

## The emerging oil palm agro-industry in Palawan, the Philippines: Livelihoods, environment and corporate accountability

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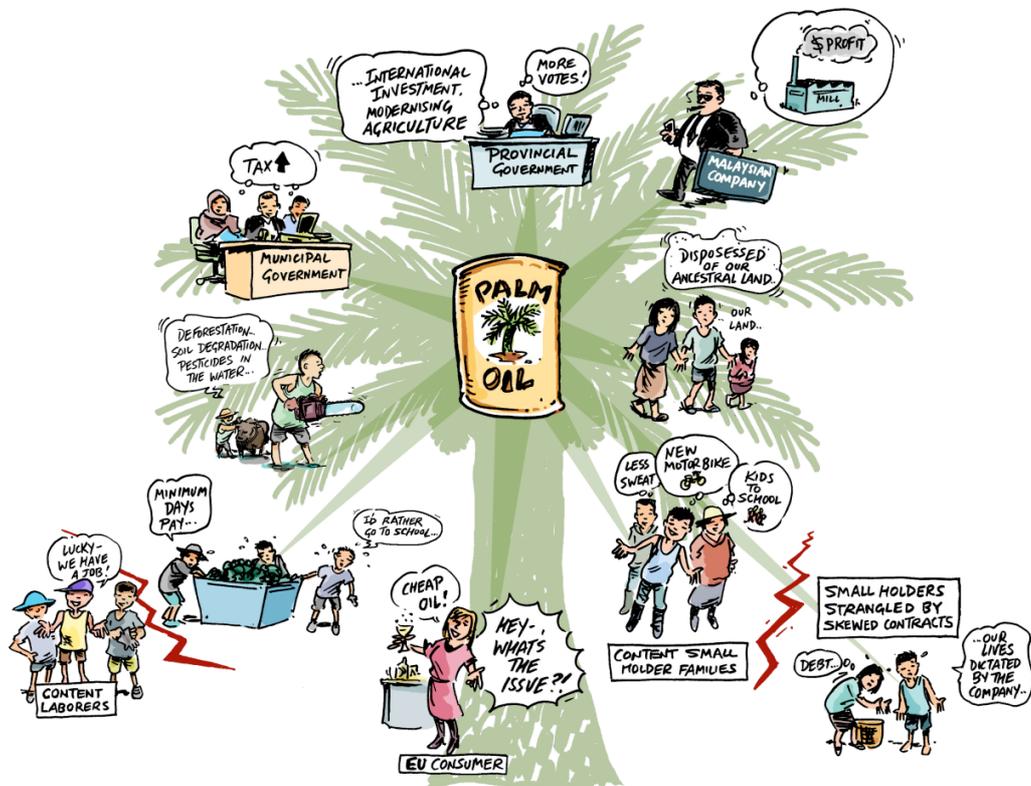
WORKING PAPER NO. 2014-3

THE EMERGING OIL PALM AGRO-INDUSTRY IN PALAWAN, THE PHILIPPINES:  
LIVELIHOODS, ENVIRONMENT AND CORPORATE ACCOUNTABILITY

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## **SUMMARY**

### **Objective and method**

The palm oil sector, like other large-scale agro-industries, is often promoted with a promise of economic benefits to cash-strapped local governments and landowners looking to improve limited livelihood opportunities. Meanwhile, any large-scale land conversion and centralization of productive control carries social and environmental risks. Questions arise as to the net benefits of the changes in land use, the creation of winners and losers in local communities, and whether institutions are equipped to manage the agro-industry and safeguard the interests of local communities, other stakeholders, and citizens in general.

This paper presents the findings from a study of the impacts on local livelihoods and environment from the emerging palm oil agro-industry in Palawan Province in the Philippines. The study focused on corporate accountability and the effectiveness of policies and institutions in governing the emerging industry. The data were obtained during fieldwork undertaken in a first scoping period in June 2013 and a second consolidation period in November and December 2013 in Puerto Princesa City and the six southern municipalities of Palawan Province where palm oil developments are taking place (Bataraza, Brooke's Point, Rizal, Quezon, Sofronio Española and Aborlan). A multi-stakeholder seminar was held on 13 December 2013 in Puerto Princesa City to share the findings with participants in the study, consolidate the results and receive feedback on proposed action points to improve corporate accountability.

### **Establishment of the oil palm industry in Palawan**

The first oil palm seedlings were planted in Palawan in 2007 and harvesting commenced in 2011, with a harvested area of 3,592 hectares. The licenses for the palm oil project in Palawan mandate the palm oil project to cultivate 15,469 hectares. This represents about 2% of the total land area of Palawan Province of close to 1.5 million hectares, with the concessions occupying up to 99% of agricultural land in the barangays in the southern municipalities, which have seen the expansion.

The palm oil project reflects growing interest from the private sector in investing in Palawan, and is part of the national government's objectives to reduce palm oil imports, seize production shares in the international market and in general modernize the agricultural sector. The provincial government has promoted the palm oil project based on the assumption that there are abundant idle lands available for new agro-business activities and that the project would help improve limited livelihoods opportunities for the island's rural population.

The palm oil project in Palawan is operated by Palawan Palm & Vegetable Oil Mills, Inc. (PPVOMI), which is 60% Singaporean and 40% Filipino-owned, and its sister company Agumil Philippines, Inc. (AGPI), which is 75% Filipino-owned and 25% Malaysian. The parent company is Agusan Plantations, Inc., which is domiciled in Malaysia. PPVOMI purchased land titles for the 13 hectares hosting the oil palm mill and nursery in Maasin, Brooke's Point. Meanwhile, AGPI has access to land for cultivation principally through either lease agreements or contract arrangements with farmers through a so-called outgrower scheme. The vast majority of farmers taking part in the palm oil project are agrarian reform beneficiaries (ARBs), that is, individual farmers who have been granted land titles by the Department of Agrarian Reform (called Certificates of Land Ownership Award – CLOA). The government takes a favourable view of the contract arrangements between ARBs and AGPI because it sees them as helping to compensate for the lack of credits and market access

that have otherwise hampered farmers in their efforts to make productive use of their newly awarded lands.

The contracts between farmers and AGPI are arranged either through cooperative groups or by farmers themselves as self-financed independent landowners. The four self-financed farmers hold larger tracts of land than ARBs and generally have greater financial resources. The Provincial Cooperative Development Office lists 14 smallholder cooperatives that grow palm oil. Two additional cooperatives, initiated by local and national business people, also cultivate palm oil. These include a 25-member cooperative started up by Cavite Ideal International Construction And Development Corporation (Cavdeal), which originally served as a building contractor for AGPI, and San Andres, a 35-member cooperative chaired by the director of the Manila-based company Capital Oil Refinery. Many members of the cooperatives that were consulted for this study were migrant settlers, while the labour force recruited by cooperatives and independent farmers appears to be dominated by indigenous peoples.

The smallholder cooperatives have entered into Production, Technical and Marketing Agreements (PTMA) as well as Management Service Agreements (MSA) with AGPI, which specify terms and conditions for the business relationship. Under this scheme, the cooperatives provide the land and organize manpower while AGPI provides the seedlings and technical know-how. Both contracts contain provisions, which tend to place control with AGPI and the majority of financial and managerial risks with the cooperatives. At the same time, AGPI is entitled to impose a 10% management fee on its services and a 14% compounded interest rate on delayed payments from cooperatives, as well as having general control of the finances of cooperatives by acting as co-signatory on bank transactions.

In order to finance the project, the cooperatives have obtained a Term Loan with the Land Bank Countryside Development Foundation, Inc., which is a non-profit subsidiary under the Land Bank of the Philippines. In the process the cooperatives have relinquished their land titles as collateral for the loan. However, seven of the 14 smallholder cooperatives have been unable to meet the targeted production and commence the planned amortization. The remaining cooperatives barely meet the payment schedule. AGPI is imposing the 14% interest rate on all additional expenses and the 10% management fee, further deepening the cooperatives' debt.

### **Grievances over environment and livelihoods**

#### ***Smallholder cooperative farmers: contractual deception, deepened poverty and food insecurity***

The signing of the contracts has placed the cooperatives in a patron-client relationship with AGPI. But it is especially significant that the cooperatives signed the PTMAs and MSAs simultaneously, placing the land under the *de facto* tenure of AGPI with the consequence that the cooperatives have lost control over decisions on land use and financial management. Moreover, PPVOMI is alleged to abuse its privileged position as the island's only fresh fruit bunch (FFB) processor. The farm plans and fertilizer budgets, which are prepared by AGPI and the Land Bank of the Philippines as the basis for the cooperatives' loans, have grossly underestimated financial needs. Furthermore, the cooperatives have alleged a number of instances of outright fraud, abuse and deceptive practices on the part of AGPI, linked to the signing and implementation of contracts. Such allegations cast doubt on the legitimacy, and perhaps also the legality, of the partnership. Cooperative officers and members also cited a number of verbal agreements that they believed had been made prior to signing the contracts

with AGPI and the Land Bank of the Philippines that they claim are now ignored by the two other parties.

***Indigenous peoples: land dispossession***

The process of land acquisition for the palm oil project through the outgrower schemes has led to complaints over dispossession of land and encroachment on ancestral domains. In many cases, farmers have entered outgrower schemes with AGPI without formal land titles, and government staff acknowledge that there have been instances where the required Free Prior and Informed Consent (FPIC) certificate was either not obtained, or obtained after the project was in place. Land acquisition has also taken place through middlemen or agents who have pretended to have ownership, or via pressure exerted by influential people. Corporate staff explained that due diligence was not always followed and that land acquisition had taken place without consultation with indigenous peoples and other groups with legitimate land claims.

***Environmental groups: illegal logging, replacement of food crops, and pests***

In the six municipalities, people contributing to this study referred to numerous observations of oil palm cultivation taking place in forestland, temporary fallowed lands, coconut groves and rice fields. In the municipalities of Quezon and Rizal alone, the Department of Environment and Natural Resources (DENR) has identified 185.25 hectares of oil palm cultivation in timberland, 35.15 of which are in forested land both inside and outside the Mt. Mantalingahan Protected Landscape, while 150.1 hectares are in Certificate of Ancestral Domain Title (CADT) areas. This encroachment on timberland comprises 66.3% of the total oil palm cultivation in the two municipalities (279.5 hectares). There are also widespread concerns that the expansion of oil palm plantations has led to introduction of insect pests to Palawan, notably the coconut leaf beetle (*Brontispa*). Moreover, there are concerns that palm oil cultivation will lead to significant long-term impacts on the landscape in the form of soil compaction, pollution of coastal areas, degradation of soil and contamination of drinking water by pesticides and fertilizers. These environmental impacts would also have effects on human health.

***Procedural history of the complaints***

Complainants have made efforts to use available means – primarily through administrative channels – to get redress. Cooperatives have made repeated, unsuccessful efforts to submit Board resolutions to AGPI that request changes to the contracts and business relationship. Indigenous communities have filed complaints with sworn affidavits to the provincial government attesting to the encroachment of oil palm cultivation on ancestral domains. For the most part, government offices have not intervened to address the grievances. The complaints from cooperatives are generally regarded by government agencies, including the Land Bank of the Philippines, as contractual matters to be dealt with between private parties.

In response to the limited government intervention, Palawan has seen growing mobilization among farmers, indigenous peoples, and civil society in general. The cooperatives formed The Association of Oil Palm Growers in Southern Palawan and have entered into a contract renegotiation process with AGPI. NGOs in the province have established the Working Group on Oil Palm Concerns (WGOPC), advocating for a moratorium on further expansion of oil palm cultivation. The continued protest has spurred responses from government agencies but no political or legislative interventions are foreseen. The Philippine Coconut Authority (PCA) convened a series of stakeholder meetings and the DENR has commenced a process to, where

appropriate, instruct AGPI to obtain required tenurial instruments or remove the plantations. It appears that the DENR expects that the majority of, if not all, cases can be solved through the issuing of appropriate tenurial instruments without actually removing illegally planted plantations or penalizing the AGPI.

### **Implementability of regulations and policies**

On 25 March, 2010 PPVOMI obtained a Strategic Environmental Plan (SEP) Clearance (No. POP-032510-020) for its Integrated Palm Oil Plantations Development, Production and Processing Project. The clearance covers the nursery and oil palm mill in an area of 13 ha in Barangay Maasin Municipality of Brooke's Point; it does not take into account the total extent of cultivation and the aggregate environmental impact. The Environmental Compliance Certificates (ECCs) were issued for the palm oil mill in Barangay Maasin on 2 July, 2010 and for the sites in the relevant municipalities between September 2008 and February 2009. Cultivation is also taking place in additional areas not covered by these ECCs. The SEP Clearance and at least some of the ECCs were thus obtained only after the project was initiated, which included contracting with landowners, establishing nurseries, converting land and planting seedlings. This is in breach of the Environmental Impact Statement System and the implementing guidelines for the SEP (including PCSD Admin. Order no. 6 in 2008).

Furthermore, the review carried out by Palawan Council for Sustainable Development (PCSD) for the SEP Clearance did not foresee that environmental impacts from oil palm cultivation in Palawan would be different compared to other agricultural activities, despite the project introducing an exotic species. The mandatory environmental monitoring has been irregular and required annual reports from AGPI/PPMVOI have not been received. Members of the Multi-Partite Monitoring Team (MMT), responsible for monitoring compliance with the ECC terms and conditions, noted that the monitoring activities had been concentrated to the mill and nursery in Maasin and had not included the activities in the plantations. The NCIP in Puerto Princesa did not review requirements for FPIC since the palm oil project was not considered to infringe on lands covered by Certificates of Ancestral Domain Claim (CADC) or Certificates of Ancestral Domain Title (CADT).

By promoting the oil palm industry without clear terms of reference or a functioning regulatory environment the Palawan provincial government appears to have placed itself in a somewhat difficult position. While having the mandate to oversee the implementation of the national policy on oil palm, the PCA in Puerto Princesa explains that it lacks implementing guidelines to clarify its regulatory role. The same challenges are faced by other offices that could potentially play a key role in support of the smallholder cooperatives, such as the Department of Agricultural Reform and the Provincial Cooperative Development Office (PCDO). The funding scheme from the Land Bank of the Philippines does not include either formal grievance mechanisms or policy safeguards to verify if the required regulatory measures are complied with. And while the Palawan Palm Oil Industry Development Council was established as a body to develop policies and monitor the oil palm industry, no formal guidelines or policies were prepared. Furthermore, the Agusan Group does not have a sustainability policy, nor has it subscribed to any voluntary corporate codes of conduct.

### **Legal liabilities**

The provisions of the outgrower contracts and the loan agreement place the control with AGPI but the majority of liabilities and financial risks with the cooperatives. With regards to land claims, both the Production, Technical and Marketing Agreements and the Management Service Agreements include provisions that place with the cooperatives the responsibility to

warrant that they have acquired the necessary instruments of tenure, and that their land is free from adverse claims. However, the conditions of the SEP Clearance places full liability on the project promoter – AGPI – for any damage to public or private property. Similarly, the responsibility for compliance with the rules and conditions attached to the ECC lie with AGPI. As such, the supervisory role of AGPI over the cultivation practices of the cooperatives appears to be recognized in law.

Concerning infringements of labour rights, under the Labor Code of the Philippines (DOLE Department Order 18-A), a principal (e.g. AGPI) that hires contractors (e.g. smallholder cooperatives) remains jointly liable for non-compliance. It is doubtful if the contract provisions currently used by AGPI can legitimately relegate the liability for labour law compliance solely to the cooperatives as this appears to be in breach of DOLE regulations. This could potentially cast doubt on the legality of the contracts; in the Securities Regulation Code (Section 71), governing business enterprises, the principle applies that any contract with provisions violating national law shall be void.

Indeed, the grievances raised by smallholder cooperatives prompt examination of the validity and legitimacy of the existing out-grower contracting arrangement. Under the Philippine contract law, the default assumption (based on the rule of parole evidence) is that all aspects of an agreement are represented in the written contract. However, in several cases, the allegations from smallholders and insights from government staff imply that the written contracts do not reflect the “meeting of minds” assumed in a contractual relationship.

#### **Potential actions to strengthen corporate accountability**

The oil palm developments in Palawan have exposed a number of features of the governance regime, which create ambiguities in citizens’ access to justice. The current legal regime does not distribute legal liabilities in favor of complainants, who often lack legal instruments to find resonance for their grievances. When such legal instruments exist, complainants may face considerable obstacles in asserting their *de jure* rights in the face of the weaknesses in the institutional performance and constrained implementation of regulations and policies. Based on the findings, the following actions appear feasible and may have effect in Palawan in the near or medium term future to improve corporate accountability for environmental and livelihoods impacts:

**Action 1:** The national or provincial government to mediate in revising the cooperatives’ contracts in order to shift financial and legal liabilities.

**Action 2:** The Department of Labour and Industry (DOLE) to investigate allegations of labour rights infringements and facilitate the formation of labour unions among plantation workers

**Action 3:** Allegations of illegal expansion of oil palm plantations to be addressed by the Department of Environment and Natural Resources (DENR) and National Commission on Indigenous Peoples (NCIP)

**Action 4:** The DENR and Palawan Council for Sustainable Development to review Environmental Compliance Certificates and Strategic Environmental Protection clearance

**Action 5:** Stricter “gatekeeping” by the provincial government, with legally required review of draft contracts and provision of competent legal counsel

**Action 6:** The Land Bank of the Philippines to put in place policy safeguards in the funding stream, such as the Food Supply Chain Program.

**Action 7:** The Palawan Council for Sustainable Development and Provincial Government Unit to promote RSPO (Roundtable on Sustainable Palm Oil) certification of oil palm cultivation in Palawan

**Action 8:** The provincial government to reactivate the Palawan Palm Oil Industry Development Council.

**Action 9:** The Philippine Coconut Authority to regulate on pricing of fresh fruit bunches, and to provide a forum for resolving disputes between smallholders and the oil palm mill.

**Action 10:** Broad revision of the legislative framework for agro-business in order to strengthen supervisory liability to ensure that liabilities match influence and financial interests.

## ACKNOWLEDGEMENTS

We extend warm gratitude to those in Palawan who contributed to this study and who showed trust in our work and shared their insights and experiences. Several people also generously provided advice for the analysis: Atty. Grizelda Mayo-Anda of Environmental Legal Assistance Center (ELAC), Attys. Pauline Caspellan and Nicole Torres of the Ateneo de Manila University School of Government, Atty. Rodolfo F. N. Quicho Jr., Dr. Miriam Saage-Mass and colleagues at the European Center for Constitutional and Human Rights (ECCHR) in Berlin, Germany, and several colleagues at the Tilburg Law School, The Netherlands, including Prof. Jonathan Verschuuren. Similarly, we thank Kristof Rácz at the Centre for Research on Multinational Corporations for undertaking a review of the corporate profile of the companies engaged in Palawan. For the field trips, we thank Mr. Jog-Jog Gabuco for driving us around safely, Ms Mercedes Limsa and Mr John Mart of the United Tribes of Palawan (Nagkakaisang Tribung Palawan) for allowing us to join on field trips, and Provincial Board Member Mr Jay Rodriguez for actively participating in the multi-stakeholder seminar held in Puerto Princesa on 13 December, 2013 and allowing us the use of his service van. We are grateful also to SEI Research Fellow Dr Albert M. Salamanca for excellent comments on the draft text in a peer-review of the manuscript. The work was funded by the Swedish research council, Formas, as part of a larger research program on corporate accountability in the Philippine oil palm sector (<http://www.sei-international.org/projects?prid=2027>), with counterpart contributions from the Palawan State University.

## ACRONYMS

AGPI	Agumil Philippines, Inc.
ALDAW	Ancestral Land/Domain Watch
ARBs	Agrarian Reform Beneficiaries
AVA	Agribusiness Venture Arrangements
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
Cavdeal	Cavite Ideal International Construction And Development Corporation
CBFMA	Community-Based Forest Management Agreement
CDA	Cooperative Development Authority
CENRO	Community Environment and Natural Resources Office
CLOA	Certificates of Land Ownership Award
CPO	Crude Palm Oil
DAO	Department Administrative Order
DAR	Department of Agricultural Reform
DENR	Department of Environment and Natural Resources
DOLE	Department of Labor and Employment
DTI	Department of Trade and Industry
ECC	Environmental Compliance Certificate
FFB	Fresh fruit bunches
FPIC	Free, prior and informed consent
FPP	Farmland Protection Program
LBP	Land Bank of the Philippines
LGU	Local Government Unit
MSA	Management Services Agreement
NCIP	National Commission on Indigenous Peoples
PCA	Philippine Coconut Authority
PCDO	Provincial Cooperative Development Office
PCSD	Palawan Council for Sustainable Development
PENRO	Provincial Environment and Natural Resources Office
PGU	Provincial Government Unit
PPDCI	Philippine Palm Oil Development Council, Inc
PPVOMI	Palawan Palm & Vegetable Oil Mills Inc.
PTMA	Production, Technical and Marketing Agreements
RA	Republic Act
RSPO	Roundtable on Sustainable Palm Oil
UNESCO	United Nations Educational, Scientific and Cultural Organization

## 1. INTRODUCTION

The palm oil sector, as with other large-scale agro-industries, is often promoted with a promise of economic benefits to cash-strapped local governments and landowners looking to improve limited livelihood opportunities. Meanwhile, any large-scale land conversion and centralization of productive control carries indisputable social and environmental risks. Questions arise as to the net benefits of the changes in land use, the creation of winners and losers in local communities, and whether institutions are equipped to manage the agro-industry and safeguard the interests of local communities, other stakeholders and citizens in general. In this regard, the governance of the sector must ensure corporate accountability and the resolution of grievances that, in most cases, invariably will arise.

This paper presents a rapid appraisal of the expanding palm oil sector in Palawan Province, located in the western Philippines. Its purpose is to synthesize the insights obtained from a study conducted collaboratively between the Palawan State University and the Stockholm Environment Institute (SEI). It aims to provide a “rich picture” of the dynamics of oil palm expansion and proffer some recommendations for actions that may assist decision makers in Palawan, and the Philippines in general.

The aim of the scoping study was to assess the environmental and livelihoods impacts arising from the palm oil sector in Palawan Island, with emphasis on corporate accountability and the effectiveness of policies and institutions in governing the emerging industry. There has so far been little substantial research examining the social, economic and environmental implications of this new agro-industry in Palawan.

Motivated by the national policy on agro-industrial modernization, other areas in the Philippines (such as Bohol, Cebu and Mindanao) have also seen rapid oil palm developments. Hence, the insights emerging from this scoping study, in particular as regards policy implications, may also be relevant to other parts of the country. Furthermore, while a body of research has explored the corporate accountability associated with extractive industries in the Philippines, large-scale agro-industries such as oil palm plantations have not received the same degree of attention.

### 1.1 Method and data

The study was inspired by principles of participatory action research, aiming to co-construct results and foster a collaborative process of inquiry and learning with research participants. In parallel, a desktop review was conducted of key documents and existing secondary data on the oil palm sector in Palawan, and in the Philippines in general. Written requests were made to government agencies, private sector groups and non-governmental organizations (NGOs) to retrieve relevant documents. Primary data generation relied on these three methods: (1) field observations, (2) key informant interviews and stakeholder consultations, and (3) focus group discussions. Meetings were organized in collaboration with, and sometimes convened by, interested stakeholders. The data were obtained during field work undertaken in a first (scoping) period in June 2013, and a second (consolidation) period during November and December 2013, both of which took place in Puerto Princesa City and the six southern municipalities of Palawan Province that are currently engaged in the palm oil developments. These municipalities are: Bataraza, Brooke’s Point, Rizal, Quezon, Sofronio Española and Aborlan (see Fig. 1). The research team also joined field trips with local NGOs and several meetings convened by the key actors involved in the oil palm sector to learn from the

exchanges and provide scientific advice. A multi-stakeholder seminar was held on 13 December 2013 in Puerto Princesa City to share the findings with participants in the study, consolidate the results and receive feedback on proposed action points to improve corporate accountability.

In total, repeat interviews, consultations and focus groups were held with more than 100 people, including 10 from provincial offices of national government agencies; six from provincial government offices, including legislative council members; 12 from municipal and barangay government offices in southern Palawan, including mayors and *kagawads* (councilors); three from companies involved in the sector; 14 from the oil palm growing smallholder cooperatives, including chairpersons, board members, managers and individual members; two independent growers; four from NGOs, including directors and field staff; eight from councils and associations of indigenous peoples, including from the Batak, Palawan, and Tagbanua; and a number of individual farmers, plantation workers and community representatives. The study received the majority of contributions from government staff and smallholder cooperatives. These coops consisted primarily of beneficiaries of lowland agrarian reform. The study had fewer opportunities to reach out to indigenous peoples and laborers. Questions posed in interviews explored the environmental and livelihoods impacts of the expanding palm oil agro-industry. At the meetings we recorded the experiences of different stakeholders and the practices used to secure access to and control over land and resources, and the effectiveness of judicial and non-judicial remedies and institutions expected to offer recourse to complainants wishing to file grievances.

Below, we present the evidence in a synthetic narrative, drawing on the primary data as well as relevant secondary sources. When it is available, we include evidence to substantiate claims of impact, and acknowledge uncertainties and needs for generating further evidence as appropriate. When possible, insights are triangulated by drawing on contributions from multiple sources. Although we indicate when certain arguments are attributable to a specific perspective among the contributors (e.g. a specific group of claimants), we avoid direct attributions when contributors requested to remain anonymous. The data has been organized using a combination of the so-called Soft Systems analytical device TWOCAGES (Larsen et al. 2011) and a corporate accountability framework to explore legal liabilities, especially in a transnational context (e.g. Jägers and van der Heijden 2008).<sup>1</sup> Grievances, as expressed by contributors, are defined broadly in line with the United Nations Guiding Principles on Business and Human Rights: perceived injustice evoking an individual or group sense of entitlement, based on law, contract, explicit or implicit promises, customary practice or general notions of fairness (Ruggie 2011)

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<sup>1</sup> The acronym TWOCAGES is an abbreviation of eight questions, which are posed in the situation in which the research is carried out, which helps researchers distinguish between different types of stakeholders in relation to a transformation (the promotion of oil palm industry) in a system of interest (Palawan Island). For this report, we use only selected categories in this framework and combine them with inquiry into emerging grievances, the efficacy of remedies available to complainants and the monitoring of legal liabilities – aspects fundamental to analysis of corporate accountability. The total set of questions are: Transformation – details of the proposed/ongoing change (oil palm developments); Worldview – the particular view that makes change meaningful to the “owner” of the process; Owner – those who have the authority to authorize the change (national / provincial government); Communities of interest – these are beneficiaries/clients or victims of the change; Actors – those implementing the change (in this case, Agumil Inc. and cooperatives, independent farmers); Guardians: those who watch or monitor for unintended outcomes of the change; Environment – the operating environment in which a change is being undertaken (e.g. legislative regime and policies); System – the system of interest bounded by issues around change identified by the clients (see, e.g. Larsen et al. 2011).

## 2. TRANSFORMATION: THE ESTABLISHMENT OF THE OIL PALM INDUSTRY IN PALAWAN

The first oil palm seedlings were planted in Palawan in 2007. Harvest commenced in 2011, with the Philippine Coconut Authority (PCA) recording a harvested area of 3,592 hectares (Nozawa 2011). More recent official figures on the extent of oil palm cultivation are somewhat uncertain, ranging from 2,789 to 6,529 ha (PPDCI (Philippine Palm Oil Development Council, Inc.) 2013). In total, the licenses for the palm oil project in Palawan mandate the project to cultivate 15,469 ha. This represents about 2% of the total land area of Palawan Province of close to 1,489,600 hectares (Provincial Planning and Development Office 2008; Provincial Agriculturist Office 2013)<sup>2</sup> In 2009, the PCA estimated that more than 46,000 ha of oil palm were cultivated in the country, of which Palawan accounted for about 7% (PPDCI 2009). The PCA and the Palawan Palm Oil Industry Development Council (PPOIDC) have identified 208,997 hectares as suitable for oil palm cultivation in Palawan (Barraquias-Flores 2010).

Six of Palawan’s 12 mainland municipalities have today seen the expansion of oil palm plantations: Aborlan, Bataraza, Brooke’s Point, Rizal, Quezon, and Sofronio Española. New areas are being planted with oil palm seedlings and, as is detailed below, new investments are on the horizon. While the cultivated area so far comprises a limited land use category in Palawan Province, the concessions do occupy up to 99% of agricultural land in the barangays in the southern municipalities that have seen the expansion (see Fig. 1).

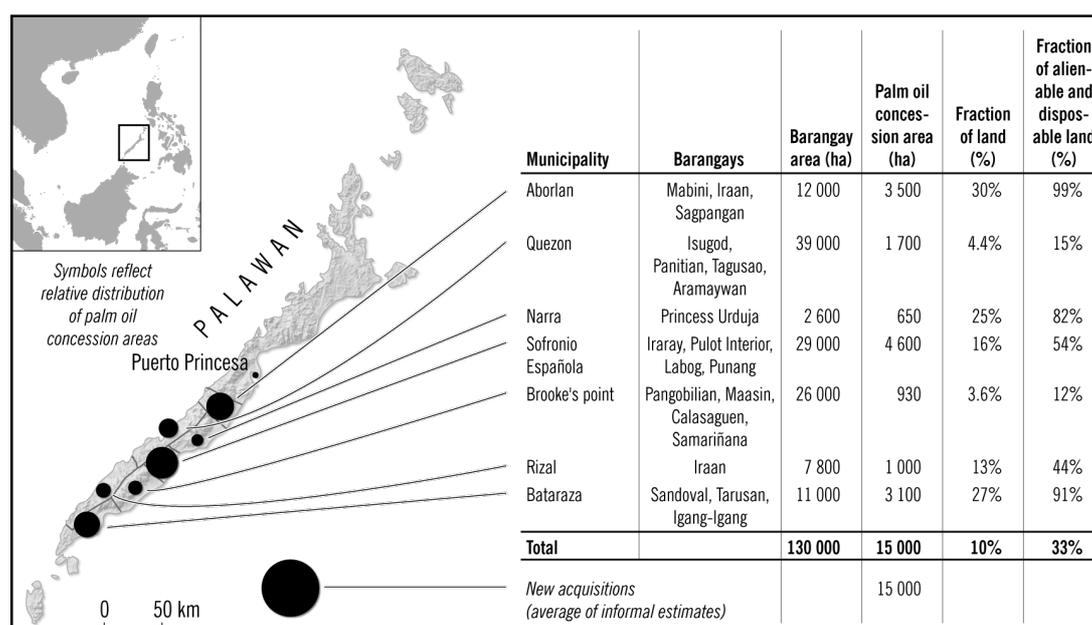


Fig. 1: Spatial distribution of oil palm developments in Palawan’s southern municipalities

Source: Data on the concession area are derived from the ECCs issued by the Department of the Environment and National Resources (DENR).

Note: The fraction of alienable and disposable land is estimated based on the provincial average. Cultivation has progressed in all municipalities except Narra.

<sup>2</sup> The major crops cultivated in Palawan, mentioned in order of descending acreage, are coconut, irrigated and non-irrigated rice, cashew, corn, mango, and rubber.



**Fig. 2: The palm-oil mill in Barangay Maasin, municipality of Brooke's Point, Palawan**

The island's only palm oil mill thus far, processing Crude Palm Oil (CPO) and located in Barangay Maasin in the Municipality of Brooke's Point, has a milling capacity of 90 tonnes fresh fruit bunches (FFB) per hour (Fig. 2). However, it is currently running at a reduced capacity because the planted trees are yet to mature and other areas have yet to be planted. In Indonesia, experienced oil palm companies with high production capacity per hectare would be generally expected to feed the mill in Maasin from 18,000 ha (IOPRI 2002). As noted above, this is roughly equal to the total permitted cultivation area for the current project. However, smallholder farmers have lower productivity and a somewhat larger cultivated area could be needed for Palawan Palm & Vegetable Oil Mills, Inc. (PPVOMI) to reach its optimum milling capacity.

While other crops take up more land area than oil palm cultivation, the palm oil project is one of the largest single coordinated agro-business ventures on the island, reflecting the private sector's growing interest in investment in Palawan. The island is attractive compared with others in the Philippine archipelago, such as mainland Luzon, Mindanao or in the Visayas, because it is located near the equator and is thus in the ideal growing zone for the oil palm tree. Land is deemed more accessible and affordable, society is peaceful (relative to other agricultural areas of the Philippines) and provides a supposedly more stable investment climate. Typhoons are also relatively rare. It is even argued that companies may look to Palawan as an alternative to further engagement in Mindanao, where oil palm plantations have suffered from political unrest and armed conflict. The Municipality of Brooke's Point, where the oil palm mill is located, is considered specifically attractive given its international port that allows for shipping of CPO. An airstrip is also being planned. Given the capital and management inputs required, including the need to ensure that FFB production meets the milling capacity, financial profitability is dictated by economy of scale and companies tend to desire large coordinated efforts, in which smallholders are organized as part of larger business schemes, with the opportunity to employ a trained labour force for efficient production. Scaling up production also enables companies to overcome the potential barrier of transport costs, which may hold back other agro-industries in islands such as Palawan.

Government staff in Puerto Princesa City list a range of foreign investors looking to acquire agricultural lands in the island, including from Taiwan, Korea, China, Singapore, and Japan.<sup>3</sup> There are also a considerable number of overseas workers looking to invest or retire there. Altogether, the Provincial Agriculturist Office receives 15–20 requests per year from agricultural investors hoping for government support.<sup>4</sup> Beyond the existing palm oil project, informal estimates suggest that between 10,000 and 20,000 ha of new land may have already been acquired for oil palm plantations, including for the establishment of new mill(s).<sup>5</sup> Individual municipalities are also actively courting foreign investors through exchange visits and advertisement.<sup>6</sup> These business engagements may proceed through incorporation of a subsidiary in the Philippines, joint ventures with Filipino corporations, or through family ties with a Filipino national.

## **2.1 Policy owners and worldview**

The establishment of oil palm cultivation and promotion of private sector agro-business ventures in Palawan forms part of the national government's objective to reduce palm oil imports and seize production shares in the international market. Shifting domestic consumption from coconut oil to palm oil is expected to generate net economic gains in the trade balance, since the value of coconut oil and copra is significantly above the market price of palm oil. This is spelled out in, notably, the Philippine Palm Oil Industry Development Plan (2004–2010) that aimed at converting close to 120,000 hectares into oil palm cultivation by 2010, in order to enable self-sufficiency (see also (Barraquias-Flores 2010). In this plan, Palawan was expected to provide 20,000 hectares. In the same vein, internal draft documents from the PCA, including the draft Policy Framework for the Development of Palm Oil Industry, articulated the ambition that oil palm shall be firstly for the domestic market and only secondly for export. The Biofuels Act 2006 (RA 9367) also ranks oil palm as a strategic agro-business crop and sets mandatory targets for blending of biodiesel partly based on palm oil. The incentive schemes mandate government finance institutions to prioritize agro-business projects with potential to provide biodiesel substrates. For instance, it is expected that Philippine Pesos (PhP) 1.5 billion shall be provided by the Land Bank of the Philippines to more than 6,000 oil palm growers (Land Bank of the Philippines, 2012).

The mobilization of smallholder plots into large-scale agribusiness ventures is a central strategy in the Philippines' national development planning, and is assumed to help alleviate poverty, harness supposedly vacant lands, increase gross productivity and include marginalized smallholders and land owners in the market economy through cash cropping. The Arroyo administration's Medium Term Philippine Development Plan for 2004 to 2010 aimed to develop at least two million hectares of new agro-business. Similarly, the current Aquino administration's medium-term plan (2011–2016), under the food security target, specifically aims to “[p]romote long-term financing for long-gestating crops such as coconut, rubber, oil palm, coffee, cacao and fruit trees similar to Indonesia, Malaysia and Thailand”(Government of the Philippines 2011). Oil palm is classified as a “high-value crop”, together with fruits, vegetables, ornamentals plants, rubber and coffee. As such, the promotion of oil palm cultivation forms part of the national effort to modernize the agricultural sector through private investment, an ambition inherited from earlier development plans, such as in the Agriculture and Fisheries Modernization Act of 1997 under the Ramos

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<sup>3</sup> Collated information from PGU staff, independent growers already operating in Palawan, and researchers

<sup>4</sup> Director, Provincial Agriculturist Office, Puerto Princesa City, 17 June, 2013

<sup>5</sup> Collated information from researchers, cooperatives, independent growers

<sup>6</sup> Government officer, Municipality of Brooke's Point, 10 Dec., 2013

administration and the Philippine Agriculture and Modernization Plan 2001–2004 under the Arroyo administration.

The Department of Agriculture identifies high value commercial crops for different regions of the country. While oil palm has been promoted as a priority crop in parts of Mindanao, this has not been the case in Palawan. The Provincial Government sets out the priority crops in the Comprehensive Provincial Development Plan, and this has so far not included oil palm.<sup>7</sup> Nonetheless, the Provincial Government, under the then governorship of Mr Joel Reyes,<sup>8</sup> actively facilitated the launch of the palm oil project in Palawan and courted international investors. Furthermore, the PCA played an active role as the nationally mandated agency under the Department of Agriculture. In fact, as a consequence of the active role played by government offices, people in the barangays who contributed to this study frequently stated that they regarded the palm oil project as a “provincial government project”.

On 13 January 2004 the Provincial Government created the Palawan Palm Oil Industry Development Council (PPOIDC)<sup>9</sup> with the mission to promote, monitor and ensure proper regulation of the industry. The PPOIDC was sponsored by the then vice-governor, Atty. David R. Ponce de Leon, and its establishment was partly inspired by the national Philippine Palm Oil Development Council Inc. (PPDCI), which was convened by the PCA to coordinate national-level efforts on oil palm. This national council is governed by a board consisting of representatives of government, companies and growers (PPDCI (Philippine Palm Oil Development Council, Inc.) 2013). In its turn, the PPOIDC is composed chiefly of provincial government staff, along with one or two representatives from research and the private sector.

Mirroring the view put forward in the national action plans, the provincial government promoted the palm oil project based on the assumption of abundant vacant or idle lands available for new agro-business activities. As one Sangguniang Bayan (municipal councillor) in the southern municipalities stated: “[We] welcome agro-business, [we] have much vacant land”.<sup>10</sup> This view was also expressed by several municipal mayors,<sup>11</sup> and still appears to be the dominant perspective among provincial government staff: Oil palm cultivation, it is generally argued, is only taking place in so-called “idle lands”, and is not competing with other land uses such as forestry or food crops.<sup>12</sup> One provincial government head of office noted, “In terms of lands, coconut and oil palm does not compete, since they have so different soil requirements”.<sup>13</sup> The promotion of the oil palm sector appears to be also partly contingent on a desire within the provincial government to escape what it perceives as overly conservationist readings of Palawan’s environmental policy framework and to redefine sustainable development with a broader focus on socio-economic development, emphasizing effective and equitable use of natural resources.<sup>14</sup>

The palm oil project was duly endorsed by barangays, municipalities and the provincial government. Members of the Sangguniang Panlalawigan (provincial board), were swayed by

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<sup>7</sup> Director, Provincial Agriculturist Office, 17 June, 2013

<sup>8</sup> Mr Reyes is currently a fugitive from a police investigation into allegations that he ordered the murder of environmental journalist Gerry Ortega on Jan. 24, 2011. Mr Ortega exposed alleged corrupt practices of the Provincial Government in its dealings with oil companies exploiting the Malampaya gas reserve located offshore of northern Palawan. The case with the Regional Trial Court is ongoing.

<sup>9</sup> PPOIDC was created through Provincial Ordinance no. 739-04.

<sup>10</sup> Municipal councillor, 22 June, 2013

<sup>11</sup> E.g. Ms. Katrina Ibba, Mayor of Bataraza, 10 Dec., 2013.

<sup>12</sup> Collated information from various interviews, including with the PCSD District Management Office, DAR and the Provincial Agriculturist Office

<sup>13</sup> PGU staff, Puerto Princesa City, 17 June, 2103

<sup>14</sup> PCSD staff, Puerto Princesa City, 18 June, 2013

convincing presentations by the investors on the expected benefits for citizens.<sup>15</sup> The provincial government was also persuaded by the fact that the investors had already secured endorsements from concerned barangays and municipalities.<sup>16</sup> Municipal governments generally seemed willing to endorse the project through council resolutions, based on hopes of economic gains from the cultivation itself but also increased land value, Business Tax, and Real Property Tax.<sup>17</sup> In the Municipality of Brooke's Point, where the mill is located, around 400 local residents are employed in the sector.<sup>18</sup> Some municipal-level politicians also saw opportunities to engage personally in the oil palm cultivation through their own business activities, for instance, as sub-contractors to the Agusan group or in the land acquisition process. However, in other instances the municipal governments were less inclined to welcome the project. For example in Narra, known as the "rice basket" of Palawan, politicians and farmers alike had little interest in shifting from rice cultivation to oil palm.<sup>19</sup> In Quezon, the local government unit (LGU) was only convinced after lobbying from cooperatives hoping to engage in the palm oil project.<sup>20</sup> In general, the role of local governments in municipalities and barangays appear to have been limited to providing the required endorsements after brief courtesy calls. For instance, the foreseen land use changes were not incorporated into the Municipal Land Use Plans.<sup>21</sup>

It is uncertain whether the original idea for the project emerged from the provincial government, Palaweño businessmen or international investors. Most likely, its conception was contingent on the overlapping interests of several actors. In the late nineties, important contacts were made between the Provincial Government and corporations and investors during the 1998 Oil Palm Convention in Davao, Mindanao. The Governor of Cotabato and the University of Southern Mindanao have, since then, played a supporting role in sharing experiences with the provincial government (see also PPDCI 2009). The provincial government of Palawan also used the opportunity in Davao to lobby the national government to include Palawan as a pilot province for oil palm development (together with the provinces of Iloilo, Bohol, and Cotabato).<sup>22</sup> National government agencies, including the PCA, Palawan Council for Sustainable Development (PCSD), Department of Environment and Natural Resources (DENR) and DAR, subsequently banded together in an inter-agency team to convince investors to bring oil palm to Palawan. The Provincial Government also supported investors in liaising with the southern municipalities that they found most promising.<sup>23</sup> In doing so, Palawan followed the national trend in relying on Malaysian companies to provide capital investment and the technical skill-sets: during the 2<sup>nd</sup> Palm Oil Industry Congress nine joint ventures were agreed with Malaysian companies of a net worth of USD 21,834 million (Manguita-Feranil 2013).

Local businessmen seem to have played an important role, and may even have been the ones who initially prompted investor interest. Indeed, previous attempts had been made to introduce oil palm agro-business to Palawan, although these earlier efforts met with little success. One person involved in the palm oil project since it began described experiences with these efforts: "They were suspected of mere money making ... seen to canvass people and

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<sup>15</sup> Provincial Board Member, Puerto Princesa City, 24 June, 2013

<sup>16</sup> Director, Provincial Agriculturist Office, Puerto Princesa City, 17 June, 2013

<sup>17</sup> E.g. LGU staff, Municipality of Brooke's Point, 20 June 2013 and Municipality of Quezon, 21 June, 2013

<sup>18</sup> Government staff, Municipality of Brooke's Point, 10 December 2013

<sup>19</sup> LGU councillor, 23 June, 2013; Ms Lucena Demaala, Mayor of Narra, 11 Dec., 2013.

<sup>20</sup> LGU staff, Municipality of Quezon, 21 June, 2013

<sup>21</sup> Collated information from several municipal government officers

<sup>22</sup> Provincial Government staff involved with the inception of the palm oil project, Puerto Princesa City, 24 June, 2013

<sup>23</sup> Provincial Board Member, Puerto Princesa City, 24 June, 2013

collecting IDs and membership fees without full disclosure of plans and intentions”.<sup>24</sup> Similarly, a government official in the municipality of Brooke’s Point recounted how one Malaysian company had previously requested land but was denied because it would not disclose information on the business plan and lacked upfront investment.<sup>25</sup>

In June 2004 the Palawan State University organized a training course on oil palm cultivation, in collaboration with the University of Southern Mindanao, in order to stimulate interest among farmers, build capacity and ensure sufficient skilled manpower. Lecturers were flown in from the University of Southern Mindanao for demonstrations in Palawan, and one training session was held in Mindanao, covering topics such as nursery establishment, pest management, and fertilization. Of the 45 people enrolled in the course, 30 successfully completed it, of which 10 were subsequently engaged in the oil palm industry. Following the training, the provincial government launched a subsidy programme, with financial and technical support, for the planting of oil palm on vacant land.<sup>26</sup>

## 2.2 Actors and expected beneficiaries: corporate profile and out-grower scheme

The palm oil project in Palawan is operated by Palawan Palm & Vegetable Oil Mills, Inc. (PPVOMI) (which is 60% Singaporean-owned and 40% Filipino) and its sister company Agumil Philippines, Inc. (AGPI) (which is 75% Filipino-owned and 25% Malaysian). The parent company is Agusan Plantations Inc., which is domiciled in Malaysia. PPVOMI and AGPI are registered with the Security Exchange Commission in accordance with the Philippine Corporations Code. The incorporation grants legal personality to the corporations, endowed with the right to undertake business activities on the national territory in compliance with Philippine law.

PPVOMI is operating the oil palm mill in the barangay of Maasin in the municipality of Brooke’s Point. Meanwhile, AGPI is the contractor in the cultivation of oil palm. AGPI receives corporate finance from First Consolidated Bank and the Land Bank Countryside Development Foundation, Inc., which is a non-profit subsidiary of the Land Bank of the Philippines. The funding is channeled under the Food Supply Chain Program in support of the National Government’s efforts to attain food self-sufficiency and increase agricultural productivity (Land Bank of the Philippines, 2010). Construction equipment is rented from Cavdeal (Cavite Ideal International Construction And Development Corporation) and seedlings are supplied by the Papua New Guinean company New Britain Palm Oil Limited.

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 (Rác 2013). According to its president, AGPI sells its CPO and kernel oil to Tropical Oil Products in Singapore, which is acting as broker for further sales.<sup>27</sup> Workers at the PPVOMI milling plant also suggest that CPO is shipped, via Agusan del Norte in Mindanao, to refineries in Sabah, Malaysia. Press releases (BusinessWorld 2010) indicate that AGPI plans to export at least 70% of its production to Singapore, China and Malaysia. The extensive export seems to contradict the original motivation of the Provincial Government and the Land Bank loans wherein palm oil was intended for the domestic market (e.g. Land Bank of the Philippines 2010).

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

<sup>25</sup> LGU staff, Municipality of Brooke’s Point, 20 June, 2013

<sup>26</sup> Palawan State University staff involved in the inception of the palm oil project, 17 June, 2013

<sup>27</sup> Mr. Lim Chan Lok, President / CEO Agusan Plantations Inc., Municipality of Brooke’s Point, 28 Nov., 2013. See also [www.cargill.com/worldwide/singapore/](http://www.cargill.com/worldwide/singapore/)

Having purchased some land titles for the 13 ha oil palm mill and nursery in Maasin, AGPI has principally accessed land for cultivation through either lease agreements or contract arrangements with farmers in the so-called out-grower schemes. As noted by one provincial government officer: “corporate actors are not strictly corporate ... people are planting oil palm as contract growers”.<sup>28</sup> Most farmers are agrarian reform beneficiaries (ARBs) who have been granted individual titles for a maximum of three hectares, namely, Certificates of Land Ownership Award (CLOA). With the implementation of the Comprehensive Agrarian Reform Law (CARL) of 1988 (RA No. 6657), land of previous state farms and private estates (*haciendas*) have been redistributed and companies thus obtain land through leases, contract farming or purchase directly from ARBs. This out-grower model seems built on the Agusan Group’s experiences from Mindanao and even from Malaysia (Nozawa 2011).<sup>29</sup> Through the extensive land redistribution and the prevalence of smallholder plots, oil palm cultivation proceeds in aggregate areas composed of both continuous and scattered individual plots. Still, the operation tends to adopt a nucleus estate pattern<sup>30</sup>, to guarantee the transport of fresh fruit bunches (FFB) to the mill for handling and extraction of oil. In fact, the proximity of farm plots to the mill in Maasin was a frequently mentioned criterion for farmers to be able to engage in the out-grower scheme.<sup>31</sup>

From the government’s perspective, the contract arrangements between farmers and AGPI are considered beneficial in that they help compensate for the lack of financial credits and market access that have otherwise hampered the opportunity for ARBs to make use of newly-awarded land.<sup>32</sup> In fact, agro-business partnerships between corporations and ARBs are explicitly recognized as Joint Economic Enterprises under the CARL, specifically the Department Administrative Order (DAO) No. 02-99. This represents one of the results of the introduction of different models of Agribusiness Venture Arrangements (AVA) into the Comprehensive Agrarian Reform Program (CARP) (e.g. Aralar 2007a). It is understandable that people would work towards additional income sources given that, in the southern municipalities, the proportion of the population living below the national poverty threshold lies between 53% (Aborlan) and 78% (Rizal) (Provincial Planning and Development Office 2008).

Farmers have been engaged in contracts with AGPI either through cooperatives or as self-financed independent landowners (see Figs 3 and 4). AGPI lists four self-financed farmers who deliver FFB to the mill in Maasin.<sup>33</sup> These farmers tend to hold larger tracts of land than cooperative farmers, which is typically inherited through the CARP or obtained through subsequent acquisition, for example, as homecoming overseas workers, and they have generally better financial resources and may import their own varieties of oil palm seedlings rather than purchase from AGPI.<sup>34</sup>

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<sup>28</sup> Provincial Government staff, Puerto Princesa City, 18 June, 2013

<sup>29</sup> AGPI operates two of the five oil palm mills in Mindanao, with 5,000 and 4,800 ha of plantations in northern and central Mindanao, respectively.

<sup>30</sup> A nucleus estate model is a centrally controlled mode of contract farming in which the company manages its own plantation, but otherwise relies on smallholder farmers to produce crops according to management procedures and quality standards under its supervision.

<sup>31</sup> Collated information from several cooperatives, PGU and LGU staff

<sup>32</sup> DAR staff, Puerto Princesa City, 24 June 2013

<sup>33</sup> AGPI staff, Maasin, 28 Nov., 2013

<sup>34</sup> Collated information from several independent growers, municipal and provincial government staff



**Fig. 3: Coconut groves and an oil palm plantation in the lands of an independent farmer, municipality of Brooke's Point, Palawan, the Philippines**



**Fig. 4: Oil palm plantation of a cooperative in Barangay Calasaguen, Palawan, the Philippines**

The Provincial Cooperative Development Office lists 14 smallholder palm-oil growing cooperatives (see Table 2), and there are at least two additional cooperatives engaged in oil palm cultivation. This includes the 25-member Palawan Evergreen Oil Palm Cooperative initiated by staff of Cavdeal, the infrastructural contractor of AGPI, and San Andres, a 35-member cooperative chaired by Mr Koh, a businessman based in Manila who is also directing the company Capital Oil Refinery that produces coconut oil. Cavdeal was originally active in road construction connected to the oil palm plantations and is also said to be the largest owner of rubber plantations in Palawan. The cooperative model is a way to avoid limitations on

acreage and benefit from tax exemptions enjoyed under the Cooperative Code (e.g. Aralar 2007a). Cavdeal and San Andres initially purchased seedlings from AGPI, but without marketing agreements and are thus freed of obligations to deliver FFB to the PPVOMI mill in Maasin.<sup>35</sup> San Andres initially had plans to construct its own milling plant, also in the Municipality of Brooke’s Point. However, owing to the investment needs and the fact that all smallholders are already contractually bound to PPVOMI, it is uncertain if the plan will be implemented.<sup>36</sup>

**Table 2: The 14 smallholder cooperatives engaged in oil palm cultivation in Palawan**

<b>Municipality</b>	<b>Cooperatives</b>
Aborlan	Aborlan Small Coconut Multi-purpose Cooperative
Quezon	Couples for Christ FAMICO Multi-purpose Cooperative IKBA Oil Palm Producers Cooperative Aramaywan Farmers Multi-purpose Cooperative
Española	Labog Agri-Based Multi-purpose Cooperative Tapisan Oil Palm Growers Multi-purpose Cooperative Malalong Multi-purpose Cooperative White Palm Producers Cooperative Golden Palm Agro Industry Multi-Purpose Cooperative
Brooke’s Point	Calasaguen-Maasin Oil Palm Growers Multi-purpose Cooperative Tagbikal Oil Palm Cooperative
Bataraza	Sandoval Oil Palm Growers Multi-purpose Cooperative Sumbiling Oil Palm Producers Cooperative

Source: Palawan Provincial Cooperative Development Office, June 2013.

The smallholder cooperatives are registered with the Cooperative Development Authority (CDA) under the Philippine Cooperative Code (Republic Act No. 9520) of 2008. They vary in background and membership compositions, with some cooperatives established prior to the promotion of oil palm cultivation while others have been set up specifically for oil palm cultivation. Indeed, the PCA actively encouraged farmers to form cooperatives to engage in the out-grower scheme of AGPI.<sup>37</sup> Of the 14 smallholder cooperatives engaged in the outgrower scheme, three are further assisted by DAR. There are 23 so-called DAR-assisted cooperatives in Palawan, organized as part of CARP implementation and receiving support services from the government.<sup>38</sup> Many of the smallholder cooperatives act as multi-purpose cooperatives, with many members not being engaged in oil palm cultivation. As such, they provide loans to members for farming expenses, and the initiation of sari-sari stores (general stores) among others.

While some cooperatives farm their entire area in the out-grower arrangement with AGPI (so-called “pure” cooperatives), a majority has leased a part of the land to AGPI (so-called “anchor areas”). Farmers who leased their land to AGPI typically did so because of a lack of

<sup>35</sup> AGPI staff, municipality of Brooke’s Point, 19 June, 2013

<sup>36</sup> Plantations Manager, San Andres Cooperative, Municipality of Brooke’s Point, 19 June. 2013 and 10 Dec., 2013; Cavdeal staff, Municipality of Brooke’s Point, 19 June, 2013 and 10 Dec., 2013

<sup>37</sup> PCA staff, Puerto Princesa City, 24 June, 2013

<sup>38</sup> DAR staff, Puerto Princesa City, 24 June, 2013

capital for up-front investments for their own cultivation and skepticism with the out-grower scheme. Others were tempted by the offer of a long-term investment where, as one farmer expressed: “...you can sit and relax and harvest once a week... or have others doing this for you.”<sup>39</sup> Those who opted for the out-grower scheme considered the lease rent offered by AGPI (typically around PHP 1,000 per ha per annum) to be non-competitive and hoped that their own management and vigilance would ensure better profits.<sup>40</sup>

The smallholder cooperatives have entered into Production, Technical and Marketing Agreements (PTMA) with AGPI that specifies terms and conditions for the business relationship. Under this scheme, the cooperatives provide the land and organize manpower while AGPI provides the seedlings and technical knowhow. The contracts bind the parties for 25 years (roughly equivalent to the productive life time of the oil palm tree), during which the cooperative must deliver fresh fruit bunches to PPVOMI, in accordance with specified quality standards. The sales price is not fixed but instead regulated through a fresh-fruit-bunch pricing formula based on AGPI’s oil extraction ratio, the average selling price and the average processing costs. A Management Services Agreement (MSA) sets out the terms and conditions for AGPI’s management of the project on the land provided by the cooperatives. Both contracts contain provisions, which place the control with AGPI and the majority of financial and managerial risks with the cooperatives. For instance, AGPI is entitled to take over management (on basis of sole opinion) if the project is not managed to the satisfaction of AGPI (see Table 3).

In order to finance the project, the cooperatives have obtained a term loan with the Land Bank of the Philippines, under the so-called Development Advocacy Program. The contract states that the “Loan/Line Agreement” provides the loan for a period of 10 years with a four-year grace period on the loan and interest. The interest on the loan amounts to a prime rate, plus 6% spread or 13%, whichever is lowest, with payments due quarterly from the fifth to the tenth year. A penalty of 3% interest per annum is imposed in cases of non-payments. The bank holds land titles of a selected number of cooperative members/key officers as collateral.

Land ownership was reviewed by the Land Bank prior to the lending and the loan is conditioned on cultivation solely taking place in previously idle and unproductive land. Since few, if any, cooperatives could shoulder the matching funding of 20% to go with the Land Bank loan, AGPI has provided the remaining 20% of financial equity to meet the Land Bank lending policy, with an interest rate of 14%. As a standard provision in such loans, the contract requires that loans be fully amortized before farmers can take out profit on the sales.<sup>41</sup> The first batch of cooperatives that signed loan agreements in 2007 was expected to commence amortization in third quarter of 2013. A second batch of smallholder cooperatives was contracted subsequently with slightly revised loan agreements and amortization plans.

Many members of the cooperatives that were consulted for this study were migrant settlers, while the labour force recruited by cooperatives and independent farmers appears to be dominated by indigenous peoples.<sup>42</sup> Workers are typically engaged in either maintenance, harvesting or as so-called “loose fruiterers” (i.e. workers that pick over-ripe fruit that has fallen to the ground). Minimum wage rates are defined according to the industry sector and the economic area, with oil palm cultivation in rural Palawan set at PHP 210 per day (Wage Order No. IV-B-06). The employer may deduct from the salary the cost associated with food

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<sup>39</sup> Farmer, Municipality of Narra, 23 June, 2013

<sup>40</sup> Collated information from several farmers and cooperatives.

<sup>41</sup> Loan manager, Land Bank of the Philippines, Puerto Princesa City, 18 June, 2013

<sup>42</sup> Collated information from several cooperatives and independent farmers

and snacks supplied to the labour force; however, this agreement should be included in the contract.

Workers are entitled to bargain for higher wages but cooperatives generally pay only a minimum wage, which is partly because many cooperatives are heavily indebted and struggling with meeting the amortization schedule. People are recruited on short-term contracts and cooperatives see a significant turnover in the workforce, varying between 40 workers in low season and more than 100 during the so-called “peak pruning” (i.e. the removal of dried leaves from the stems). Several cooperatives also report efforts to reduce the labour force to save costs. Cooperative managers explain that they face difficulties in ensuring that workers from indigenous communities perform efficiently, and have made efforts to recruit new workers from other municipalities in mainland Palawan. Independent growers considered importing so-called skilled labour from other islands in the Philippines.

### 3. GRIEVANCES OVER LIVELIHOODS AND ENVIRONMENT

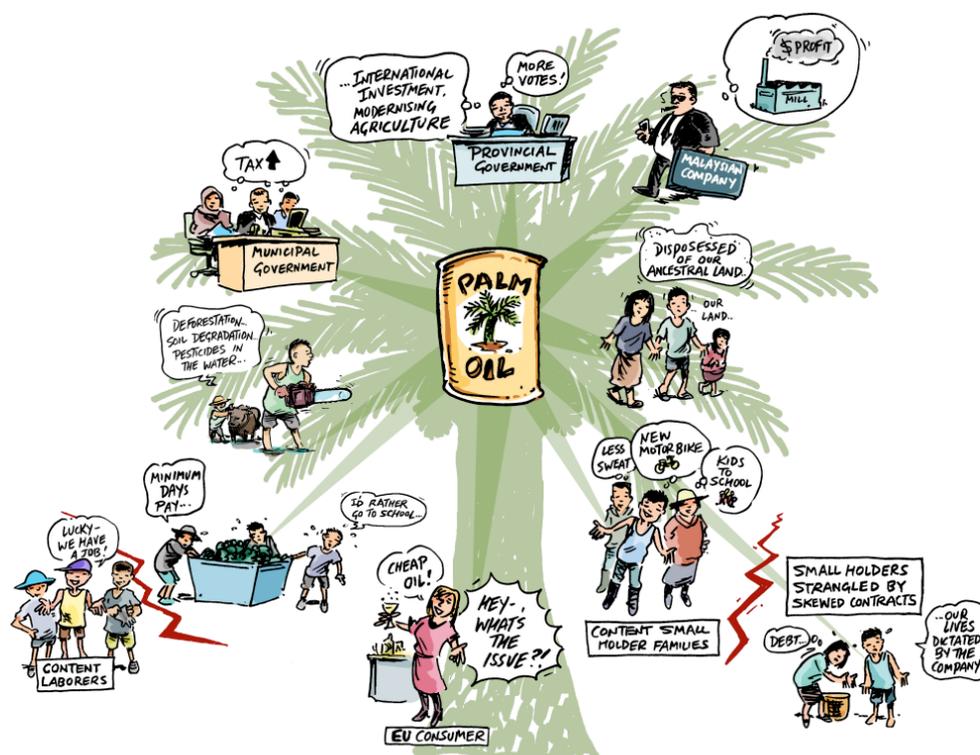


Fig. 5: Grievances and other stakeholder interests in the oil palm project: An illustration of the views expressed by people consulted for this study.

(Illustration by Simon Kneebone)

Irrespective of the socio-economic benefits obtained by some people involved in the palm oil project, other stakeholders in Palawan have made a number of complaints. For the present purpose (although the picture is more complex) we organize these grievances into three categories expressed by specific groups of complainants (see Fig. 5). As stated in the introduction, this study consulted only a few representatives of indigenous groups and workers, and more research is needed to give a more complete picture of their experiences to date. As concerns workers, issues were raised regarding widespread labour rights infringements, such as breach of the minimum wage (i.e. 210 PHP per day), use of child labour, insecurity in employment and growing interest in importing of labour, lack of social

security system (SSS) benefits, cases where unionizing has been discouraged, penalizing of complainants.<sup>43</sup> Several of the concerns outlined below have previously been articulated at length in a series of NGO reports (e.g. Barraquias-Flores 2010; Villanueva 2011; Dalabajan 2011; Neame and Villarante 2013; ALDAW 2013b; ALDAW 2013a).

### 3.1 Smallholder farmers: contractual deception, deepened poverty and food insecurity

For the majority of smallholder farmers that were interviewed, the business venture has become a very bad experience. Seven of the 14 smallholder cooperatives have been unable to meet the production targets and thus have been unable to amortize the Land Bank and AGPI loans.<sup>44</sup> The remaining cooperatives are barely meeting the payment schedule. In line with the contract, AGPI is imposing a 14% interest rate on all additional expenses and a 10% management fee, further deepening the cooperatives' debt. The prolonged period without income is a major constraint to smallholders, who, without other parcels of land for food crops, are, through the contracts, prevented from intercropping food crops in the oil palm plantations.<sup>45</sup> This predicament is especially severe for farmers who converted land used for other food or cash crops, such as cashew and coconut, or previously relied on a diverse livelihood sources such as agro-forestry, inter-cropping and livestock rearing in coconut groves, and for indigenous peoples who find it difficult to obtain the required permits from DENR to gather non-timber forest products (NTFPs). Farmers who have submitted their land titles or certificates to the Land Bank of the Philippines as collateral have grown anxious that they may lose their land if the business does not improve. In the barangays, these concerns have caused considerable psychosocial distress, and in some cases community conflicts and marital problems.

The signing of the contracts has placed the cooperatives in a patron-client relationship with the company. Most importantly, the cooperatives signed the PTMA and MSA simultaneously, placing the land under the *de facto* tenure of AGPI with cooperatives having lost control over their land-use decisions and financial management. As expressed by one member of the municipal government staff "... *farmers become tenants on their own land*".<sup>46</sup> According to AGPI staff, this contractual scheme was developed due to a directive from the Land Bank of the Philippines, based on experiences in Mindanao that smallholder cooperatives were unable to manage their plantations without direct supervision.<sup>47</sup> This means that the growers were not given the chance to independently manage their operation, as is otherwise intended in the PTMA (see Table 3).

PPVOMI is alleged to abuse its privileged position as the island's only processor of fresh fruit bunches.<sup>48</sup> Contrary to other cash crops, such as rubber and abaca, the harvested palm bunches cannot be stocked and must be processed at the milling plant within 48 hours to avoid deterioration of the oil content. With only one milling plant, and with all cooperatives having contractually committed to delivery of fresh fruit bunches to PPVOMI as a condition for their loan, pricing is fixed by PPVOMI at its discretion. Rather than guaranteeing growers

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<sup>43</sup> E.g. Barangay official, Municipality of Aborlan, 8 Dec., 2013; DOLE staff, Puerto Princesa City, 18 June and 27 Nov., 2013).

<sup>44</sup> Loan manager, Land Bank of the Philippines, 18 June, 2013.

<sup>45</sup> The lack of food crops and income during the first years of production has also been noted as a key issue by the PCA (PPDCI, 2013).

<sup>46</sup> Government officer, Municipality of Quezon, 21 June 2013

<sup>47</sup> AGPI staff, 28 November 2013

<sup>48</sup> Collated information from all cooperatives and independent farmers consulted for this study, including some LGU and PGU staff.

proceeds directly contingent on the world market price, the pricing formula in the PTMA makes the proceeds contingent on the internal milling efficiency of the PPVOMI plant, prior to deducting 15% gross profit for PPVOMI. The formula is also based on PPVOMI’s reported selling price for CPO and kernel oil, which does not include a mechanism for growers to verify or obtain an independent audit. Citing experiences from Bohol and Mindanao, farmers complained that the price setting at the PPVOMI milling plant is far below that of other mills in the Philippines where there is competition for deliveries of fresh fruit bunches.

**Table 3: Examples of the risk-distributing clauses in the contracts and critique from the Association of Oil palm Growers in Southern Palawan.**

<b>Provision</b>	<b>Consideration of the Association</b>
PTMA Section 1.14: If the cooperatives mismanage the operation they shall “...hand over the management to AGPI...”	The growers were not given the chance to independently manage their operation, since the PTMA and MSA were signed simultaneously.
PTMA Section 2.6: For the fresh fruit bunches, the grower shall be given “...a purchase price based on the pricing formula...”	The pricing formula shall be revised, removing the 3% milling fee since PPVOMI is part of the Agusan Group and the milling fee is not an externality to the project.  Loose fruits shall be weighed in separately and given a higher extraction ratio than bunches, as is practice elsewhere.  The weighing and computation shall consistently use either tonnes or metric tonnes; not alternate as currently practiced by PPVOMI.
PTMA Section 1.13: AGPI shall “...conduct of trainings and seminars”	No such training or seminars were conducted by AGPI, which thus has not sought to ensure the skills of the growers to manage their farms
PTMA Section 1.8: The compliance with labor laws is the sole responsibility of the grower	This is in breach of the Labor Code, specifically DOLE department administrative order 18-A, in which a principal (AGPI) remains solidary liable with the contractor (growers) for compliance with labour laws.  Because AGPI has taken over management of the plantations, AGPI shall be seen as primary liable under the current arrangement.

Source: Preliminary outcomes from the Association’s meetings held on 2 and 13 Dec., 2014 (see also Association of Oil Palm Growers in Southern Palawan 2013)

The farm plans and fertilizer budgets, prepared by AGPI and the Land Bank of the Philippines as the basis for the cooperatives’ loans, appear to have grossly underestimated financial needs. In particular, they took incomplete account of market dynamics and price fluctuations in fertilizer price. As reported by farmers, the projected cost for fertilizer was PHP 700/sack (one fertilizer sack equates to about 50 kg.), but the actual fertilizer price had increased to above PHP 1,300/sack. Because cooperatives have lacked financing to cover this price gap, they have had to request an additional loan from AGPI at a contracted compounded interest rate of 14%. The oil palm trees require regular fertilization at three-month intervals, and omitting or reducing fertilization will, under the contract, represent mismanagement on behalf of the cooperative.

Above and beyond the formal discrepancies associated with the structure of the contracts, the cooperatives alleged a number of instances of outright fraud associated with contract signing and implementation, which casts doubt on the legitimacy – and perhaps even legality – of the partnership. In the formation of oil palm cooperatives, AGPI had been seen to create rosters

of members without the consent of individual farmers. One farmer stated: *“I became automatically a member in the cooperative... I was included in [the] roster since I had land in a relevant area”*.<sup>49</sup> One cooperative Chairperson similarly explained: *“Agumil then expanded [our area] into 750 hectares, yet without a PTMA. AGPI was adding new members to our cooperative, but as the chair I was not aware. [We] expanded from 100 to [over 200] members”*.<sup>50</sup> In yet another case, an ex-chairperson of a cooperative reported how AGPI enclosed with the signed contract an attendance sheet of the cooperatives’ workers rather than the signatures of landowners.<sup>51</sup> The involuntary inclusion in cooperatives is a particular risk to farmers since they become jointly liable for the financial risk of the cooperative, whether or not they have committed their own land under the contract with AGPI. According to officers and members in several cooperatives, the contracts were never reviewed by the Board of Directors but signed by the chairpersons, who in some cases were allegedly bribed by AGPI staff. Barangay officials made similar comments, namely that the barangay endorsements in some cases were issued without the required consultation in the barangay council. Furthermore, chairpersons from several cooperatives, who acted as signatories on the contracts with AGPI, explained that they never read the contracts in detail. As one Chairperson stated: *“The agreement was pro forma, [it was] already prepared and I didn’t study it in detail before signing. Of course I regret that now”*.<sup>52</sup> Another cooperative member explained: *“[I said], ‘I trust you, my friend. Now I ask: Where is my friend? The management doesn’t listen... I try to use my influence as a municipal officer. If I go as land owner then I am not well entertained”*.<sup>53</sup> In some cases, cultivation started before the contracts were agreed, with earlier dates subsequently added to the contracts.<sup>54</sup> In other instances, AGPI was seen to withdraw cooperatives’ loans from the Land Bank of the Philippines for areas that were reported as fully planted but in fact still not cultivated.<sup>55</sup>

Cooperatives also alleged that AGPI routinely employed several abuses and deceptive practices in the implementation of the contracts. While the contract requires cooperatives to authorize AGPI to act as signatory on their Land Bank account, AGPI was seen to exclude them from financial management. Accordingly, AGPI had prevented cooperatives’ access to the use of the funds for which they are solely liable. One cooperative manager stated: *“The first three years of operation we were blindfolded ... we only received a copy of the PTMA after two years of planting... We tried to complain to Agumil with Board resolutions but they rejected all”*.<sup>56</sup> The ability of cooperatives to wrest documents from AGPI and obtain some degree of insight into the financial management of their operations appeared to depend partly on the technical competence and backgrounds of board members and managers: It was clearly an advantage when people had higher levels of education and regular employment, or contacts in government offices that they could use as leverage.<sup>57</sup>

Moreover, the cooperatives’ ability to oversee crop fertilization and to be financially sound was constrained when AGPI provided cooperatives with only summary overviews of costs, without receipts, breakdowns of expenses or information on where fertilizer had been applied. The lack of transparency has led to a suspicion among the cooperatives that AGPI is applying fertilizers paid for by the cooperatives to its own “anchor areas” (i.e. the land leases within

<sup>49</sup> Cooperative member, Municipality of Brooke’s Point, June 20 2013

<sup>50</sup> Cooperative Chairperson, 20 June, 2013

<sup>51</sup> Cooperative Ex-Chairperson, 16 Dec., 2013

<sup>52</sup> Cooperative Chairperson, 23 June, 2013

<sup>53</sup> Municipal officer and cooperative member, 20 June, 2013

<sup>54</sup> Cooperative Manager, 8 Dec., 2013.

<sup>55</sup> Cooperative Manager, 28 Nov., 2013

<sup>56</sup> Cooperative Manager, 19 June, 2013

<sup>57</sup> Collated information from several cooperatives.

some cooperatives wherein AGPI retains all profit). In addition, AGPI was seen to rather persistently under-report the weight of fresh-fruit bunch deliveries, and the cooperatives have subsequently become more diligent in double-checking the weighing scale during deliveries to avoid what they perceive as deliberate attempts at deception. Cooperatives also report that the need to obtain a counter-signature from AGPI was used as a coercive practice by the company staff. As one cooperative manager explained “*Agumil hangs the payroll if we are too ‘difficult’. Then we lose workers*”.<sup>58</sup>

Cooperative officers and members also cited a number of verbal agreements that they believed had been made prior to signing the contracts with AGPI and the Land Bank of the Philippines and which are now ignored by the two other parties. These include different levels of fixed proceeds that were guaranteed, that landowners would have priority to serve as workers on their own land, and that intercropping would automatically be allowed.<sup>59</sup> Similarly, two provincial government officials involved in the promotion of the palm oil project commented that the written terms and conditions were developed after the promotion campaign, including that management fee and interest rates, in fact, changed during the final stage of contracting.<sup>60</sup>

### 3.2 Indigenous peoples: Land dispossession

The process of land acquisition for the palm oil project through the out-grower schemes has spurred a range of complaints about encroachment on ancestral domains, whether these are covered by Certificates of Ancestral Domain Claim (CADC) or Certificates of Ancestral Domain Title (CADT) (see section 4.2 for more on the role of CADT and CADC certificates). As one person 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>61</sup> Numerous cases were mentioned where land was sold or rented with insufficient delineation of the plots and people subsequently losing access to their land.

Independent farmers and cooperative members acknowledged that it had been a challenge for many to provide the required land titles to secure the loans from the Land Bank of the Philippines. In fact, a considerable number of members in several cooperatives were disqualified from entering the out-grower scheme since they lacked titles to the plots that they volunteered for the contracts.<sup>62</sup> However, in many cases, it was possible for farmers to enter the scheme even without formal land titles. As one chairperson stated: “*... a few of the lots were not titled ... about 10–15% ... so they included survey cards ... or [a copy of] an application to DENR/DAR as proof*”.<sup>63</sup>

AGPI staff described how the many complaints had prompted realization within the company of the need to review its land acquisition and address cases of non-compliance: “*...yes, [we] committed mistakes...[land was] sold by land canvassers as ‘informal realty’. Half of such people are ex-DENR or ex-DAR, who know loop-holes in the system ... in some cases people were rightful owners, for instance indigenous peoples, but couldn’t sell since the land was ancestral domains ...[in other cases] they were not the rightful owners*”.<sup>64</sup> San Andres staff

<sup>58</sup> Cooperative manager, 19 June, 2013; Cooperative Chairperson 16 Dec., 2013

<sup>59</sup> Collated information from several cooperatives and PGU staff.

<sup>60</sup> Two Provincial Government staff representing different offices, Puerto Princesa City, 24 June, 2013.

<sup>61</sup> Tribal farmer, municipality of Brooke’s Point, 19 June, 2013. CADC is the Certificate of Ancestral Domain Claim (see section 5.2).

<sup>62</sup> Collated information from several cooperatives.

<sup>63</sup> Cooperative Chairperson, 20 June, 2013.

<sup>64</sup> AGPI staff, Maasin, 28 Nov., 2013.

also acknowledged the prevalence of overlapping land claims and that companies were aware of such competing claims but often chose to “*close their eyes*”.<sup>65</sup>

Staff from the DENR and National Council on Indigenous Peoples (NCIP) similarly noted that there have been instances where the required Free Prior and Informed Consent from indigenous peoples (see section 5.2) was only obtained after the project was in place and that land acquisition took place through land buying of middlemen/agents or via pressure exerted by influential people. Compared to the predicament of cooperative members, government and corporate staff appear to have, in general, less recognition of the concerns of indigenous groups. As expressed by one company officer: “[Indigenous peoples] *are not affected*...”.<sup>66</sup> Provincial Government staff tended to place the responsibility solely with NCIP staff and rejecting that their office could have shared responsibility. As put by one head of office: “*ancestral domains ... this is responsibility of the NCIP*”.<sup>67</sup>

### 3.3 Environmental groups: illegal logging, replacement of food crops, pests

A central assumption held by the Provincial Government in the promotion of the palm oil project was that it would not intrude into forested areas or replace food crops but would instead occupy the so-called vacant and idle lands. Yet, as already stated (see Section 3.1), a substantial number of observations from cooperative farmers, indigenous people and government staff suggest that this assumption is not valid. Cooperatives explained how they have been “*forced to cut coconuts by the Agumil supervisor*”,<sup>68</sup> or that “*Agumil encourages members to log timber to clear [land] for oil palm*”.<sup>69</sup> Provincial government staff and NGOs described widespread cutting of timber in pending applications for Certificates of Ancestral Domain Claims (CADCs), as well as in titled land, for the purpose of oil palm cultivation. Similarly, one LGU official noted that he was afraid to lose many of the municipality’s coconut groves as the oil palm plantations expand.<sup>70</sup> For such reasons, some barangays have filed resolutions complaining that oil palm plantations have replaced rice fields, lands fallowed by indigenous groups, and coconut groves.<sup>71</sup> In the municipalities of Quezon and Rizal alone, the DENR has identified 185.25 hectares of oil palm cultivation in timberland, comprising 35.15 ha of forested land both outside and inside the Mt Mantalingahan Protected Landscape and 150.1 ha in Certificate of Ancestral Domain Title (CADT) areas. The encroachment on timberland comprises 66.3% of the oil palm cultivation in the two municipalities (279.53 hectares) (CENRO Quezon, 2013).<sup>72</sup>

One particular case of logging concerns the initiation of oil palm cultivation in the area claimed by Salam Multi-Purpose Cooperative in the Municipality of Rizal. While the loan agreement with the Land Bank was still pending, AGPI planted oil palm seedlings in 15 ha. The actual planting was carried out by AGPI, and labour expenses were charged to the cooperative.<sup>73</sup> However, the loan was never approved because the cooperative was unable to secure the required Protected Area Community-based Resource Management Agreement.

<sup>65</sup> Corporate manager, 19 June, 2013.

<sup>66</sup> Cooperate officer, 19 June, 2013

<sup>67</sup> PGU staff, Puerto Princesa City, 17 June, 2013

<sup>68</sup> Cooperative manager, 19 June, 2013. The cutting of coconut stands without license is prohibited under the Coconut Preservation Act RA8048 of 1985.

<sup>69</sup> Farmer, municipality of Brooke’s Point, 19 June, 2013

<sup>70</sup> LGU official, municipality of Brooke’s Point, 20 June, 2013

<sup>71</sup> See for instance Resolution no. 51 2011 of Barangay Ipilán, municipality of Brooke’s Point

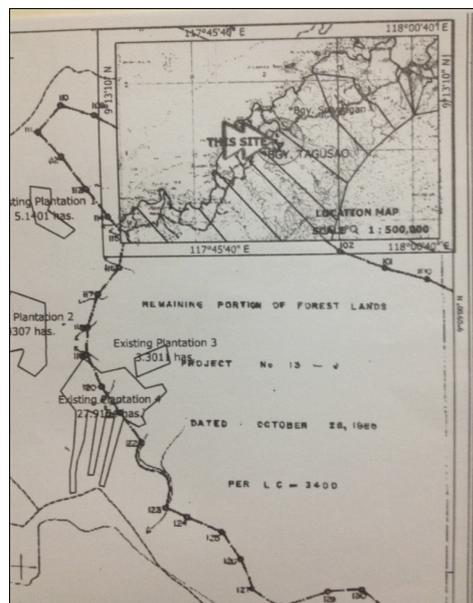
<sup>72</sup> CENRO Quezon was the first DENR office to provide its consolidated map of oil palm expansion into timberland to the DENR. The other concerned CENRO’s were expected to submit their maps after conclusion of this study.

<sup>73</sup> Board member, Salam Multi-Purpose Cooperative, 22 June 2013; DENR staff, 21 June 2013

Their land claim had in 2012 been included in the Mt. Mantalingahan Protected Landscape (Presidential Proclamation 1815 signed on 29 July, 2009), and its Protected Area Management Board rejected converting the Community Based Forest Management Agreement (CBFMA) license to a Protected Area Community-based Resource Management Agreement, which would have allowed the cooperative to cultivate the area.

Furthermore, concerns were widespread that the expansion of oil palm plantations has led to introduction of insect pests to Palawan. As some farmers suggested: “...when oil palm farmers apply large amounts of pesticides it pushes [the] pests to rice fields ... [and] coconut”.<sup>74</sup> This includes notably the coconut leaf beetle of the genus *Brontispa*. This particular hispine feeds on the soft tissue of coconut fronds, eventually leading to the death of the plant. In fact, the discovery of “ringspot virus disease” and an outbreak of *Brontispa* previously resulted in the banning of imported oil palm planting materials (PPDCI (Philippine Palm Oil Development Council, Inc.) 2013). The earwig, a natural predator of the *Brontispa*, has been released to combat the spread of the pest and the PCA has launched an information campaign to compel people to report on *Brontispa* outbreaks (PCA, 2007). Such concerns have held some farmers and cooperatives back from engaging in the palm oil project.<sup>75</sup>

Compared to coconut and other food crops, oil palm is heavily dependent on fertilizers and pesticides. Hence, farmers and LGU staff are concerned that there will be long-term impacts in the form of pollution and contaminated soil and drinking water, with associated human health effects. Some famers and government staff also anticipate long-term reduction of soil fertility, as well as negative impacts on the native biodiversity.<sup>76</sup>



**Fig. 6: Excerpt from map of Barangay Tagusao, Quezon, showing oil palm expansion into forestland.**

Source: PENRO, 2013

<sup>74</sup> Farmer and LGU councilor, 23 June, 2013

<sup>75</sup> Collated information from several contributors, including cooperatives, tribal farmers and LGU councillor,

<sup>76</sup> Collated information from several farmers and municipal and provincial government staff

## 4. INSTITUTIONAL PERFORMANCE

This section examines the rigour of the current regulatory environment and the performance of existing government institutions in terms of providing access to remedies and means of redress for people with legitimate grievances, such as those outlined above. We first review the way complainants so far have sought to access remedies (the so-called “procedural history” of the claims), then the implementability of regulations and policies, and finally provide a preliminary analysis of legal liabilities in the current governance regime.

### 4.1 Procedural history of the complaints

Complainants have made various efforts to make use of available remedies, principally turning to administrative channels. However, no efforts have been made to access the judiciary through court actions. This is partly because NGOs still needed to compile sufficient evidence to substantiate lawsuits and because it is necessary, for court actions to be accepted by the judiciary, to first exhaust administrative remedies. Farmers and indigenous groups generally find the judicial system inaccessible and lack finances to recruit lawyers. However, NGO staff referred to one case, filed to the government ombudsman in Manila against the PCSD for breach of duty in monitoring of the palm oil project. This case is now under investigation.<sup>77</sup>

Cooperatives have made repeated, unsuccessful efforts to submit board resolutions to Agumil that request changes in the business relationship. These resolutions have also invited the Land Bank of the Philippines and AGPI to cooperative board meetings, and requested that AGPI convene all cooperative chairpersons for joint and regular meetings to discuss their concerns.<sup>78</sup> Some cooperatives have tried to evoke the provisions of the PTMA that allow for renegotiation of the contracts with AGPI, given consent of both parties, but were rejected by AGPI managers. Cooperatives have filed complaints to local legislative bodies, including the provincial board.<sup>79</sup> In this process, cooperatives have also submitted requests for assistance to the Cooperative Development Authority office in Puerto Princesa City and the Department of Agricultural Reform (DAR), but reported that they had not yet received any support (see also PPDCI, 2013).<sup>80</sup>

Similarly, indigenous communities have filed complaints with sworn affidavits to the provincial government attesting to the encroachment of cultivation on ancestral domains. Complaints have also been submitted to the NCIP pertaining to alleged negligence regarding the required Free, prior and informed consent (FPIC) under the Indigenous Peoples Rights Act (IPRA), associated with the establishment of the palm oil project and its attached cooperatives and their land titles (see also ALDAW, 2013). Recognition among some barangay officials has prompted some calls to the Provincial Government, such as from Barangay Ipilan, the Municipality of Brooke’s point.<sup>81</sup> Such notifications have also prompted the Provincial Environment and Natural Resource Officer (PENRO) to submit formal requests to the Provincial Agriculturist Office to halt the oil palm expansion.<sup>82</sup>

<sup>77</sup> NGO staff, 18 June, 2013, Puerto Princesa City

<sup>78</sup> Art 2.7 and 2.8 of the MSA/PTMA require AGPI to join cooperatives’ board meetings and “adequately inform” the cooperatives.

<sup>79</sup> For instance, the complaint from the Aborlan Small Coconut Producers Cooperative was received on 13 March, 2013, and the subsequent document submission treated in a plenary hearing by the councilors, supposedly during the first week of April, 2013.

<sup>80</sup> Collated information from several cooperatives

<sup>81</sup> Barangay Ipilan Resolution no. 51

<sup>82</sup> Copy of letter shown by provincial government staff, Puerto Princesa City, 17 June, 2013

However, by and large, government offices have not intervened to address the grievances. The complaints from cooperatives are generally regarded by government agencies, including the Land Bank of the Philippines, as matters to be dealt with between private parties. A dominant view expressed by several agency staff was that the cooperatives were to blame for engaging in contracts they did not legally understand or without required management capacity.<sup>83</sup> As a member of the provincial board expressed it, the provincial politicians are particularly concerned not to interfere in this matter since this would influence the potential to attract private investors to Palawan.<sup>84</sup> Concerning complaints from indigenous peoples, NCIP staff deny that they have received formal submissions from complainants and thus cannot act to scrutinize the issue.<sup>85</sup>

In response to the limited government intervention, Palawan has seen growing mobilization from among farmers, indigenous peoples, and civil society in general. The cooperatives first explored the option of uniting in a federation (legal entity under the Cooperative Code) but the momentum was held back by the requirement to hold capital of PHP 1.5 million to register a federation with the Cooperative Development Authority (CDA) and the extensive travel required to coordinate among the prospective members.<sup>86</sup> Instead, the cooperatives formed The Association of Oil Palm Growers in Southern Palawan as a more flexible organizational platform. The association has coordinated the communication with the provincial government and filed several resolutions and requests for support, including a request for tax exemption to alleviate their financial distress and a request for assistance with legal counsel for the negotiation with Agumil.<sup>87</sup> Furthermore, a number of NGOs in the province have established the Working Group on Oil Palm Concerns (WGOPC) advocating for a moratorium on further expansion of oil palm cultivation and backtracking on illegal cultivation in forest land or indigenous peoples' ancestral land (e.g. ALDAW 2013a). A letter was submitted by the NGO Ancestral Land/Domain Watch (ALDAW) to the President of the Philippines, HE Benigno Aquino III, on 7 June, 2013. It called for an in-depth investigation into the alleged human rights violations perpetuated by oil palm companies and called for a nationwide moratorium on oil palm expansion.

This mobilization and continued protest has spurred the government to respond. The provincial government has committed to provide legal counsel through its legal office and Provincial Cooperative Development Office (PCDO) to support the cooperatives in clarifying the contractual relationship.<sup>88</sup> Still, no political or legislative interventions are foreseen. The only provincial ordinance that has been passed to date is Provincial Ordinance No. 1295 of 2013, sponsored by the previous chair of the Committee of Cooperatives and NGOs, which established procedures for reviewing business proposals prior to issuing permits to contract with cooperatives. This ordinance will affect only new business activities and will not affect the current oil palm project.

Efforts are ongoing within the tripartite contract arrangements (the Agusan Group, the Land Bank of the Philippines and the cooperatives) to address some of the issues faced by the smallholder cooperatives. In July 2013 the Land Bank of the Philippines initiated a series of meetings with the cooperatives to examine how their loans can be restructured to extend amortization schedules and reduce penalties in case of delays in amortization, which should

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<sup>83</sup> Collated information from several provincial government offices

<sup>84</sup> Provincial Board Member (Sangguniang Panlalawigan), Puerto Princesa City, 9 Dec., 2013

<sup>85</sup> Legal Officer, NCIP Puerto Princesa City, 6 Dec., 2013.

<sup>86</sup> Collated information from several cooperatives

<sup>87</sup> Resolution no. 01 and 02 of 2013 of the Association of Oil Palm Growers in Southern Palawan

<sup>88</sup> Provincial Board Member (Sangguniang Panlalawigan), Puerto Princesa City, 9 Dec., 2013

result in rehabilitation plans through bilateral talks with the cooperatives.<sup>89</sup> PPVOMI has employed additional administrative staff to handle the issues emerging in the company's relationship with its out-growers.<sup>90</sup> However, the majority of cooperative officers and members interviewed perceive the proposed measures as only token, and insufficient in that they do not substantially address their underlying concerns. As noted by one cooperative chairperson: "*Restructuring of loan will only add more interest*".<sup>91</sup> In a recent submission to the Provincial Government, The Association of Oil Palm Growers in Southern Palawan calls attention to the alleged deception and illegal acts associated with the entry into the PTMA and MSA, and demand payment of damages from the Agusan group for the economic loss and harm incurred (Association of Oil Palm Growers in Southern Palawan 2013). Yet, cooperatives and land owners are divided in their views: some wish to annul the contract, uproot the palms and sue the Agusan Group for damages, others hope to renegotiate the contracts and rectify the business into a viable and profitable undertaking. The cooperatives appear to have difficulty reaching agreement among members and Boards of Directors, and the individual members are 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>92</sup>

Shortly after ALDAW's submission of its letter to the President of the Philippines, the PCA was tasked to establish an inter-agency group in Palawan and convened a series of stakeholder meetings to hear the emerging concerns around the oil palm industry. The national Deputy Administrator of the PCA acted as arbitrator for these meetings, held on 7 July, 18 August and 17 September, 2013, in Puerto Princesa City.<sup>93</sup> At these meetings the DENR and other government agencies officially admitted to the presence of widespread encroachment on forested land and ancestral land (PCA (Philippine Coconut Authority) 2013). The DENR has thus started a process to map the expansion areas of the oil palm project, identify where tenurial instruments have not been obtained, and where appropriate to instruct AGPI to obtain such instruments or remove the plantations (e.g. CENRO Quezon 2013).<sup>94</sup> Agumil has admitted to having made mistakes in land acquisition and is declaring its commitment to collaborate with DENR to address the cases that will be identified during this process.<sup>95</sup> It appears that the DENR expects that the majority of, if not all, cases can be resolved by issuing appropriate tenurial instruments without actually removing illegally planted plantations or penalizing AGPI.<sup>96</sup>

Moreover, the protests from the localities have spurred growing recognition among government staff of the unexpected and undesirable outcomes from the oil palm project. As expressed by a member of the provincial government staff: "*Only Agumil is benefitting ... the PTMA advantages the company. Many oil palm cooperatives are now suffering*".<sup>97</sup> Another staff member who had originally been instrumental in convincing the cooperatives to engage in the palm oil project expressed: "*I am not pro-oil palm anymore – there is a control of the market. I have discouraged [new] investors ... who approach for oil palm investments ...*".<sup>98</sup>

<sup>89</sup> Loan manager, Land Bank of the Philippines, Municipality of Brooke's Point, 28 Nov., 2013

<sup>90</sup> Agumil staff, Municipality of Brooke's Point, 19 June 2013.

<sup>91</sup> Cooperative Chairperson, 23 June 2013

<sup>92</sup> Land owner and former cooperative Chairperson, 16 Dec., 2013

<sup>93</sup> PCA staff, Puerto Princesa City, 5 Dec., 2013

<sup>94</sup> PENRO staff, Puerto Princesa City, 5 Dec., 2013

<sup>95</sup> AGPI staff, 28 Nov., 2013

<sup>96</sup> Collated information from several DENR staff in Puerto Princesa City, Quezon and Brooke's Point.

<sup>97</sup> Provincial Government staff, Puerto Princesa City, 24 June, 2013

<sup>98</sup> National Government staff, Puerto Princesa City, 24 June, 2013

Such changes in attitudes are partly linked to recognition that mounting dissatisfaction among farmers may attract attention from rebel groups, such as the New People's Army (NPA), with a presence in Palawan's interior highlands. In fact, some people noted that NPA groups have started to make contact with community members in southern Palawan specifically regarding their discontent with the palm oil project.<sup>99</sup> As one member of the provincial government staff commented: "*If companies seize land from farmers then it may encourage the NPA ... and we get more insurgency*".<sup>100</sup>

#### 4.2 Implementability of regulations and policies

The use of forestland is governed by the Revised Forestry Code of the Philippines (Presidential Decree No. 705 of 1975), including its different tenurial instruments required for the allowed activities in the designated zones, such as Community Based Forest Management Agreements. Furthermore, the President has declared a moratorium on the cutting of timber in natural and residual forestland (Executive Order No. 23 of 2011). In addition to the national government policy framework, Palawan Island has a comprehensive framework for sustainable development – the 1992 Strategic Environmental Plan (SEP) Republic Act No. 7611 – and the associated protected area zoning known as the Environmentally Critical Areas Network (ECAN). In accordance with the 1992 environmental plan and ECAN zoning, agro-industrial ventures can only take place in the so-called "multiple-use zone". Moreover, Environmental Compliance Certificates (ECCs) are required for all projects that fall under the Philippines Environmental Impact Statement System and do not secure a Certificate of Non-Coverage (Presidential Decree 1586 and DENR DAO No. 2003-30). In general, land use conversions are exempted if they are below 100 ha and do not take place in environmentally critical areas; hence, many independent farmers with small landholdings will not require an ECC for oil palm cultivation. For the out-grower scheme, securing the ECC is the responsibility of the project owner (in this case AGPI) that contracts out-growers for the project.

PPVOMI obtained a SEP clearance (No. POP-032510-020) on 25 March, 2010 for its Integrated Palm Oil Plantations Development, Production and Processing Project. The clearance covers the nursery and oil palm mill in an area of 13 ha in Barangay Maasin, Municipality of Brooke's Point. Hence, the SEP clearance does not refer to the plantations or take into account the total extent of cultivation or their aggregate environmental impact.<sup>101</sup> The ECCs were issued for the palm oil mill in Barangay Maasin on 2 July, 2010, and the sites in the relevant municipalities between September 2008 and February 2009.<sup>102</sup> Cultivation also takes place in additional areas not covered by these ECCs. For instance, some cooperatives, operating outside of the out-grower scheme of AGPI but delivering fresh fruit bunches to the mill, noted that they have expanded their plantations into new land without an ECC.

The SEP clearance and at least some of the ECCs were thus obtained only after the project was initiated, including contracting with landowners, nursery establishment, land conversion, and planting of seedlings. This is in breach of the Environmental Impact Statement System and the implementing guidelines for the SEP (including PCSD Admin. Order no. 6 2008).

<sup>99</sup> Community member, Southern Palawan, 19 June, 2013

<sup>100</sup> Provincial government staff, Puerto Princesa City, 24 June, 2013

<sup>101</sup> We requested from the PCSD and DENR the baseline study undertaken by the PCSD prior to release of clearance under the Strategic Environmental Plan and the Initial Environmental Examination to be filed by the project promoter, but these were not disclosed.

<sup>102</sup> Brooke's Point: 23 Jan., 2009, Quezon: Sep. 2008, Rizal: 26 Sep., 2008, Aborlan: 20 Feb., 2009, Narra: 20 Feb., 2009, Sofronio Española: 26 Sep. 2008, and Bataraza: 20 Feb., 2009. Copies of permits and license are on file with the authors.

According to the Memorandum of Agreement between PCSD and DENR (signed December 29, 1994), DENR shall not issue an ECC without the project promoter having secured a SEP clearance. And in this case, the DENR did in fact issue the ECC prior to the SEP clearance being issued.<sup>103</sup> It is possible that the ECCs were provided by means of the recent DENR Department Administrative Order that allows DENR to set processing times for applications. Under this order, if no response is provided within 90–180 days then the application will automatically be considered approved and the ECC issued (Manguita-Feranil 2013).

While it has been a standard practice for project promoters in past agro-business projects to obtain the ECC from the concerned CENRO or PENRO, the ECCs were in this case issued by the main office of the DENR in Quezon City, and subsequently approved by the Regional Director (with endorsements from concerned barangays, municipal governments and the provincial government). This option is provided for in a memorandum aimed at speeding up investments through more efficient administrative procedures. However, as the local regulators are not involved and do not receive copies of the application or files processed by the DENR, it is difficult for local government officers to oversee implementation of the certificate.<sup>104</sup>

In the PCSD's review for the SEP Clearance, no particular environmental impacts were expected from oil palm cultivation compared to other agricultural activities in Palawan, despite the project representing the introduction of an exotic species.<sup>105</sup> Similarly, government officials and provincial council members explained that the mandatory environmental monitoring had been irregular and that required annual reports from AGPI/PPMVOI had not been received.<sup>106</sup> Members of the Multi-Partite Monitoring Team (MMT), responsible for monitoring compliance with the ECC terms and conditions, noted that the monitoring activities had been concentrated on the mill and nursery in Maasin and had not included the expansion or activities in the plantations.<sup>107</sup> The funding scheme from the Land Bank of the Philippines comes without any formal grievance mechanisms or policy safeguards to verify if the required public regulatory measures are complied with.<sup>108</sup> Similarly, the Agusan Group does not have a sustainability policy, nor has it subscribed to any voluntary corporate codes of conduct.<sup>109</sup>

Under the 1997 Indigenous People's Rights Act (Republic Act No. 8371), FPIC certificates from indigenous peoples are required if the oil palm cultivation is to be undertaken in ancestral domains. The NCIP is expected to assess project proposals and applications for land titles processes made by other agencies. CADCs are issued under the rules and procedures of the DENR Dep. Admin. Order 02 of 1993 (DAO No. 02-93). In the present case, the NCIP in Puerto Princesa did not review requirements for FPIC since the palm oil project was not considered to infringe on lands covered by CADCs or native claims.<sup>110</sup> As noted above, a number of complaints have subsequently been submitted to the NCIP regarding ignorance of ancestral land claims.

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<sup>103</sup> PCSDS staff, 24 June 2013, Puerto Princesa City,

<sup>104</sup> Collated information from DENR staff, Puerto Princesa City, and PENRO officers in Southern Palawan

<sup>105</sup> PCSD staff, Puerto Princesa City, 24 June, 2013

<sup>106</sup> LGU staff, Municipality of Brooke's Point, 20 June, 2013; Provincial Councilor (SB), Puerto Princesa City, 24 June, 2013; CENRO staff, Municipality of Quezon, 21 June, 2013

<sup>107</sup> MMT member, 10 December 2013

<sup>108</sup> Loan Manager, Land Bank of the Philippines, Municipality of Brooke's Point, 28 November 2013

<sup>109</sup> AGPI staff, Municipality of Brooke's Point, 28 Nov., 2013. For instance, Five Philippine palm oil processors and traders are approved members of the RSPO; however this does not include Agumil companies operating in Palawan (RSPO, 2013).

<sup>110</sup> NCIP staff, Puerto Princesa City, 17 June, 2013

The Philippines in general, and Palawan Province in particular, suffer from ambiguities in land titling that arise from competing legal frameworks for property rights and a legacy of overlapping land claims. Potentially competing property rights include forest titles, private land titles, unissued titles that have ripened into ownership by the operation of law (under the Civil Code), and CADCs/CADTs or yet uncertified native land claims. In general, the FPIC review will only take place if the responsible authority issuing the land title (DENR, DAR or municipal governments) consults the NCIP to verify the existence of ancestral or native claim claims. Coordination between and among agencies has historically been limited and human and financial resources for undertaking FPIC reviews and native titling are often insufficient. Typically, experience shows that land titling and release of land for investors may proceed without following due procedures for FPIC and NCIP.<sup>111</sup>

Overall, the provincial government appears to have placed itself in a somewhat difficult position by promoting the oil palm industry without clear terms of reference or regulatory environment (Fig. 7). This made it more complicated to define the responsibilities of Agumil after the involvement of provincial offices of national government agencies ceased and the project became a solely private undertaking. While it has the mandate to oversee the implementation of the national policy on oil palm, the PCA in Puerto Princesa lacks guidelines for implementation that would clarify its regulatory role.<sup>112</sup> The same challenges

are faced by other offices, such as DAR and the PCDO, which could potentially play a key role in supporting the smallholder cooperatives. However, these offices lack formal mandates and have so far been excluded from the activities surrounding the project. One provincial government worker said: *“Our office didn’t see the agreement prior to the cooperatives signing ... and now we are asked for assistance”*.<sup>113</sup> Some government staff even believe that advocates of the oil palm industry have sidelined their agency as part of an explicit strategy to undermine their capacity to represent the cooperatives’ interests. For instance, another provincial government staff member said: *“It was a strategy to eliminate [us] from [the contracting process] ... verbally the terms were good for the cooperatives”*.<sup>114</sup>

Moreover, while the Palawan Palm Oil Industry Development Council was established as a body to develop policies and monitor the oil palm industry, no formal guidelines or policies were prepared.<sup>115</sup> This means that the Provincial Government has not conditioned the agro-industry with any particular requirements over and above standard regulations. The PPOIDC is today widely seen to be passive and not taking on its mandated role to monitor and ensure regulation of the industry. It appears that the political interest has declined since ex-governor Reyes’ administration was replaced, with recent administrations attending to other development priorities.<sup>116</sup>

Overall, a number of people within government offices felt that the expectations they had for the palm oil project had not been met. In their view, the company has not reciprocated on the investments made by the provincial government and the extensive efforts of its agencies. As

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<sup>111</sup> Collated information from Provincial Government staff in relevant offices. Recently, a joint administrative order (Joint DAR-DENR-LRA-NCIP Admin. Order no. 01-12) has been prepared among DAR, DENR, NCIP, LAR to seek improved coordination, including requirements for reciprocal notification during land titling.

<sup>112</sup> PCA staff, Puerto Princesa City, 17 June, 2013

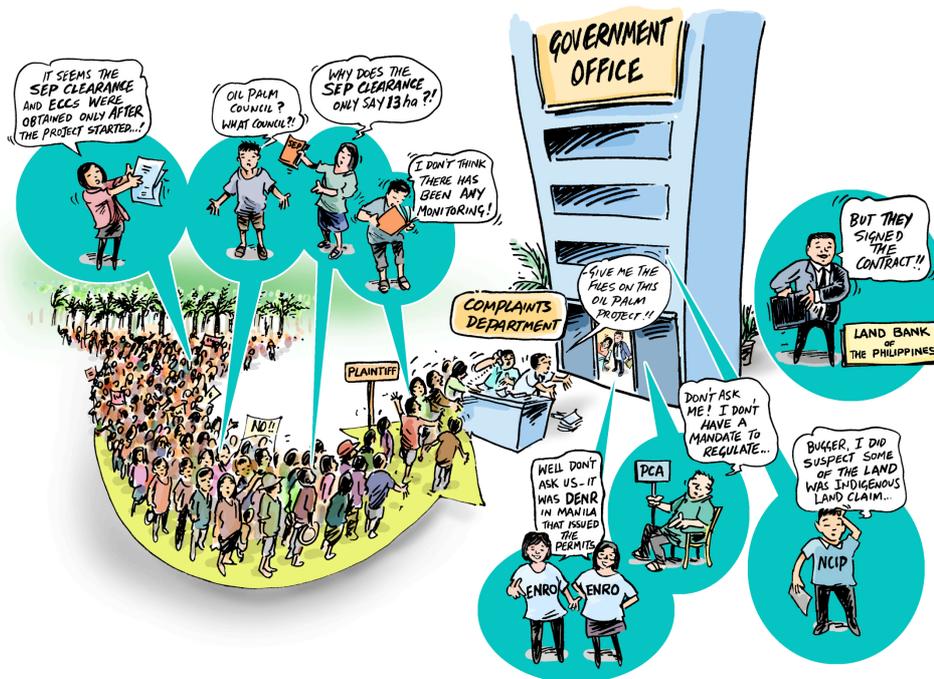
<sup>113</sup> Provincial Government staff, Puerto Princesa City, 24 June, 2013

<sup>114</sup> Provincial Government staff, Puerto Princesa City, 24 June, 2013

<sup>115</sup> Some contributors suggested that the council had in fact initially prepared guidelines on the land areas to be converted to oil palm cultivation, excluding areas covered by food crops such as rice cultivation, and also fixing limitations per municipality. However, no confirmation or documentation on these guidelines could be retrieved during the study.

<sup>116</sup> Collated information from interviews with PGU staff, legislators, and NGOs

one provincial board member stated: “Agumil needed support from [us] with the permit process ... we had weekly meetings then. But now Agumil doesn’t recognize us anymore”.<sup>117</sup> Administrative staff from the provincial government involved in the initial inter-agency promotion of the project also recounted how changes of personnel in the company meant that verbal agreements had been forgotten by the company staff.<sup>118</sup>



**Fig. 7: Complaints and regulations – illustration of institutional performance in the context of oil palm cultivation in Palawan**  
(Illustration by Simon Kneebone)

### 4.3 Legal liabilities

AGPI have sought to transfer many legal liabilities and financial risks through the out-grower contracts (see Table 3). With regards to the land claims, both the PTMA and the MSA include provisions that place with the cooperatives the responsibility to warrant that they have acquired the necessary tenurial instruments and that their land is free from adverse claims (PTMA 1.1; MAS 1.4). Also, the Loan/Line Agreement’s warranties in section 16.3.3 include such clauses, and section 15.11 requires cultivation to solely take place in idle and unproductive land. However, the conditions of the SEP clearance places full liability on the project promoter (AGPI) for any damage to public or private property. Similarly, the responsibility for compliance with the rules and conditions attached to the ECC lies with AGPI. As such, the supervisory role of AGPI over the cultivation practices of the cooperatives appears to be recognized in law.

In terms of infringements of labour rights, under the Philippine Labor Code (DOLE Department Order 18-A), a principal (e.g. AGPI) that hires contractors (e.g. smallholder cooperatives) remains jointly liable for non-compliance under the principle of solidary liability. However, in order for this legal relationship to be recognized, the cooperatives must register with DOLE. This requires the payment of a fee of PHP 25,000 and proof of

<sup>117</sup> Provincial Board Member (SB), Puerto Princesa City, 24 June, 2013

<sup>118</sup> Provincial Government staff, Puerto Princesa City, 24 June, 2013

significant financial capital. No cooperatives have yet registered, which means that they are, in fact, both operating illegally under DOLE regulations and that the principle of solidary liability does not apply.<sup>119</sup> It is thus doubtful if the contract provisions currently used by AGPI (PTMA 1.8) can legitimately transfer the liability for labour law compliance solely to the cooperatives as this appears to be in breach of DOLE regulations. This could potentially cast doubt on the legality of the contracts: in the Securities Regulation Code (Section 71) that governs business enterprises, the principle applies that any contract with provisions violating national law shall be void.

Philippine law does not recognize criminal liability of corporations, nor do the rules of procedure of any existing court or tribunal allow for extra-territorial jurisdiction to prosecute foreign corporations (such as Agusan Plantations, Inc.). Rather, as defined in the Philippine Corporate Code (Section 31) directors, trustees or officers can be held jointly and personally liable for damages suffered by other parties when they knowingly endorse unlawful acts or otherwise are guilty of gross negligence or bad faith in directing the affairs of the corporation. This includes an exemption of the limited liability principle in company law, offering complainants the possibility to access the personal assets of the director or officer. In the Securities Regulation Code (Section 51), a corporation or individual may also be subject to secondary liability for controlling, aiding or abetting unlawful acts. If complainants were to file a court case alleging criminal acts on the part of AGPI, such as flouting of FPIC procedures or using child labour, AGPI would thus have to prove that, despite exercising due diligence, no knowledge was held of the facts (Aralar 2007b).<sup>120</sup>

The grievances raised by smallholder cooperatives may also prompt examination of the validity and legitimacy of the existing out-grower contracting arrangement. In Philippine contract law, the default assumption (based on the rule of parole evidence) is that all aspects of an agreement are represented in the written contract. However, in several cases, smallholders' allegations and insights from government staff imply that the written contracts do not reflect the "meeting of minds" assumed in a contractual relationship. According to the national Law on Obligations and Contract (Philippine Civil Code, RA. No. 386, Art. 1390), contracts are voidable/annullable when the consent of one of the parties is vitiated by mistake, violence, intimidation or undue influence or fraud. However, mere mistakes on behalf of the cooperatives that could have been avoided by show of ordinary diligence cannot nullify consent. In such cases the cooperatives would need to show that AGPI employed undue influence, that they consented in ignorance of the actual conditions, or that they were convinced by financial distress. In turn, allegations of fraud would require proof that AGPI purposefully misrepresented or concealed facts motivating farmers' consent. For cooperative chairpersons signing contracts with no or limited proficiency in the English language, the burden of proof would lie with the defendant (AGPI) to show that the terms were fully explained prior to signing (De Leon and De Leon Jr 2011).

The Philippines is well known internationally for far-reaching judgments on environmental cases (e.g. *La Viña*, 1994). The 29 April, 2010 Supreme Court Rules of Procedure for Environmental Cases have made the Supreme Court more accessible to environmental claims, including through the use of provision on environmental protection orders as a means of injunction (the so-called Writ of *Kalikasan*), liberalized rules of standing allowing NGOs to represent communities, and through applying the precautionary principle in the evidentiary

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<sup>119</sup> Head of Palawan Field Office, DOLE, Puerto Princesa City, 18 June, 2013 and 27 Nov., 2013.

<sup>120</sup> For instance, the penalties for child labour amount to up to six years of imprisonment under Section 6 of RA. No. 9231 of 2003. Furthermore, under the Labor Code, in cases of doubt, the judge shall in general favour the labourers, which means that corporations such as AGPI will have to demonstrate additional diligence.

rules (La Viña 2013). Yet, the judicial system is often inaccessible and farmers and indigenous peoples have limited trust in the courts. Key obstacles include delays in the resolution of cases and undue political influence as well as insurmountable lawyer fees and other litigation costs (see also ICJ (International Commission of Jurists) 2010). Owing to extensive delays in the Philippine judiciary, most court cases now require mediation between parties in order to exhaust all possibilities for settlement before the case is admitted to court.<sup>121</sup>

Complainants may also seek recognition of their grievances through complaints against the Philippine state for violating its duty to protect internationally recognized human rights. Under international human rights conventions, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), states have a positive duty not only to create a regulatory milieu and refrain from infringing on citizens' rights but also to actively pursue measures that assure that citizens are able to enjoy these rights (e.g. Verschuuren and Kuchta 2011). However, the Philippine Commission on Human Rights is a government agency created along with the 1987 Constitution and cannot adjudicate or impose penalties. Still, while generally comprising a very lengthy process, the symbolic and reputational effects arising from a human rights claim could possibly help motivate other means of redress.<sup>122</sup>

In some cases complainants may also access the courts of the home country of a foreign owned agro-industry. Under specific circumstances, parent companies (such as Agusan Inc.) may thus become liable for criminal acts and omissions and/or damages incurred by private parties, such as smallholder farmers and indigenous peoples. In civil law, for example, this could take the form of foreign direct liability, wherein Agusan Plantations, Inc. could be found liable for breaching a duty of care owed to citizens in Palawan. This would lead to financial redress (compensation and/or punitive damages) paid from the company's resources (e.g. Enneking 2012). In criminal law, corporate violations would have to comprise violations of internationally recognized human rights or criminal norms as incorporated into national law in the home country (in this case Malaysia, where Agusan Inc. is domiciled). Companies can also be held liable for complicity in criminal acts by aiding or abetting the perpetrator. Criminal liability will depend on the domestic penal codes of home countries and to what extent they include internationally recognized crimes. Procedural court rules also limit the ability of the judiciary to exert so-called extra-territorial jurisdiction (e.g. Taylor 2004).

In practice, a range of jurisdictional, substantive, legal and practical obstacles are likely to make such pathways to justice very cumbersome or even impossible. A key condition would be to demonstrate the supervisory control of parent companies, such as Agusan Plantations, Inc., over its subsidiaries in Palawan, including establishing a causal link between decisions (acts or omissions) made abroad and the damages or criminal and human rights violations taking place in Palawan. Legal and judicial reform in the home countries would be needed to address these barriers and make transnational litigation more accessible. Many proposals have over the years been made to, among others, European governments but political will has so far been lacking to pass concrete reforms (e.g. De Schutter 2004).

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<sup>121</sup> One mode of mediation is provided by Court Annexed Mediation. Another is offered through out-of-court mediation or other forms of Alternative Dispute Resolution (ADR), the agreements resulting from which are to be registered with the courts. The Special ADR Rules concerned with out-of-court mediation were introduced in 2009. The law on Court-Annexed Mediation dates back from 2004. There is still much uncertainty regarding how to plead the outcomes to the court and its effects in the legal procedure, including a general absence of jurisprudence (Atty. Rodolfo Ferdinand N. Quicho, Jr., pers. comm., Manila, 27 June, 2013).

<sup>122</sup> For instance, a recent high-profile case is being investigated by the Human Rights Commission of Thailand, namely the allegations against the Thai company Khon Kaen Sugar operating the Koh Kong Sugar Cane Plantation in Cambodia pertaining to, among other things, unlawful land confiscation, forced evictions, killing of livestock, and physical threats of violence (see <http://www.business-humanrights.org/Links/Repository/1013888>).

International investment and trade exert substantial influence on rural reforms and development in oil palm producing countries. Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) could potentially provide corporate accountability measures. For instance, trade partners with the Philippines, such as the European Union, already aim to promote respect for human rights and environmental sustainability through sustainability impact assessments (SIAs), specific human rights clauses and chapters on sustainable development in FTAs, specific criteria in the Generalized System of Preferences (GSP), and recognition of international standards in investment treaties. However, these tools are to be classified as “soft law”, principally implemented through dialogue between the governments. Commitments are laid out in generalized and often ambiguous terms with few, if any, enforcement mechanisms. Existing measures are thus largely discursive in nature and have little, if any, bearing on actual corporate behaviour within trade and investment regimes. Furthermore, as FTAs and BITs comprise agreements between countries, sanctions can only be imposed on country governments, not on foreign corporations and their subsidiaries (e.g. Sikka 2011).

## 5. CONCLUSIONS: ACTIONS TO STRENGTHEN CORPORATE ACCOUNTABILITY

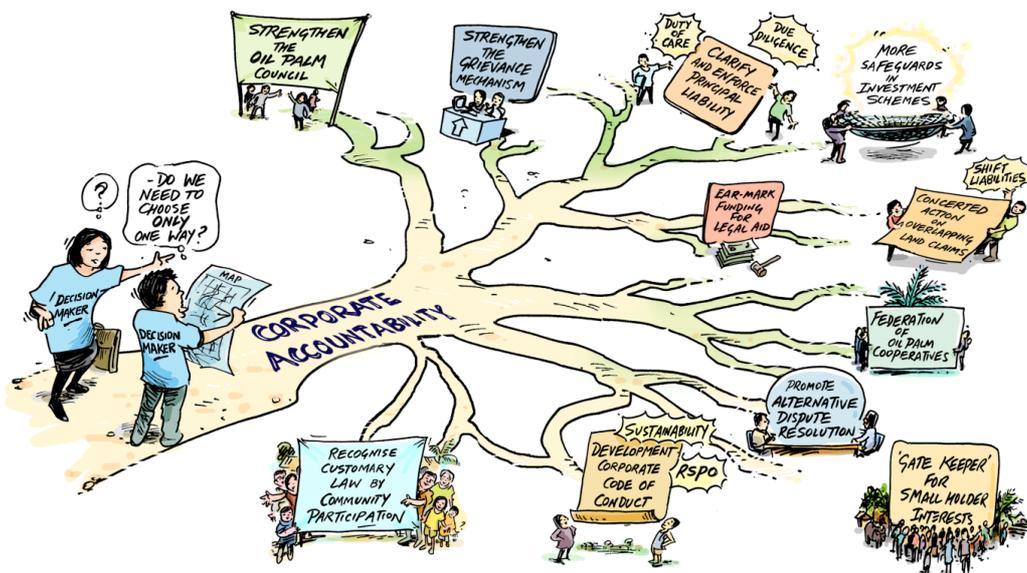


Fig. 8: The search for strengthened accountability and governance performance: Illustration of possible pathways.

(illustration by Simon Kneebone)

Our study of oil palm developments in Palawan has identified a number of features of the governance regime that create ambiguities in citizens’ access to justice. The current national legal regime does not distribute legal liabilities in favour of complainants, who often lack legal instruments to resolve their grievances. Where such legal instruments do exist, complainants may face considerable obstacles in asserting their *de jure* rights in the face of the weaknesses in the institutional performance and constrained implementation of regulations and policies. First and foremost, this calls for strengthening of the institutional capacity to implement policies and regulations and to respond to legitimate grievances, including through administrative channels, court actions and general policy and law enforcement. This section presents some specific observations and concrete proposals for actions, which appear feasible and may have positive effects in Palawan in the near or

medium term, to improve corporate accountability and thus reduce environmental and livelihoods impacts (Fig. 8).

### 5.1 Actions

***Action 1: The national or provincial government to mediate in revising the cooperatives' contracts in order to shift financial and legal liabilities.***

The majority of oil palm growing cooperatives have, under the influence of the project promoters and government agencies and without legal counsel, undersigned the contracts (PTMA and MSA) with AGPI, and loan agreements with the Land Bank of the Philippines, and there have been a range of allegations of deception or fraud in these processes. The contracts were based on a template provided by AGPI that is favourable to the company and, in many cases, places undue financial risks with the growers, in turn undermining their ability to amortize the loans. The PTMAs should be revised, with competent legal counsel provided to the cooperatives – for instance in a mediation led by the Provincial Government Legal Office and the PCDO. Landowners wishing to annul their contracts based on allegations of fraud or AGPI's breach of obligations should be provided this opportunity, contingent on providing the required evidence for their claims. As a strongly government promoted project, it is legitimate for the National and Provincial governments to take further steps to strengthen regulations and policy guidance for the sector, with implications for the private contract arrangement.

***Action 2: The Department of Labour and Industry (DOLE) to investigate allegations of labour rights infringements and facilitate the formation of labour unions among plantation workers***

While not explored in detail in this study, concerns abound over substantial infringements of labour rights. These include child labour, breach of the minimum wage, and insecurity in employment. Farm workers under Title IV of the Labour Code are entitled to unionize, but no unions exist among oil palm workers. Organization of labour unions also appears to be discouraged by some cooperatives and companies. There is a need for DOLE and other agencies to facilitate awareness among workers of their rights and privileges and support them in establishing unions, if they so desire.

***Action 3: Allegations of illegal expansion of oil palm plantations to be addressed by the Department of Environment and Natural Resources (DENR) and National Commission on Indigenous Peoples (NCIP)***

Complaints have arisen related to the illegal expansion of oil palm plantations into forestlands and indigenous peoples' ancestral lands. These allegations should be assessed by the DENR and the NCIP. Cultivation outside the ECAN multiple use zone or into natural growth forest should be stopped and the land undergo physical and ecological rehabilitation paid by the principal project owner (AGPI). If cultivation has expanded into areas governed by CADC/T or CBFM Agreements, then consultation with the resource users should determine whether FPIC was obtained from the concerned communities. The FPIC assessment should be conducted through a multi-stakeholder team, including competent civil society counsel to the communities. If FPICs are not granted, then the plantation should be stopped, the land may be rehabilitated, and compensation for damages may be provided to the land users. Ideally, this effort should contribute to a comprehensive, consolidated land classification, which is made publicly available. These efforts must support a process of harmonizing land classifications of the DENR, NCIP and DAR, and may be linked to regular updating of the municipal Land Use

Plans. Further expansion of cultivation should be contingent on resolving overlapping land claims in the land classifications and delineation of pending CADCs and CBFM Agreement applications.

**Action 4: The DENR and Palawan Council for Sustainable Development to review Environmental Compliance Certificates and Strategic Environmental Protection clearance**

Questions remain over the rigour of the governmental permits of the oil palm project. The SEP clearance and at least some of the ECC licenses were obtained only after the initiation of the project. Furthermore, the ECCs were issued prior to the SEP clearance and neither refer to an assessment of the environmental risks associated with the aggregate extent of the plantations. The submissions of AGPI and the DENR's Initial Environmental Examinations are held by the Environmental Management Bureau in Manila and have so far not been disclosed to government agencies in Palawan or to the general public. In the interests of transparency, these documents could be disclosed. If needed, a comprehensive environmental and social impact assessment should be conducted on the aggregate impacts of the oil palm project, including issues related to the effects of monoculture, soil degradation and extensive fertilizer and pesticide applications.

**Action 5: Stricter "gatekeeping" by the provincial government, with legally required review of draft contracts and provision of competent legal counsel**

The pre-project review procedures associated with the SEP clearance, ECC licensing, and registration with the Security Exchange Commission (SEC) are limited in scope. Similarly, the pre-project review carried out by the national or provincial government did not consider the track record of a new agro-business corporation seeking to acquire land, such as pending complaints or court cases. While the Provincial Ordinance No. 1295 of 2013 recently established procedures for review of business proposals prior to issuance of permits, this does not include review of draft contracts. Crucial changes may be made in the contracting phase and cooperatives generally lack access to adequate legal counsel. It would be possible to learn from developments in the extractive industries, including the Alternative Minerals Management Bill, that have seen an evolution towards stronger measures for so-called 'gate-keeping', i.e., the need for specific approvals from government agencies prior to contract signing. The NCIP is already mandated, under the Indigenous Peoples Rights Act (IPRA), to undertake the so-called pre-contract signing supervision for extractive industries, yet such a measure does not apply to agro-industry. The Provincial Government could establish a gate-keeping function involving government offices that would specifically represent smallholder farmer interests, such as the Department of Agricultural Reform (DAR), Provincial Cooperative Development Office (PCDO) and Cooperative Development Authority (CDA).

**Action 6: The Land Bank of the Philippines to put in place policy safeguards in the funding stream, such as the Food Supply Chain Program.**

The funding scheme provided by the Land Bank Countryside Development Foundation, Inc., as a non-profit subsidiary of the Land Bank of the Philippines, is explicitly aimed at improving rural livelihoods. However, there are currently no policy safeguards in place. It would be desirable to institute transparent and effective safeguards in the funding stream, whereby funding may be made conditional on compliance with key regulatory measures, which can be regularly monitored – for instance by a multi-stakeholder committee. This could also allow for more formalized grievance mechanisms for local governments (barangays, municipalities) to call for temporary injunctions and/or remedial measures.

**Action 7: The Palawan Council for Sustainable Development and Provincial Government Unit to promote RSPO (Roundtable on Sustainable Palm Oil) certification of oil palm cultivation in Palawan**

The PCSD and provincial government could explore the requirements for oil palm plantations in Palawan to undergo certification with the Roundtable on Sustainable Palm Oil (RSPO) – the leading international standard-setting body for sustainable and responsible oil palm cultivation. This would fall clearly in line with the province’s Strategic Environmental Plan. The RSPO has recently made available a specialized fund for certification of smallholders, the Smallholders’ Support Fund, and it is likely that funding could be obtained through this channel. There would be a need to prepare a “national interpretation” of the RSPO Principles and Criteria or, alternatively, a set of local indicators. Palawan Province could be the first province in the Philippines with smallholder certification, which could increase the competitiveness of producers in Palawan and their market reputation. This would be likely to help lower the risks of biodiversity loss, soil degradation and long-term pollution/health impacts arising from the application of fertilizers and pesticides.

**Action 8: The provincial government to reactivate the Palawan Palm Oil Industry Development Council**

While the Palawan Palm Oil Industry Development Council was established as a body to formulate policies and monitor the oil palm industry, no formal guidelines or policies were prepared. The council is today passive and is not taking on its mandated role to monitor the industry and ensure that it is properly regulated. To address this, there is scope to widen the formal membership to include seats for cooperative Chairpersons, and to ensure that socio-economic benefits as well as social and environmental impacts are regularly monitored. Routine monitoring and participatory land mapping for public disclosure could also be conducted. To further support the coordination in the sector, the provincial government could support the Association of Oil Palm Growers in Southern Palawan to establish a federation under the Cooperative Code. This would most likely require some degree of financial support as well as mandating selected government staff to assist cooperatives in convening meetings.

**Action 9: The Philippine Coconut Authority to regulate pricing of fresh fruit bunches, and to provide a forum for resolving disputes between smallholders and the oil palm mill.**

There is a need for the PCA to clarify its regulatory role in the oil palm sector, notably to intervene in the relationship between smallholder farmers and the oil palm mill to regulate the pricing of fresh fruit bunches. It would also be desirable for the PCA to monitor and regulate the pricing of bunches for contract schemes between agro-businesses and smallholders. Inspiration can be drawn from similar regulations in neighboring countries, for instance Indonesia (The Indonesian Regulation of the Minister of Agriculture 14/Permentan/OT. 140/2/2013) (see also Maryadi and Mulyana 2004). This would provide much-needed transparency in price setting, especially given the monopoly situation that currently prevails in Palawan Province. The government could annually review and specify the following parameters: the relative proceeds (a percentage) allocated to the grower, the extraction ratios for CPO and kernel oil, and – through an external audit – verify the selling/market prices applied by the mill in calculating the net proceeds to the growers. The PCA could under this regulation convene a committee with the PCDO and the CDA to serve as a legally mandated facility for settling disputes between growers and companies.

**Action 10: Broad revision of the legislative framework for agro-business in order to strengthen supervisory liability to ensure that liabilities match influence and financial interests.**

The existing environmental legislations and the regulatory bodies are not fully equipped to govern oil palm cultivation as a new agro-industry. Furthermore, although this new industry comprises various and apparently independent actors (e.g. AGPI, PPVOMI, the Land Bank of the Philippines, the cooperatives, independent farmers), in many ways it acts as a single coordinated endeavor through the centralized control and supervision of the Agusan Group. The cooperative model of association, with its tax exemptions and privileges intended to enable agro-business ventures for smallholder farmers, has also been used as an instrument by corporations and/or established businessmen (e.g. San Andres and Cavdeal). The existing regime does not distribute legal liabilities between the project partners in a way that matches capacities, resources or financial interests, especially with respect to the extensive influence exerted by Agumil (both *de jure* and *de facto*). There are thus clear arguments in favour of placing a stronger emphasis on supervisory liability in such ventures, and for government agencies to more effectively regulate the oil palm developments at the aggregate project level. Legislation could be revised – for instance to introduce parent-subsidiary supervision and approval of key decisions – in order to formalize expectations about the degree of control exerted by the parent company (in this case Agusan Plantations Inc.). This would more directly render the parent company solidary liable with its subsidiary. Furthermore, it could be beneficial to clarify the corporate duty of care where existing public regulations are ambiguous and/or implementation is weak, including in the handling of FPIC procedures under the Indigenous People’s Rights Act and land acquisition in situations of overlapping land claims under various tenure regimes.

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