**

In this paper, our point of departure is the international procedural turn and specifically the propagation of remedies as alternative solutions to the intractable governance issues provoked by land-based investments. The question we ask is if such procedural remedies bolster previous territorial governance fixes and serve espoused objectives in the highly politicized and entrenched locales in which the agro-industry operates, such as in the Philippines and other developing southeast Asian nations. In other words, is it realistic to rely on such remedies to ‘right the wrongs’?

By exploring this question, we primarily make two theoretical contributions. First, we aim to add to the understanding of modern agro-industry development, notably oil palm, in the Philippines and the actual prospects for local and indigenous communities to exert agency and claim rights. Hence, after an expanded theoretical review, we pursue our investigation through contrasting the international remedies discourse with local reality in one specific example of an oil palm project in the Province of Palawan, in the Philippines. Through the case study, we

concur with Cramb's (2013: 85) articulation of the need 'for detailed empirical examination of individual cases to build up an understanding of the circumstances resulting in outcomes favourable to customary landholders through to those that constitute nothing more than a 'land grab', whether by domestic or international actors'.

Second, we aim to contribute to the critique of neoliberal governance fixes (e.g. de Schutter, 2011; Bryan, 2012; Anthias and Radcliffe, 2015), offering a conceptualization of the procedural turn and extending the critique to recent developments in the business and human rights field. Previous work has examined other procedural measures espoused to support the agency of local and indigenous actors, such as FPIC (e.g. Papillon and Rodon, 2016) and efforts at private regulation through certification schemes premised on consensus-seeking among business and civil society (e.g. Cheyns, 2014). However, the remedies discourse has been scarcely covered in this debate to date.

To set up a framework for the analysis, we draw especially on literature on the mechanisms of elite capture and access to justice limitations in agrarian states such as the Philippines (e.g. Kerkvliet, 1986; Angeles, 1999; Pichler, 2015) and a wider body of work on tokenism and legitimizing functions of corporate responsibility initiatives linked to land-based industries (e.g. Campbell, 2012; Ponte and Cheyns, 2013; Cheyns, 2014; Larsen et al., 2014). Below, before turning to our case study, we first summarize the novelty of the Guiding Principles as these relate to aspirations of remedy in the oil palm sector and the dynamics of elite capture and corporate responsibility initiatives, with focus on the Philippines.

The Philippine oil palm industry also merits attention in its own right; comparatively, much scholarly work has examined the development ramifications of the sector in neighbouring Indonesia and Malaysia. As a relatively new sector in the wider commodities market in the Philippines, however, very limited research has examined the social and environmental implications of the industry, its governance and prospects for corporate accountability. This paper is thus among the first to offer a detailed examination of the unfolding of a concrete corporate venture in the oil palm sector in the Philippines. As we demonstrate below, the case of Palawan also proffers insights on the dynamics of regionalization of Malaysian firms in Southeast Asia; in response to domestic stagnation owing to land scarcity, degradation and labour shortage (Varkkey, 2013).

## 2. BACKGROUND

The Guiding Principles consists of three pillars that clarifies the state duty to *protect* human rights in accordance with existing international human rights obligations (Pillar 1), the expectation placed on business to *respect* human rights (Pillar 2) and the right to *remedy* for victims of corporate related human rights abuse (Pillar 3) (OHCHR, 2011). Whereas the two first pillars primarily reiterate an obligation of harm prevention, the third pillar stresses the right to remedy for victims of corporate-related human rights abuse, from both states and companies. For industries such as the oil palm sector – entrenched in problematic legal and political structures of dispossession with high risks of human rights harm and often little ability of the state to fulfil its duty to protect from such harm through earlier territorial protection – part of the novelty of the Guiding Principles was to place clearer expectations on companies to respect human rights and to remedy any adverse human rights impacts they may have caused or contributed to (see also DIHR and ICAR, 2014). This is arguably important since, where harms have already occurred, remediation is the only option.

The remedies discourse is today enacted in the context of an ubiquitous blend of corporate social responsibility (CSR) measures, private regulation and so-called ‘hybrid’ state-corporate governance arrangements that tend to offer only cosmetic tools insufficient to address the deeper structural governance issues in the oil palm sector (e.g. Larsen et al., 2014). As observed in diverse contexts, including the Philippine environmental impact assessment regime (Bravante and Holden, 2009) and African mining (Campbell, 2012), most often CSR discourses are instrumental on behalf of their promoters, aiming to instil legitimacy in the face of governance ‘gaps’ that were purposefully created by the very same business alliances, governments, and international institutions now championing the new fixes. Such instrumentation may serve to deflect criticism, coopt stakeholder involvement, and undermine local resistance movements.

Along these lines, there is an evident risk that the remedies discourse feeds existing piecemeal efforts. As a case in point, in the palm oil industry, the Roundtable for Sustainable Palm Oil (RSPO) has since 2007 worked to implement its voluntary sustainability standard, representative of the ascendance of multistakeholder certification and roundtable models in the governance of global commodity chains (e.g. Ponte and Cheyns, 2013). It is well established that the RSPO – like many other measures for private regulation – has not moved much beyond standard setting and struggles with ensuring robust auditing and enforcement

(McCarthy and Zen, 2010; Schouten and Glasbergen, 2011). Still, an effective grievance mechanism comprises a central source of legitimacy of the RSPO and the General Assembly decided in 2013 to ensure the alignment of its Complaints System with the Guiding Principles' call for effective non-judicial remedy.

### **1.1 The politics of frontier land development in the Philippines**

The risks of corporate cooption of procedural governance fixes, such as with the remedies discourse, are arguably particularly pertinent in agrarian states, such as in the Philippines, with a legacy of the state apparatus being mobilized for purposes of continued conquest and elite capture in its agro-industries. Previous historical accounts (e.g. Broad and Cavanaugh, 1993; Novellino, 2000; Pulhin and Dressler, 2009) have shown how land dispossession in the Philippines was initiated during the colonial period, when the Spanish and American colonizers first ignored pre-existing land use and extinguished traditional rights to land and resources (i.e. through the *Regalian Doctrine*). Under the Regalian doctrine (today embodied in Section 2, Article XII of the 1987 Constitution) all lands of the public domain belong to the State and is the source of any asserted right to ownership of land.

This dispossession subsequently morphed into post-colonial (pre- and post-martial law) exploitation by state-based oligarchies. As elsewhere in the world, one of the vehicles of power was to impose myths of so-called 'vacant lands' where people had lived for centuries. Given the persistence of this colonial construction of upland environmental narratives and the genealogy of exploitation (Montefrio and Dressler, 2016), it is hardly surprising that territorial fixes have proven little effective in protecting the proclaimed rights of indigenous peoples and local communities in the Philippines. When international finance institutions such as the World Bank during the 1980s-1990s led large-scale programs for collective land titling of indigenous lands, the Philippines also saw the advent of the 1997 Indigenous Peoples' Rights Act (IPRA). Yet, bureaucratic methods of claiming titles or use rights under IPRA have often functioned as means of further cementing state and elite control over resources (e.g. Novellino and Dressler, 2010; Dressler et al., 2012).

In this legal-institutional context, varied forms of non-state social regulation by land-based local authoritarian elites have long overshadowed the state justice systems (Franco, 2008). As Angeles (1999: 669) has reviewed, scholarly work within rural political sociology has

articulated the ‘continuity of elites’ thesis, namely that resourceful people, who hold powers in business, government and religious communities, manage to retain influence over time through kinship networks, political parties, state patronage, foreign aid and warlordism. Efforts of elite capture have been steered by changing opportunities for accumulating wealth, for instance making the capture of local government more interesting when the 1991 Local Government Code provided internal revenue allotments (Vellema et al. 2011). In the agricultural sector, a prominent and well-known example is from the coconut industry, where the late President Ferdinand Marcos during his rule (1965-86) deployed state power to place control of this top agricultural export commodity into the hands of his presidential ‘cronies’ (Boyce, 1992).

Early work on the structuring of the relations between state, corporations and grassroots by liberalist market ideology was done by Kerkvliet (1977), who documented the disintegration of the patron-client relations between landlords and tenants and their informal rules and accords – ultimately removing the institutions that mediated difference and spurring the unrest known as the Huk rebellion. With the transnational investments and redistribution of power in capitalist networks, market dynamics are exerting new pressures on these relations. A shift is taking place from local authoritarian enclaves governed by land-based agro-industry elites to new transnational alliances of companies and government-based actors (Borras and Franco, 2005; Varkkey, 2013).

Studying the dynamics of the palm oil industry as it is now propagated by foreign, including Malaysian, investments in collusion with local government and businesses may here add nuances to the shifting nature of these relations. As noted above, not much work is yet available in this respect as concerns the oil palm sector in the Philippines. The studies that do exist point to important dynamics with great justice and development ramifications. In Mindanao, Vellema et al. (2012) have noted how the oil palm industry has, exploited by national elites in alliance with transnational companies, contributed to fuelling violent conflicts through enclosures and dispossessions. In Palawan, research into out-grower schemes (in the oil palm project that we examine further below) has shown how oil palm promotion has formed part of an ‘appropriationism’ that incorporates local agricultural systems into a transnational industrial mode of production, largely dictated by foreign companies (Montefrio and Sonnefeld, 2013).

### 3. METHODOLOGY

Empirical evidence is presented from a study of one specific agro-industrial venture; namely: the Integrated Palm Oil Plantations Development, Production and Processing Project in Palawan Province, Philippines. This project is managed by subsidiaries of the Malaysian company Agusan Plantations, Inc. with support from the national and the provincial governments. We adopted a participatory and qualitative case study approach, aiming to foster a collaborative process of inquiry and learning with research participants (e.g. Nielsen and Svensson, 2006).

The main research activities included the following: (1) field observations, (2) key informant interviews, (3) focus group discussions (FGDs), and (4) stakeholder consultations. The research team also joined field trips with local non-government organizations (NGOs) and several meetings convened by key actors involved in the oil palm sector to learn from the exchanges and provide scientific advice. This also included advisory and support to the smallholder farmers as they sought to renegotiate their contracts with the oil palm company. A multi-stakeholder seminar was held on 13 December 2013 at the Palawan State University (PSU) main campus in Puerto Princesa City (the provincial capital) to share the findings and consolidate the results with many of the participants in the study.

The work was undertaken in Puerto Princesa City and the six southern municipalities (Aborlan, Bataraza, Brooke's Point, Quezon, Rizal and Sofronio Española) of Palawan Province that are sites of palm oil developments. It was chronologically undertaken in two periods: the first period (scoping) in June 2013 and the second period (consolidation) November and December 2013. Moreover, one member of the research team had substantial insight into the history of the project, having been involved in the establishment of the oil palm project since its inception in 2007.

In total, interviews, consultations and FGDs were conducted with over 100 people; and many were engaged on several occasions for follow-up conversations and/or joint activities as part of the inquiry. The contributors had their main affiliations with 10 provincial offices of several national government agencies; 6 provincial government offices, including legislative council members; 12 municipal and *barangay* (village) government offices in southern Palawan, including mayors and *kagawads* (municipal/city councillors); 3 companies involved in the sector; 14 oil palm growing smallholder cooperatives, including chairpersons, board members, managers and individual members; 2 independent growers; 4 NGOs, including

directors and field staff; 8 councils and associations of indigenous peoples from the Batak, Palaw'an, and Tagbanua tribes; and individual farmers, plantation workers and community members. Conversations were preceded by either written or verbal introductions to the study and obtaining of verbal consent. Meetings with tribal representatives were based on prior agreement with and facilitated by staff from Natripal (*Nagkakaisang Tribu ng Palawan / United Tribes of Palawan*).

During the engagement with participants, conversations centred on eliciting experiences with the environmental and livelihoods impacts arising from the oil palm industry and the efficacy of the governance regime in providing remedy, when needed. We have synthesized the insights into a narrative, presented below, that has thus been partly co-constructed with the participants. The final interpretation and conclusions are the responsibility of the authors alone. We indicate when certain arguments are attributable to a specific perspective among the contributors or cite the source of factual information. However, we apply the principle of non-attribution when the participants requested to remain anonymous or we judge that confidentiality is warranted.

#### **4. THE OIL PALM AGRO-INDUSTRY IN PALAWAN, PHILIPPINES**

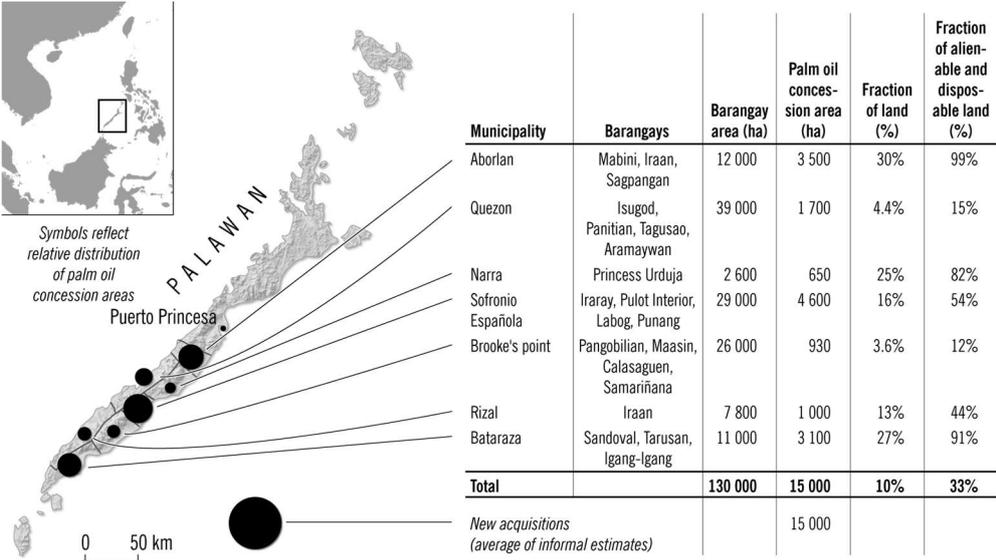
During the last decade or so, the Philippines has seen a rapid expansion of oil palm cultivation, with the government vying for attention as a new oil palm producer in Southeast Asia. The first Philippine Palm Oil Industry Development Plan (2004-2010) was aimed at converting close to 120,000 hectares (ha) into oil palm cultivation by 2010. A new road map has been in progress for several years, led by the Philippine Coconut Authority (PCA).<sup>1</sup> While the figures are uncertain, the PCA estimated in 2009 that more than 46,000 ha of oil palm were cultivated in the country of which Palawan Province accounted for about 7 per cent (PPDCI, 2009).

Palawan Province – together with the provinces of Iloilo, Bohol and Cotabato – was chosen as a pilot province for investments. The first batch of oil palm seedlings were planted in Palawan in 2007 and the initial harvest commenced in 2011, with the PCA recording a harvested area of 3,592 ha (Nozawa, 2011). Six of Palawan's 12 mainland municipalities have seen the

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<sup>1</sup> According to the PCA the plan has now been updated to 2014-2023. This document is undergoing a series of consultations and is not yet public.

expansion of oil palm plantations, where the cultivation comprises of a significant part of the land area (Fig. 1). The island’s (so far) only palm oil mill, processing Crude Palm Oil (CPO) and located in *Barangay* Maasin in the Municipality of Brooke’s Point, has a milling capacity of 90 ton Fresh Fruit Bunches (FFB) per hour (DENR, 2010).



**Figure 1. Spatial distribution of oil palm developments in Palawan’s southern municipalities.** In the absence of reliable data on the actual extent of cultivations, concession area data is derived from the permits issued by the Department of Environment and Natural Resources (DENR). The DENR is the national or federal government agency that is primarily responsible for environment and natural resources management. The fraction of alienable and disposable land (lands of the public domain classified as not needed for forest purposes) is estimated based on the provincial average. Cultivation has progressed in all municipalities except Narra. A relative indication of new acquisitions (additional to the existing project) is included, based on informal estimates from consultations (i.e. 2013 data). (Graphic produced by Nordpil.)

**4.1 Project inception**

The inception of the oil palm project in Palawan was contingent on the overlapping interests of the provincial government, *Palaweño* businessmen and international investors. Important contacts transpired during the 1998 Philippine Oil Palm Convention in Davao City, Mindanao.<sup>2</sup> The Provincial Government, under the then governorship of Mr. Joel Reyes,

<sup>2</sup> See also Philippine Palm Oil Development Council, Inc. 2009. The 6<sup>th</sup> National Oil Palm Congress – Proceedings. 25-26 June 2009, Asturias Hotel, Puerto Princesa City, Palawan.

actively facilitated the launch of the project, courted international investors, and used the convention in Davao City to lobby the national government to include Palawan as a pilot province in its national program.<sup>3</sup> National government agencies, including the PCA, the Palawan Council for Sustainable Development (PCSD), the DENR and the Department of Agrarian Reform (DAR), subsequently banded together to establish an inter-agency team. The PCA, as the nationally-mandated agency, led the inter-agency team to convince investors to bring oil palm to Palawan.

The national and provincial governments promoted the industry with a promise of economic benefits to cash-strapped local governments and land owners looking to improve limited livelihood opportunities. This was welcomed by many local governments and farmers in the southern municipalities of Palawan, where the proportion of the population living below the national poverty threshold ranged from 53 per cent (Aborlan) to 78 per cent (Rizal). In the Municipality of Brooke's Point alone, around 400 local residents were as of November 2013 employed full or part-time in the oil palm sector.<sup>4</sup> The *Sangguniang Panlalawigan* (Provincial Board) members and municipal governments endorsed the project based on hopes of economic gains from the cultivation itself but also increased employment, land value, business tax and real property tax.<sup>5</sup> Some municipal-level politicians also saw opportunities to engage in the oil palm industry through their own business activities, for instance, as sub-contractors or as middlemen in the land acquisition process.

The establishment of oil palm cultivation and promotion of private sector agro-business ventures in Palawan formed part of the national government's objective to reduce palm oil imports and to seize shares in the international market. This development strategy was first espoused in the previous Gloria Macapagal-Arroyo Administration's Medium Term Philippine Development Plan (MTPDP) for 2004 to 2010. It was subsequently carried over into Benigno Aquino III administration's MTPDP (2011-2016). In the current MTPDP (2017-2022) of President Rodrigo Duterte, oil palm remains a priority commodity, but the geographical focus is more in Mindanao. In Region IV-B where Palawan belongs, the

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<sup>3</sup> Interview, Provincial Government staff involved with the inception of the palm oil project, Puerto Princesa City, 24 June 2013

<sup>4</sup> Interview, Government staff, Municipality of Brooke's Point, 10 December 2013

<sup>5</sup> Interview, LGU staff, Municipality of Brooke's Point, 20 June 2013 and Municipality of Quezon, 21 June 2013. (Local legislative power is exercised by the Provincial Board, as the legislative body of the provincial government, and thus, it is primarily responsible in enacting ordinances, approving resolutions and appropriating funds for the general welfare of the province and its inhabitants.)

priorities are seaweed, cacao, rubber, coco coir and tourism. The promotion of the oil palm industry is intended to contribute to poverty alleviation, harness supposedly ‘vacant lands’, increase gross productivity and include marginalized smallholders and land owners in the market economy through cash cropping. The Biofuels Act 2006 (Republic Act or RA 9367) also ranked oil palm as a strategic agro-business crop and set mandatory targets for blending of biodiesel partly based on palm oil.

Mirroring the view of the national development plans, the provincial and municipal governments promoted the palm oil project based on the assumption of abundant vacant lands available for new agro-business activities. This is demonstrated through statements by local government executives such as ‘[we] welcome agro-business, [we] have much vacant land’.<sup>6</sup> Cultivation, they generally argued, would only be taking place in the so-called vacant or idle lands, with no competition with other land uses such as forestry, human settlements or food crops. Only in Narra was the municipal government less inclined to welcome the project. Narra is known as the ‘rice basket’ of Palawan, and politicians and farmers alike had little interest in shifting from rice cultivation to oil palm.<sup>7</sup>

#### **4.2 The company and the enrolment of farmers and labourers**

The project that was eventually established is operated by the Palawan Palm & Vegetable Oil Mills, Inc. (PPVOMI) (60 per cent Singaporean and 40 per cent Filipino-owned) and its sister company Agumil Philippines, Inc. (AGPI) (75 per cent Filipino-owned and 25 per cent Malaysian). The parent company is Agusan Plantations, Inc., which is domiciled in Malaysia. PPVOMI is operating the oil palm mill in *Barangay* Maasin, Municipality of Brooke’s Point. Meanwhile, AGPI is the contracting party in the cultivation of oil palm. AGPI receives corporate finance from First Consolidated Bank and the Land Bank Countryside Development Foundation, Inc., a non-profit subsidiary of the Land Bank of the Philippines (LBP) (Land Bank of the Philippines, 2010). According to its President, Agumil sells CPO and kernel oil to a broker in Singapore for further sales.<sup>8</sup>

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<sup>6</sup> Interview, Municipal councilor, 22 June 2013 (place confidential).

<sup>7</sup> Interview, LGU councilor, 23 June 2013 (place confidential); Interview, Ms. Lucena Demaala, Mayor of Narra, 11 December 2013.

<sup>8</sup> Interview, Mr. Lim Chan Lok, President and CEO Agusan Plantations Inc., Municipality of Brooke’s Point, 28 November 2013. (As a privately-owned company, AGPI does not have the reporting obligations, which listed companies have. Therefore, it has no publicly available information on its supply chain, such as information on buyers or on its operational processes of milling and manufacturing.)

AGPI has accessed land for cultivation through a combination of lease agreements, contract arrangements with farmers in out-grower schemes and some contracts with independent farmers. This out-grower model appears to be patterned after the Agusan Group's experiences from Mindanao and Malaysia, relying on a so-called nucleus-estate model (Cramb and Curry, 2012). Most farmers are agrarian reform beneficiaries who have been granted individual titles for a maximum of three hectares through Certificates of Land Ownership Award (CLOA). With the implementation of the Comprehensive Agrarian Reform Law (CARL) of 1988 (RA No. 6657) and the 2009 Comprehensive Agrarian Reform Program Extension with Reforms (CARPER, RA 9700), previous state farms and private estates (*haciendas*) in the province were redistributed to beneficiaries, who are largely migrants from other provinces in the archipelago. Continued in migration is one of the reasons why the annual population growth rate of Palawan (2.66 per cent) has been higher than the national average (1.9 per cent, both 2010 Census figures)

When the study was undertaken, four self-financed farmers were involved in the project; they found a business opportunity where they could mobilize finance and land inherited through the land reform program or obtained through subsequent acquisition. About 14 palm oil growing smallholder cooperatives, registered with the Cooperative Development Authority (CDA) under the Philippine Cooperative Code (RA No. 9520) of 2008, were involved in the out-grower scheme. Some plantations were established prior to this date while others were set up specifically for the project, encouraged by the PCA.<sup>9</sup> Farmers with previous experience in oil palm cultivation, e.g. as migrant workers in plantations in Malaysia, opted for farming their own lands (in so-called 'pure' cooperatives). Meanwhile, those who lacked technical and/or financial capacity tended to opt for leasing out their lands to AGPI (as so-called 'anchor areas'). Some people were tempted by what appeared to be an easy source of income. One farmer expressed the common view that was circulating among smallholders: '...you can sit and relax and harvest once a week... or have others doing this for you.'<sup>10</sup> The cooperatives entered into a 25-year Production, Technical and Marketing Agreements (PTMA) with AGPI, wherein the cooperatives provide the land and organize manpower while AGPI provides the

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<sup>9</sup> Interview, PCA staff, Puerto Princesa City, 24 June 2013.

<sup>10</sup> Interview, Farmer, Municipality of Narra, 23 June 2013. (Harvesting schedules vary depending among other on the size of the planted area and labor force, ranging from weekly to fortnightly harvesting rounds, subject to instructions from the Agumil supervisors.)

seedlings and technical know-how. To finance the project, cooperatives obtained a Term Loan with the Land Bank of the Philippines, under the so-called Development Advocacy Program.

### **4.3 The emergence of grievances**

When we conducted the research, 7 of the 14 smallholder cooperatives had been unable to meet the targeted production and amortization on their loans (Fig. 2).<sup>11</sup> The remaining cooperatives barely meet the payment schedule and AGPI had imposed a 14 per cent interest rate on all additional expenses and a 10 per cent management fee. While no economic assessment was conducted in this study, one underlying reason for this unfavorable financial state of the farmers appears to be that the farm plans and fertilizer budgets, prepared by AGPI and the Land Bank of the Philippines as the basis for the cooperatives' loans, underestimated financial needs and took inadequate account of price fluctuations. For instance, the projected cost for chemical fertilizer was reportedly PhP 700/sack (one fertilizer sack equates to about 50 kg.), while the actual fertilizer price later increased to above PhP 1,300/sack.<sup>12</sup> Because cooperatives lacked financing to cover this price gap, they had to request an additional loan from AGPI at a contracted compounded interest rate of 14 per cent. The oil palm trees require regular fertilization at three-month intervals and omitting or reducing fertilization would, under the contract, represent mismanagement on behalf of the cooperatives while also reducing the future harvest.

The contractual regime thus established a patron-client relationship, with the company being widely perceived to abuse its privileged position as the island's only processor of FFBs. The contracts placed control with AGPI and most of financial and managerial risks with the cooperatives.<sup>13</sup> For instance, the sales price was not fixed but regulated through a pricing formula, with the input data decided at PPVOMI's discretion and without independent audits. The proportion of the FFB selling price received by the farmers is in this formula expressed by the so-called 'K-index' (per cent); setting this index is left entirely to the company whereas for instance in Indonesia provincial governments are mandated to adjust this index annually including by involving relevant technical expertise (Indonesian Regulation of the Minister of Agriculture 14/Permentan/OT.140/2/2013). Further, the formula also included an extra 15 per

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<sup>11</sup> Interview, Loan manager, Land Bank of the Philippines, Puerto Princesa City, 18 June 2013.

<sup>12</sup> Collated information from interviews with several cooperative chairpersons and board members. (Farmers obtaining special offers may be able to purchase fertilizer at close to PhP 1,000/sack but specialized fertilizer applications cost up to 1,800/sack.)

<sup>13</sup> Copies of contracts and loan agreements for several cooperatives are on file with the authors.

cent profit margin to Agumil – in addition to the ratio expressed in the K-index (see also Maryadi et al., 2004). Moreover, through a Management Services Agreement (MSA), the cooperatives had relinquished all management decisions to AGPI. In the process, they effectively lost the tenure over their lands.

The cooperatives alleged many specific instances of outright fraud associated with the contracts, explaining why they would enter into such an unfavourable business venture.<sup>14</sup> Many contracts were never reviewed by the Board of Directors but handled (and signed) only by the chairpersons. Some signatories were allegedly bribed by AGPI staff while others explained that they never read the contracts in detail:

‘The agreement was proforma, [it was] already prepared and I didn’t study it in detail before signing. Of course, I regret that now’.<sup>15</sup>

‘Agumil expanded [our area] into 750 hectares, yet without [a contract]. AGPI was adding new members to our cooperative, but I as the chair was not aware’.<sup>16</sup>

Two provincial government officials involved in the promotion of the palm oil project commented that the written terms and conditions were developed after the governmental promotion campaign among farmers and that management fee and interest rates changed during the final stage of contracting without government involvement.<sup>17</sup>

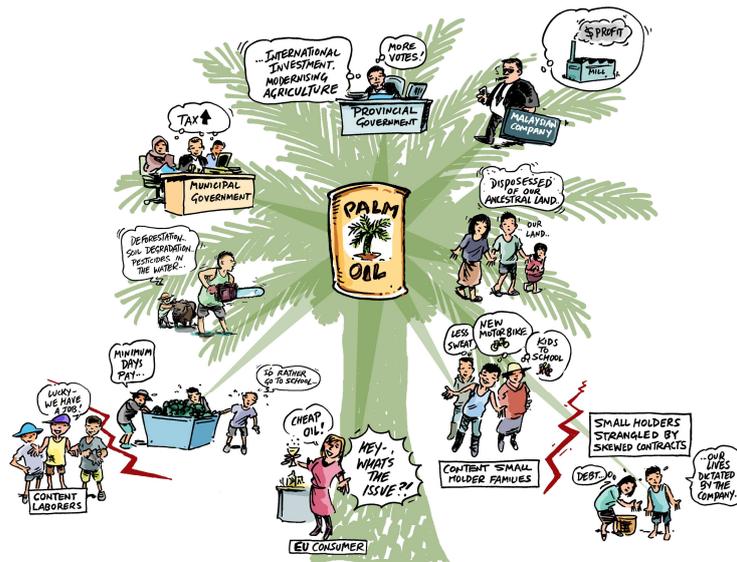
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<sup>14</sup> These concerns have also been articulated in, among other, a submission from the Association of Oil Palm Growers in Southern Palawan to the Provincial Government of Palawan on 27 November 2013 (“The Association’s stand on the PTMA and MSA”).

<sup>15</sup> Interview, Cooperative Chairperson, 23 June 2013 (place confidential).

<sup>16</sup> Interview, Cooperative Chairperson, 20 June 2013 (place confidential).

<sup>17</sup> Interview, Two Provincial Government staff representing different offices, Puerto Princesa City, 24 June 2013.



**Figure 2: Stakeholder interests in the oil palm project.** Diagrammatic representation of some of the views expressed by people consulted for this study. This diagram was used as a dialogical tool in the multi-stakeholder seminar to consolidate findings on 13 December 2013 in Puerto Princesa City. Art work by Simon Kneebone.

The process of land acquisition itself spurred a range of complaints regarding encroachment on indigenous customary lands. As one NGO employee, working for the rights of indigenous peoples, stated:

‘The company is still expanding... burial grounds [are] cultivated with oil palm... herbal plants and trees normally used by native doctors are cut...bamboos, trees, vines for daily life and wild fruits and materials for houses are cut or bulldozed’.<sup>18</sup>

Independent farmers and cooperative members acknowledged that it had been a challenge for many to provide the required land titles to secure the loans. In some cases, it was possible for farmers to enter the scheme even without formal land titles.<sup>19</sup> One senior AGPI staff acknowledged that

<sup>18</sup> Interview, Tribal farmer, municipality of Brooke’s Point, 19 June 2013. (CADC is the Certificate of Ancestral Domain Claim.)

<sup>19</sup> Interview, Cooperative Chairperson, 20 June 2013 (place confidential).

‘...yes, [we] committed mistakes... [land was] sold by land canvassers as ‘informal realty’. Half of such people are ex-DENR or ex-DAR employees, who know loop-holes in the system...’.<sup>20</sup>

A range of complaints also emerged regarding illegal cutting of trees and replacement of food crops. Cooperatives explained how they were ‘...forced to cut coconuts by the Agumil supervisor’.<sup>21</sup> Or that ‘Agumil encourages members to log timber to clear [land] for oil palm’.<sup>22</sup> Provincial Government staff and NGOs described widespread illegal timber harvesting in ancestral domain lands. Some *barangays* filed resolutions complaining over the replacement of rice fields, fallowed lands and coconut groves by the oil palm plantations.<sup>23</sup> In the municipalities of Quezon and Rizal, the DENR has identified 185 ha of oil palm cultivation in timberland, comprising forested land in and around the Mount Mantalingahan Protected Landscape (MMPL) (Presidential Proclamation 1815 signed in 29 July 2009) (35 ha) and in titled ancestral domains (150 ha). These illegally planted concessions comprise 66.2 per cent of the oil palm cultivation in these two municipalities.<sup>24</sup>

#### **4.4 Resistance**

Aggrieved farmers and indigenous groups have made – and at the time of writing continue to make – a variety of efforts to find redress through administrative channels in the municipal and provincial governments as well as national government agencies. However, government offices did not appear responsive to the complaints from indigenous peoples, farmers or environmental groups. Many officials explained that they generally considered the complaints from cooperatives as matters to be dealt with between private parties and that the cooperatives only had themselves to blame for engaging in contracts they did not legally understand or without required management capacity. As expressed by a Provincial Board Member, the

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<sup>20</sup> Interview, AGPI staff, Maasin, 28 November 2013.

<sup>21</sup> Interview, Cooperative manager, 19 June 2013 (place confidential). (The cutting of coconut stands without license is prohibited under the Coconut Preservation Act RA8048 of 1985.)

<sup>22</sup> Interview, Farmer, Municipality of Brooke’s Point, 19 June 2013

<sup>23</sup> See for instance Resolution no. 51 2011 of Barangay Ipilan, Municipality of Brooke’s Point

<sup>24</sup> The CENRO Quezon was the first DENR office to provide its consolidated map of oil palm expansion into timberland to the DENR. The other concerned CENROs were expected to submit their maps after conclusion of this study. See the document: ‘List of existing palm oil plantation in the municipality of Quezon and Rizal within the administrative jurisdiction of CENRO Quezon, Palawan, 2013’.

provincial politicians were moreover concerned not to interfere since this could impede their ability to attract new private investors in Palawan.<sup>25</sup>

In response to the limited government intervention, Palawan saw a growing self-organization and mobilization from among farmers, indigenous peoples, and civil society in general. The cooperatives formed The Association of Oil Palm Growers in Southern Palawan as a platform for coordinating the communication with the Provincial Government, filing resolutions and requests for support, and eventually also leading a renegotiation of the out-grower contracts with AGPI. However, the cooperatives had difficulty reaching agreement among its members and Boards of Directors. Individual members who disagreed with their Boards would still be subject to the decisions made in the cooperative. As one land owner explained

‘I don’t know my debt, it is a joint loan [in the cooperative] ...I wish no more oil palm and have asked Agumil to uproot the palms but they say “what about your loan?” ... it’s not transparent in the cooperative’.<sup>26</sup>

Meanwhile, many cooperatives found it hard, if not impossible, to access support from NGOs in the province. These organizations have limited resources and a primary focus on indigenous land rights or environmental conservation, where the cooperatives rather were seen as part of the problem. This view was confirmed by NGO directors on several occasions.

In response to the encroachment and dispossession, a number of NGOs in the province established the Working Group on Oil Palm Concerns (WGOPC) advocating for a moratorium on further expansion of oil palm cultivation and ‘backtracking’ (i.e. reverting to original land use) on illegal cultivation in forest lands or indigenous peoples’ ancestral lands. As part of this effort, on 7 June 2013, one of the founding NGOs in the Working Group, Ancestral Land/Domain Watch (ALDAW), submitted a letter to the then President of the Philippines, Benigno Aquino III, calling for an in-depth investigation into alleged human rights violations and calling for a nation-wide moratorium on oil palm expansion. Shortly thereafter, the PCA was tasked to establish an inter-agency group in Palawan and convene a series of stakeholder meetings to hear the concerns. The DENR and other government

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<sup>25</sup> Interview, Provincial Board Member (*Sangguniang Panlalawigan*), Puerto Princesa City, 9 December 2013.

<sup>26</sup> Interview, Land owner and former cooperative Chairperson, 16 December 2013 (place confidential).

agencies here officially admitted to the presence of widespread encroachment on timber lands and indigenous peoples' ancestral lands.<sup>27</sup>

The DENR started a process to map the expansion areas of the oil palm project, identify where tenurial instruments have not been obtained, and – where appropriate – instruct AGPI to obtain such instruments or remove the plantations.<sup>28</sup> Now, recognition also seemed to grow among government staff of the undesirable outcomes from the oil palm project. As expressed by one Provincial Government staff: 'Only Agumil is benefitting... many oil palm cooperatives are now suffering'.<sup>29</sup> Government officials who were originally instrumental in convincing the cooperatives to engage in the palm oil project changed their views: 'I am not pro-oil palm anymore... I have discouraged [new] investors... who approach for oil palm investments...'.<sup>30</sup>

#### **4.5 Regulatory failures**

In paving the way for the undesired outcomes witnessed above, the project suffered from poor institutional performance in various aspects of the implementation of statutory requirements (Fig. 3). As required in the 1992 Strategic Environmental Plan (SEP) (the 'Palawan Act', RA No. 7611), the Agusan Group obtained a SEP Clearance for the project on 25 March 2010. The SEP clearance, however, covered only nursery and oil palm mill in an area of 13 ha and not the actual plantations. The Environmental Compliance Certificates (ECCs), required under the Philippines Environmental Impact Statement System (1978 Presidential Decree 1586 and DENR DAO No. 2003-30), were issued for the plantations between September 2008 and February 2009.<sup>31</sup> Both SEP Clearance and ECCs were thus obtained only after the initiation of the project. Moreover, as noted above, cultivation also took place in additional areas not covered by ECCs.

According to a Memorandum of Agreement between the PCSD and the DENR, the latter shall not issue ECCs without the project proponent having secured first a SEP Clearance. In this

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<sup>27</sup> This was, among other, documented in the minutes taken by the Philippine Coconut Authority during the inter-agency meeting held in the Governor's Conference Room, Puerto Princesa, Palawan, 17 September 2013 ("Highlights from the Inter-Agency Meeting re: Oil Palm Expansion in Palawan").

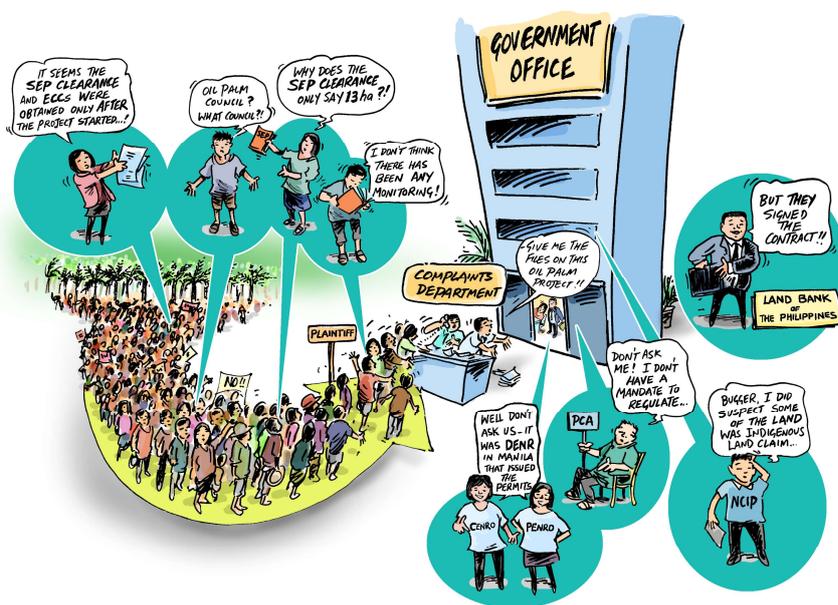
<sup>28</sup> Interview, PENRO staff, Puerto Princesa City, 5 December 2013.

<sup>29</sup> Interview, Provincial Government staff, Puerto Princesa City, 24 June 2013.

<sup>30</sup> Interview, National Government staff, Puerto Princesa City, 24 June 2013.

<sup>31</sup> Brooke's Point: 23 Jan. 2009, Quezon: Sept. 2008, Rizal: 26 Sept. 2008, Aborlan: 20 Feb. 2009, Narra: 20 Feb. 2009, Sofronio Española: 26 Sept. 2008, and Bataraza: 20 Feb. 2009. Copies of permits and licenses are on file with the authors.

case, the DENR did in fact issue the ECC prior to the SEP Clearance. The ECCs were issued by the DENR Headquarters in Quezon City, Metro Manila, rather than the concerned Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO) as is the standard practice. In addition, the local DENR officials did not receive the project documentation or permits to allow for monitoring or enforcement.<sup>32</sup> Similarly, the foreseen land use changes were not incorporated into the Municipal Comprehensive Land Use Plans (CLUPs).<sup>33</sup> The mandatory environmental monitoring were irregular and required annual reports from AGPI and PPMVOI were not received by government officials.<sup>34</sup>



**Figure 3: Institutional performance.** Diagrammatic representation of key aspects of the governance failures highlighted by the participants in the study. This diagram was used as a dialogical tool in the multi-stakeholder seminar to consolidate findings on 13 December 2013 in Puerto Princesa City. Art work by Simon Kneebone.

Under the 1997 Indigenous People’s Rights Act (RA No. 8371), certificates of Free Prior and Informed Consent (FPIC) from indigenous peoples are required if the oil palm cultivation is to be undertaken in areas that are either: (1) covered by a Certificate of Ancestral Domain

<sup>32</sup> Collated information from interviews with several DENR staff, Puerto Princesa City, and PENRO officers in Southern Palawan.

<sup>33</sup> Collated information from interviews several municipal government officers.

<sup>34</sup> Interview, LGU staff, Municipality of Brooke’s Point, 20 June 2013; Interview, Provincial Councilor (SB), Puerto Princesa City, 24 June 2013; Interview, CENRO staff, Municipality of Quezon, 21 June 2013.

Claim (CADC) or a Certificate of Ancestral Domain Title (CADT), or (2) are subject to pending applications for such certificates. As expressed by an agency staff, the NCIP in Puerto Princesa City did not review the requirements for FPIC since they did not consider the palm oil project to infringe on lands covered by indigenous claims.<sup>35</sup> Such errors were not discovered partly since the funding scheme from the Land Bank of the Philippines comes without any grievance mechanisms or policy safeguards to verify if the required regulatory measures, such as FPIC, are complied with.<sup>36</sup>

While having the mandate to oversee the implementation of the national policy on oil palm, the PCA in Puerto Princesa claimed to lack implementing guidelines that specify its regulatory role.<sup>37</sup> The same challenges are supposedly faced by other offices, such as the DAR and the Provincial Cooperative Development Office, which could potentially play significant roles in support of the smallholder cooperatives. As one government official noted: ‘Our office didn’t see the agreement prior to the cooperatives signing... and now we are asked for assistance!’.<sup>38</sup>

The Provincial Government created on 13 January 2004 the Palawan Palm Oil Industry Development Council (PPOIDC) (through Provincial Ordinance no. 739-04) with the mission to promote, monitor and ensure proper regulation of the industry. The composition of the council included principally the governor and other provincial political executives as well as directors of concerned provincial government offices. The membership did not include representatives from civil society groups, NGOs or farmer associations. One NGO director explained that they had, in fact, been invited as member but had preferred to sit as observers.<sup>39</sup> Notwithstanding issues concerning its membership composition, the council did not prepare any guidelines or policies and was during the time of the study a rather ‘passive’ organization. This development, it was widely explained, owed to the fact that the political interests in the council declined when the ex-Governor Reyes administration was replaced, with the current administration attending to other development priorities.

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<sup>35</sup> Interview, NCIP staff, Puerto Princesa City, 17 June 2013

<sup>36</sup> Interview, Loan Manager, Land Bank of the Philippines, Municipality of Brooke’s Point, 28 November 2013.

<sup>37</sup> Interview, PCA staff, Puerto Princesa City, 17 June 2013.

<sup>38</sup> Interview, Provincial Government staff, Puerto Princesa City, 24 June 2013.

<sup>39</sup> Interview, NGO director, Puerto Princesa City, 18 June 2013.

## 5. DISCUSSION

The evidence from the unfolding of the oil palm industry in Palawan portrays a project that was initially welcomed by many in government and farming groups, but later backfired and created substantial grievances and even non-compliance with a host of statutory requirements. The project at first spoke to many legitimate farmer interests; some joined the project with plots of land where there were no competing claims, in the hope of improving their families' meagre livelihoods. Indigenous peoples volunteered their lands to the project or became engaged in the labour force. Politicians and government officials welcomed the project and hoped it would serve the economic interests of mainstream lowland society.

Within some (arguably limited) parts of the concession areas, the project could hence have had a legitimate function to perform, partly as a response to contentious post-land reform arrangements (Borras and Franco, 2005). Like in Mindanao (Vista et al., 2012), while previously landless farmers in Palawan have secured their own private plots of land, the land reform process seems to have rarely improved livelihoods, due to lack of credit, technical support for agricultural technologies and market access.

However, as we saw, the signing of the contracts placed the cooperatives in a highly skewed, and possibly even legally dubious, patron-client relationship with the company. This resulted in farmers being much worse off in the project than before their engagement. Local and national governments, together with the investors, evoked the 'proverbial promised land' (Vellema et al., 2011) and mobilized the (post)colonial environmental narrative to ignore the fact that lands often were not vacant (Montefrio and Dressler, 2016). Given the contestation over the close to 15,000 ha permitted for oil palm cultivation at the time of this study, it is doubtful how many of the 208,997 ha that the PCA and the PPOIDC early on identified as suitable for oil palm cultivation in Palawan (Barraquias-Flores, 2010) actually are 'available'.

Overall, there is little doubt that the oil palm project served as a vehicle for investors, companies, resourceful people within the government and a few landed farmers to secure economic gains at the expense of people with unclear or unrecognized property rights over lands or other resources. The project proponents managed to sail rather easily through the bureaucratic system, navigate regulatory failures and benefit from ambiguities in project implementation. As previously noted, this preferential treatment of the oil palm company occurred while forest-dependent indigenous communities in Palawan otherwise face

significant obstacles in obtaining even the simplest of resource use permits on their supposedly native title lands (e.g. Novellino 2010).

## 5.2 *What's the remedy?*

What, if anything, could have mitigated the project's shortcomings? As reflected in the regulatory failures, none of the existing institutional checks and balances helped, despite complainants calling on various government agencies. The company itself was not responsive and government offices and executives lacked capacity or commitment (or both) to exercise their existing powers or incorporate new remedies into even the most central accountability lines, such as those linked to the funding scheme. Given the power relations and the fact that key state institutions were taking the side of the investors we find it doubtful that a different institutional arrangement, including any other forms of state-based or corporate remedy, would have improved this situation.

The licensing, regulation and funding schemes were operated by government agencies and banks and endorsed by politicians that had limited or no interests in holding back the project due to the harm inflicted on some groups, especially politically marginalized indigenous peoples. The aggrieved groups' concerns were only championed through the local self-organized resistance among indigenous peoples, farmers and some civil society groups. For instance, it was the *ad-hoc* complaint to the then Philippine President Aquino and to the Commission on Human Rights that prompted some reactions from the concerned government agencies. Similarly, it was only by forming the Association of Oil Palm Growers of Southern Palawan that the smallholder cooperatives brought AGPI to the table to start a renegotiation of the contentious out-grower contracts.<sup>40</sup>

In the Philippine context, this evidence adds to our understanding of the way elites can enact their agency through corporate-government ties, holding the hand under a project deemed beneficial by those same elites but harmful to the less privileged. Building on previous studies of the internal structure of such oligarchies (Angeles, 1999) and the emergence of new

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<sup>40</sup> Some cooperatives have, after the conclusion of the field work for this study, seen their contracts revised and translated in Tagalog, as requested by the chairmen. However, no solutions were found on the issues linked to the loans and repayments. During the revision of this manuscript the complaints have also been taken up by the House of Representatives, resolving that the Committee on Cooperatives Development should conduct an inquiry in aid of legislation to address the alleged violations in the smallholder contracts (House Resolution 120, 27 July 2016). These steps do not appear to address the alleged violations of the rights of the indigenous communities, who did not enter into contracts.

transnational alliances (Borras and Franco, 2005; Varkkey, 2013), the case sheds light on the shifting nature of these contested spaces and how the exposure to elite capture within concrete projects undermine the ambition of procedural governance fixes. For instance, it was suggestive of how influential people extended their control through the selective application of administrative procedures and supposedly ‘objective’ technical knowledge of state agencies (see also Novellino and Dressler, 2010).

In the present case, it is even possible that the anomalies surrounding the ECCs were associated with a departmental order that allowed the DENR to set processing time on a case by case basis; if the appropriate DENR unit was unable to respond within 90-180 days, then the application would automatically be considered as approved (Manguita-Feranil, 2013). Varkkey (2013) has earlier discussed how Malaysian companies operate with tight linkages to their home state government, exerting trans-border patronage and blocking access to justice for aggrieved people in cases of corporate wrongdoing. The barriers for aggrieved groups to access functional remedy suggests that while the disintegration of local social relations has indeed been a persistent feature with the advent of market ideology (Kerkvliet, 1977, 1986), these more recent transnational elite ties make ownership – and the sources of oppression – even harder to penetrate for local and indigenous communities.

The findings also extend earlier critiques of the tokenistic function of corporate responsibility discourses to procedural governance fixes (Bravante and Holden, 2009; Campbell, 2012). As Thomas King recalls, from his historical account of Native history in North America but equally relevant for the Philippines, history testifies to the changing ideas concerning the ideal structuring of relations between state, corporations and communities, yet the underlying issue remains the same:

‘[t]he issue that came ashore with the [colonizers], the issue that was the *raison d’être* for each of the colonies ... the issue that has never changed, never varied, never faltered in its resolve is the issue of land. The issue has always been land. It will always be land, until there isn’t a square foot left...’ (King, 2012:217).

When reaching local contexts in Southeast Asia, such as Palawan Province in the Philippines, the remedies discourse may, in fact, serve as an effective way of silencing these land-based politics. Rather than transparently addressing competing territorial claims, as was one of the original ambitions in the Guiding Principles, the remedies discourse allows for glossing over the conflicts altogether. This critique resonates with concerns regarding how private

regulation fails to recognize that the dispute resolution ‘on the ground’ is so much messier than expected in supposedly deliberative democratic grievance mechanisms (Cheyns, 2014; Schouten et al., 2012). The very presence of transnational agro-industry will here be prone to further exacerbate injustices and undermine indigenous legal cultures (Siliman, 1982) or pre-existing alternative dispute resolution (Franco, 2008).

As Cramb (2013: 96) has concluded, based on work in Malaysian Sarawak, smallholder and out-grower schemes may, in such cases, be prone to leave ‘landholders significantly worse off than if they had pursued other options - including ‘business as usual’, developing the land as independent smallholders’. If uncritically rolled out across widely different contexts, ambitions of corporate or state-based remedies, or other procedural fixes for that matter, will not move much beyond earlier ‘half-baked’ CSR compromises built on a lack of political will to pursue the more comprehensive reforms needed to ensure proper access to justice measures (Joseph, 2004). Emphasis on remedy may here easily serve as a strategy that deflects attention from harm prevention, which is likely to be more threatening to industry since it could be used to prevent projects from happening altogether.

## **6. CONCLUSION**

The societal, environmental and moral issues raised by the oil palm project in Palawan demonstrate, in our view, that there are projects that simply are not amenable to being ‘remediated’. In other words, it would be naive to expect that institutionalized remedies as envisioned in the Guiding Principles – under the disabling conditions faced in Palawan – will buffer against, let alone resolve, the intractable resource dilemmas in a local society fraught with deep historical and social contingencies. In such situations, the underlying rationale of large-scale land investments based on centralization of control and commoditization of markets for land rights remains fundamentally at odds with what Dressler et al. (2012: 689) has termed ‘the messy reality of upland living’ in the Philippines.

To be sure, valid arguments can be made for the ‘procedural turn’ to the extent that it responds to earlier failures of territorial governance fixes (Bryan, 2012; Anthias and Radcliffe, 2015). Moreover, the Guiding Principles undisputedly offer novel quasi-legal guidance on the provision of remedies for both states and companies that could, in principle, help leverage local rights claims in a variety of ways. However, unless local and indigenous

actors are allowed to reshape both purpose and practice, then the enactment of Guiding Principles as well as the wider pallet of approaches within the procedural turn are likely to remain rooted in colonial doctrines and neoliberal constructs put in place by already undertaken conquest (e.g. de Schutter, 2011; Montefrio and Dressler, 2016). On this basis, the promise of improved leverage for local and indigenous communities will be sorely defeated.

One of the central reasons why procedural governance fixes may fall short is that, paradoxically, they are premised on continued faith in the ability of states and corporations to remedy the harm they often themselves caused in the first place. In so doing, local actors' own agency and visions for their lands and societies is prone to be ignored. This is because, just as for measures of private regulation, these efforts work to institutionalize a mode of governance based on acting 'at a distance' (Ponte and Cheyns, 2013: 473). In so doing, they serve as 'translocal assemblages' (McFarlane, 2009) to remove agency both spatially and socially *away* from the affected localities, i.e. the very people, who are the assumed 'beneficiaries' of such remedies.

James Eder, in his pioneering work with indigenous peoples in Palawan, was mindful that research accounts must move beyond simplistic 'victim-of-progress' models to explain the co-evolution of interests and perspectives of local communities interacting with new modes of production. This is since simple descriptions divert 'attention from the very processes of individual choice and change that must be understood if we are genuinely to assist ... peoples in distress' (Eder, 1987: 6). Yet, if new procedures are to enable such co-evolution they must shift agency back with local actors, so that they can, in fact, act as rights holders in shaping both conceptions of territory and due procedure, rather than victims of harm.

However inconvenient this may be from the purview of parts of the international community and nation states that articulate new neoliberal governance fixes, we contend that functional procedures will only arise once states and companies more honestly confront the existence of competing land and resource claims. This involves relinquishing much greater control over any enabling procedures to local and indigenous communities. In places such as Palawan, this will mean continuing the journey of affirming the rights of indigenous and local communities to make informed choices, pursue desired development paths for their lands, and successfully resist erroneous investment proposals in the first place.

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