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**Impact of Large Scale Land Concessions  
in South-East Asia**

*Case Studies from Cambodia and the Philippines*

***PHD DISSERTATION THESIS***

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## CERTIFICATION

I, undersigned, Petr Drbohlav, declare herewith that this PhD Dissertation Thesis is my own work unless otherwise referenced or acknowledged, submitted for PhD Degree at the Faculty of Tropical AgriSciences, Czech University of Life Sciences Prague.

Prague, 11 August 2017



Ing. Petr Drbohlav

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## ABBREVIATIONS

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights & Development Association
ANGOC	Asian NGO Coalition
ASEAN	Association of South-East Asian Nations
ASS	Asian Social Science
BALAOB	Balay Alternative Legal Advocates for Development
CADT	Certificate of Ancestral Domain Title
CARP	Comprehensive Agrarian Reform Program
CARPER	Comprehensive Agrarian Reform Program Extension with Reforms
CDC	Council for Development of Cambodia
CDP	Committee for Development Policy
CHR	Commission for Human Rights
CULS	Czech University of Life Sciences, Prague
D	exhaustible natural resources
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
EBA	Everything but Arms
ELC	Economic Land Concession
EU	European Union
EUR	Euro
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FGD	Focus Group Discussion
FPIC	free, prior and informed consent
FSWG	Food Security Working Group
GDP	Gross Domestic Product
GIZ	Gesellschaft für internationale Zusammenarbeit [German Agency for International Development Cooperation]
GoP	Government of the Philippines
GTZ	Gesellschaft für technische Zusammenarbeit

	[German Agency for Technical Cooperation]
ICARRD	International Conference on Agrarian Reform and Rural Development
IFAD	International Fund for Agricultural Development
IJAPS	International Journal of Asia Pacific Studies
IOM	International Organization for Migration
IPRA	Indigenous Peoples Rights Act
K	capital
KII	Key Informant Interview
KMBT	Kahugpong sa Mag-uuma sa Barangay Tingalan
KMP	Kilusang Magbubukid ng Pilipinas [Peasant Movement of the Philippines]
L	land
LDC	Least Developed Countries
Lao PDR	Lao People's Democratic Republic
MAFF	Ministry of Agriculture, Forestry and Fisheries
MARO	Municipal Agrarian Reform Officer
MSU	Michigan State University
N	labour
NCIP	National Commission on Indigenous Peoples
NGO	Non-Governmental Organization
NTFP	Non-Timber Forest Products
NP	National Park
PAN AP	Pesticide Action Network Asia and the Pacific
PARO	Provincial Agrarian Reform Officer
PPP	Power Purchasing Parity
RGC	Royal Government of Cambodia
SBFA	Sarahogon Bagooboc Farmers Association
SDC	Swiss Development Cooperation
SLC	Social Land Concession
UDG	United Development Group, Ltd.
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme

UNPFII	United Nations Permanent Forum on Indigenous Issues
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USD	United States Dollar
WB	World Bank
Y	aggregate output

## **ABSTRACT**

Land is one of the key factors of production, a vehicle for socio-economic development, physical commodity and investment opportunity as well as abstract concept and provider of amenity services. Governments of some developing countries provide land in the form of long-term land concessions to agribusinesses and other investors, such as mining or tourism industry, with the justification of agriculture intensification, job creation and economic development / growth. Unfortunately, these land concessions very often lead to land grabbing and have negative consequences on tenants of the land in question as well as on the environment. The peasants and indigenous peoples have often their rights violated as the land they use is alienated from them. The colonial rule in some countries led to the process of land acquisition by the elite, land grabbing and created a system of property rights arbitrary to peasants. To reverse these historical land grabs, land reforms were launched.

This PhD Thesis is using case study design based on qualitative methodology to analyse selected critical issues related to land grabbing and land concessions in South-East Asia with the attempt to explore complex real-life issues and provide holistic and in-depth explanation of social behaviour and community-based problems from perspectives of multiple stakeholders. The three selected research subtopics – living conditions after relocation, indigenous peoples' land tenure security and land redistribution to remedy historical land grabbing - describe typical yet in a way specific cases and phenomena which are in forefront of academic research as well as (not only) political debates in Cambodia and the Philippines.

The research results show that those affected by land concessions are worse off in the short to medium term than they were before the relocation. They have lost their livelihoods, their food and nutrition security have worsened, and their access to health services, education, road infrastructure and housing as well as to drinking water is problematic. Although some families found jobs with the investment project, they were concerned about its long-term prospects.

The recognition of the indigenous peoples' rights to their ancestral lands and domains in the domestic legal framework of some countries offers a way of improving the indigenous land tenure security. The research results indicate that conflicting laws and mandates of various

government bodies and lack of coordination between them, as well as lack of resources and political will to implement the laws and regulations are important factors behind slow issuance of ancestral domain titles.

While the land distribution to peasants through agrarian reform could present potential alternative to large-scale land concessions with its associated risks, high opportunity costs and negative externalities, the land redistribution implementation in practice shows that it is a difficult task with many challenges. Moreover, the beneficiaries of land redistribution sometimes become victims of new land grabbing.

### ***Key Words***

Land grabbing, land tenure, Cambodia, Philippines, relocation, agrarian reform, indigenous peoples.

## ABSTRAKT

Půda je jedním z výrobních faktorů, motor socio-ekonomického rozvoje, komodita a investiční příležitost, ale také abstraktní koncept a poskytovatel blahodárných služeb. Vlády některých rozvojových zemí poskytují dlouhodobé pronájmy půdy zemědělsko-průmyslovým podnikům a dalším investorům jako těžebnímu průmyslu a cestovnímu ruchu s deklarovaným cílem zemědělské intenzifikace, tvorby pracovních míst a podpory hospodářského růstu. Bohužel tyto pronájmy půdy často vedou k záborům půdy (*land grabbing*) s negativními následky pro uživatele půdy nebo životní prostředí. Práva venkovské populace a původních obyvatel jsou často porušována a dochází k odcizení jejich půdy.

Tato dizertační práce používá případové studie založené na kvalitativních metodách pro analýzu vybraných zásadních témat týkajících se záborů půdy a dlouhodobých pronájmů půdy v jihovýchodní Asii se snahou zkoumání komplexních skutečných životních problémů a poskytnutí holistické a hloubkové analýzy sociálního chování a komunitních problémů z perspektivy různých aktérů. Tři specifická výzkumná témata – životní podmínky lidí po přesídlení, držba půdy původním obyvatelstvem a redistribuce půdy za účelem vyrovnání se s historickými záborů půdy – popisují typické a zároveň do jisté míry specifické případy a fenomény, které stojí v popředí aktuálních politických a dalších debat v Kambodže a na Filipínách.

Výsledky výzkumu ukazují, že životní podmínky lidí postižených záborů půdy jsou horší, než byly před přesídlením. Lidé přišli o své zdroje obživy, zhoršila se jejich potravinová a nutriční bezpečnost. Jejich přístup ke zdravotnictví, školství, silniční infrastruktuře, kvalitnímu bydlení a pitné vodě je problematický. Byť někteří byli zaměstnání investorem, panují obavy o její dlouhodobou perspektivu takového zaměstnání.

Uznání práv původních obyvatel na dědičnou půdu a domény domácím právním řádem některých zemí nabízí možnost zlepšení právní postavení držby půdy původními obyvateli. Výsledky výzkumu indikují, že vzájemně si rozporující zákony a mandáty jednotlivých vládních agentur, nedostatek koordinace mezi nimi, nedostatek zdrojů a politické vůle realizovat zákony jsou důležité faktory stojící za zdoluhavým vydáváním vlastnických pozemkových certifikátů. Dalšími faktory kritickými pro držbu půdy původních obyvatel jsou

nejednotnost uvnitř kmenu a protichůdné zájmy jeho členů a klanů využívané soukromými firmami pro své podnikatelské zájmy.

Distribuce půdy venkovské populaci skrze pozemkovou reformu představuje potenciální alternativu k poskytování dlouhodobých pronájmů půdy vzhledem k rizikům, vysokým nákladům ušlé příležitosti a negativním externalitám, jež se s nimi pojí. Realizace redistribuce půdy v praxi se ukazuje jako složitý úkol čelící řadě výzev. Příjemci redistribuované půdy navíc čelí novým formám záborů půdy.

### ***Klíčová slova***

Zábory půdy, držba půdy, Kambodža, Filipíny, přesídlení, agrární reforma, původní obyvatelstvo.

# 1. INTRODUCTION

Foreign investment in land in what we call today “developing countries”, including grabbing the land from its tenants and providing it to plantation-style agriculture, logging or mining operations, is not an entirely new phenomenon, and in fact has been happening ever since the colonial times. To some extent, it was the 2007-08 global financial and food price crises combined with growing demand for energy, incl. the EU’s 20% mandatory target for renewable energy, that has rapidly accelerated the historical trends and made land an even more interesting investment opportunity and significantly stepped up investment in land in developing countries by transnational corporations, international financial institutions, local elites and other investors such as certain food-importing capital-exporting countries governments (De Schutter, 2011; Deininger, 2011; UNDESA, 2010; Borras and Franco, 2011) who in alliances with state officials seized opportunities for the appropriation of resources and land grabbing in the times of opened markets and high indebtedness of developing countries (White et al., 2012).

While there is a widespread assumption of the abundancy of land or existence of idle, marginal, reserve, underutilized, fallow or vacant land in certain countries of large land deals, such land might actually be utilized by indigenous<sup>1</sup> or other rural communities who do not have formal land rights (Borras and Franco, 2011; Schneider, 2011; Scoones et al., 2013; White et al., 2012; Cotula et al., 2009; De Schutter, 2011). Their land and water<sup>2</sup> use rights are often not codified in “modern” law and are non-existent in any formal legal terms but are

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<sup>1</sup> I understand the term “indigenous peoples” in line with the United Nations Permanent Forum on Indigenous Issues as “inheritors and practitioners of unique cultures and ways of relating to people and the environment... Practicing unique traditions, they retain social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means. There is no official definition of the term “indigenous” by the UN. Instead the understanding of the term is based on the following points (UNPFII, 2017):

- Self- identification as indigenous peoples at the individual level and accepted by the community
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

<sup>2</sup> Or in general natural resources.



based on local traditions or customary laws and these land users are marginalised from formal land rights and access to the law and institutions (Cotula et al., 2009; UNDESA, 2010).

Large-scale land investment often lacks transparency and adequate consultation processes and is characterized by uneven access to information and failure to implement the domestic legal framework, which is often relatively well developed on paper, resulting in widespread conflict over land ownership and use and in the marginalization of the affected communities (Cotula et al. 2009; Schneider 2011; Subedi 2014; UNHRC 2012; CIDSE, 2009).

My PhD Dissertation Thesis is based on three “first author” scientific papers published or accepted for publication in SCOPUS-indexed journals:

- Social and Economic Impacts of Land Concessions on Rural Communities of Cambodia: Case Study of Botum Sakor National Park (Drbohlav and Hejkrlik, 2018)
- Indigenous Peoples’ Struggle for Secure Land Tenure in the Philippines: Case Study of Higaonon Tribe in Opol, Mindanao (Drbohlav and Hejkrlik, 2017)
- Socio-economic Assessment of the Philippine Agrarian Reform (Drbohlav, Svitalek and Hejkrlik, 2017)

These case studies are meant to provide holistic and in-depth explanation of complex real life issues linked to land grabbing in particular and land tenure in general from the perspectives of a range of stakeholders exploring specific social, environmental, economic, legal and geopolitical circumstances.

The *Case Study of Botum Sakor National Park* shows the negative short- to medium-term consequences and impacts on the people evicted because of large-scale land concessions and at the same time points to the important fact that land grabbing in Cambodia has many other driving forces than just “global land grabbing phenomenon”. In this case it is the Chinese investment into the tourism industry, rather than a “typical land grabber” investing into the agriculture production or agro-industry. However, I would argue, the consequences for small-holding farmers are the same, regardless of who is responsible for or what the driving forces for the land dispossession are; whether an investment is made to feed people in another country or to escape the vulnerabilities of the stock market - issues identified as part of the

global land grab meta-narrative (Baird, 2014); by Chinese companies investing in logging or building hotels, casinos and housing complexes; or the Vietnamese military assuming control of border areas inhabited by indigenous people (Blomberg and Roen, 2015) or in the aftermath of a natural disaster (Uson, 2015).

The *Case Study of Higaonon Tribe in Opol* is a typical example of the contestation for land and other natural resources between indigenous peoples on one hand and the oil palm agribusiness and mining industries on the other in Northern Mindanao. Some of the problems and issues presented here may well apply to other indigenous areas in the Philippines and even elsewhere, for instance in Cambodia and Malaysia, countries that have recognized indigenous land rights in their national legislations and have introduced corresponding domestic legal instruments to protect communal land rights and resources. The indigenous peoples of these countries despite all the problems and complications, such as conflicting laws and mandates of various government bodies and lack of coordination between them or lack of political will to implement and enforce the laws, can reach out to the “modern” legal system to some form of redress and protection of their land tenure. This is not possible at all in Myanmar<sup>3</sup> or Laos where the indigenous peoples’ land rights and other customary land rights are not recognized by the law<sup>4</sup>.

The redistributive land / agrarian reform<sup>5</sup> where the large land holdings are broken up and divided into small plots that are distributed to landless or almost landless farmers or farm

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<sup>3</sup> I will refer to the country as “Burma” when writing about the situation in country before 1989 when the official name was changed to “Myanmar” by the military junta. UN had recognized this change within five days though some countries (incl. USA, Canada and UK) find adoption of the new name illegitimate and officially still refer to the country as “Burma”. However, referring to the country as “Myanmar” has become more common during the last seven or so years of Myanmar transition and many die-hard advocates of the old name “Burma” have eagerly switched to the usage of “Myanmar” by now, incl. the Aung San Suu Kyi-led National League for Democracy government. In my opinion, the change of the country name is a *fait accompli* and sooner or later vast majority of countries will recognize it; insisting on calling the country “Burma” will become as irrelevant and odd as if still calling Sri Lanka “Ceylon”.

<sup>4</sup> The 2012 land laws - Vacant Fallow and Virgin Lands Management Law and Farmland Law - retain substantial Government authority to expropriate land and to reallocate “wasteland” to private companies for the purpose of agricultural production, livestock farming, mining and other purposes deemed to be in the long term national interest, without any requirement to consult local communities in the given area failing to take into account traditional land tenure systems, implemented and mediated at the community level according to local customs and by traditional leaders (Franco et al., 2015; KHRG, 2013).

<sup>5</sup> While the terms “land reform” and “agrarian reform” are often used interchangeably, even by me in this thesis, they are actually not precisely the same. Banerjee (1999), Jacobs (2013), Tai (1974) and others limit the land reform to its narrow definition of redistributing land to rural poor, while agrarian reform is considered to have a

workers could be seen as a “reverse” land concession process. The *Socio-economic Assessment of the Philippine Agrarian Reform* shows how the Philippine Government deals with the legacy of the colonial rule by the Spanish and Americans that led to the process of land acquisition by the elite, land-grabbing and privileged access to legal formalities creating a system of property rights that tends to appear arbitrary to peasants (Putzel, 1992), processes not dissimilar to what has been happening in Cambodia since the end of the Vietnamese occupation, transition to the market economy and opening of the country to the global capital. This “reverse” land concession process is complicated by a new wave of land concessions or conversions for agribusiness, tourism or housing estate development in the lands already redistributed or meant to be redistributed by the agrarian reform. The Philippine agrarian reform can also serve as policy guide for other South-East Asian countries - prior to the initiation of the land reform in the Philippines, almost 50% of the rural population was landless (Elauria, 2015), figures not dissimilar to today’s Myanmar where more than 50% rural households are landless or near-landless (MSU, 2013), or Cambodia’s land redistribution program to the landless. Land redistribution to smallholder peasants through land reform could also represent a viable alternative to large-scale land concession development model (De Schutter, 2011).

The case studies are from Cambodia and the Philippines, which belong among the most affected countries in Asia by the land grabbing.<sup>6</sup> In Cambodia, according to Haakansson (2011) almost 56% of all arable land has been given to private companies for agro-industrial use and Chao (2013) claims that by 2013 such land concessions covered already around 65% of total arable land and together with land concession for other purposes more than 22% of the country’s total surface area was in hand of private investors by the end of 2012 (Khiev, 2013; Kaag and Zoomers, 2014) though a significant proportion of these were awarded for mining exploration and will not be developed further. More than 770,000 Cambodians have been affected by land grabs and resulting conflicts over natural resources (ADHOC, 2014). Although some of these lands were gained for speculative purposes and were not developed

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wider meaning embracing improvements in both land tenure and agricultural organization, including provision of infrastructure, services and, sometimes, a whole program of redistributive and democratic reforms. Adams (1995) sees agrarian reform as a construct of the Cold War to counter the concept of “communist” land reform. Cohen (1978) defines agrarian reform as “a multi-disciplined set of interrelated aims and means capable of combating the ills” of the “feudal and quasi-feudal institutional agrarian structure.”

<sup>6</sup> Other countries include Laos, Vietnam and Indonesia.

(USAID, 2011; Toh, 2013; Löhr, 2011; UNHRC, 2012; Subedi, 2014), communities have been evicted anyway or are under serious threat of eviction and dispossession.

In the Philippines, agribusiness was a central aspect of the national development plans for more than a decade before President Duterte took office in June 2016 and number of promulgated laws encouraged foreign investment in land development and partnership schemes that encourage Agrarian Reform Communities and indigenous peoples to engage in agribusiness joint ventures. Only between 2005 and 2010, 1.83 million hectares or 14% of the total agricultural lands were given to agribusiness; Philippine Government's plans and strategies allocated additional target of 1.37 million hectares of land for agro-fuels production (Villanueva, 2012; Pulhin and Ramirez, 2013).

The following text is meant as an attempt to synthesize the three case studies and identify commonalities and differences in impacts, processes, frameworks and conditions leading to rural poor and indigenous peoples in South-East Asia finding themselves without access to land. I will also use footnotes to refer to some of the issues presented here on Cambodia and the Philippines on other South-East Asian countries.

This PhD Dissertation Thesis is structured in a following way. The next section provides literature review focusing on concept of land in economic theory, land grabbing, land concessions and land redistribution in general and in Cambodia and the Philippines in particular; followed by a section setting the goal, specific objectives, detailing methodology and limitation. This is further followed by a section summing up and discussing the results of the three case studies and by the conclusion. The core of my PhD research should, nevertheless, be seen predominantly in the three articles annexed.

It might be useful to provide here a definition of some of the terms used in the thesis, though more on these phenomena will be described in the literature review, the discussion or in the annexed articles. **Land concession** is an instrument of governments to provide land in a form of long-leases (and sometimes even sales) to investors for agribusiness development (but also mining, tourism or hydropower generation)<sup>7</sup>. In Cambodia, such mechanism is called

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<sup>7</sup> Land concession in Laos refer to the process of giving authorization to individuals or legal entities to operate business with the right to use state land based on the conditions and time limit specified legally in the terms of

*Economic Land Concessions* (ELC). The country policies also know so called *Social Land Concessions* (SLC) that are a mechanism for land distribution to landless, similarly to the Comprehensive Agrarian Reform Program (CARP) and its Extension with Reforms (CARPER) in the Philippines. *Land grabbing* is a situation / process where land is taken from its users and tenants without Free, Prior and Informed Consent (FPIC) or without fair and proper compensation or even with a use of force. *Global land grabbing phenomenon* or global rush for land, started by the 2007-08 food and economic crisis, whereas land concessions are provided to global land investors very often resulting in land grabbing. Land grabbing as a situation / process was happening before the global land grabbing for instance as a part of colonization process<sup>8</sup> and the term was actually coined already by Marx (White et al., 2012; Marx, 1887), and has also been happening in parallel with it, because the reasons for and actors behind the land alienation from its users can be different and much more complex.

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contract; the minimum duration of granted concessions must not be less than five years. Such commercial land leases and concessions are granted for plantation land, agricultural land, hydropower land, mining land and other types of land as allocated by the state for business operation in accordance with the relevant laws and regulation (Wellmann, 2012). Granting land concessions is seen as a tool to make un- or underutilized land productive (Hanssen, 2007).

<sup>8</sup> Legal mechanisms to establish agro-industrial plantations by private entities on land under lease arrangements from the state have existed in Burma since the mid-nineteenth century (FSWG, 2012). British colonial rulers usually ignored the customary use of the land in Burma and simply acquired land deemed useful for their development purposes (Hudson-Rodd, 2001).

After 1997, Myanmar Government made significant efforts to move from socialist planning to market economy and tried to develop the agriculture sector by inviting domestic entrepreneurs – “cronies”, who were on favourable terms with high ranking military officer or even their relatives, to take part in large-scale farming by providing them 30 year leases on land of 5,000+ acres and benefits such as permission to export 50% of the crop, exemption from taxes and duties for imported machinery, insecticides, fertilizers, no-cost provision of infrastructure such as roads, bridges, telecommunication and wells and guarantee of loans (Hudson-Rodd, 2001).

## 2. LITERATURE REVIEW

### 2.1 Land

*“Land is the ultimate resource, for without it life on earth cannot be sustained. Land is both a physical commodity and an abstract concept in that the rights to own or use it are as much a part of the land as the objects rooted in its soil. Good stewardship of the land is essential for present and future generations.”* (UN Economic Commission for Europe, 1996)

According to Hubacek and van den Bergh (2002) the concept of land encompasses a variety of functions that typically get classified into the categories of the environment, economy, society, and spirituality. Shepard (2011) stresses that land is not just a resource to be exploited but also a crucial vehicle for the achievement of improved socioeconomic, biological, and physical environments.

The concept of land in the economic theory has developed over the centuries, but largely it was seen primarily as one of the inputs / factors / agents of production. For *Smith* (2007), the “founder” of classical economy, agriculture was more productive than manufacturing because it has two factors necessary in its production, land and labour while manufacturing has only one - labour. In his theory of value, under competition, a costless item can never have a price. The services of land are costless in comparison to the capital invested in the land. The price paid for the use of land is thus a monopoly rent. *Steuart* presented the, later called, theory of Extensive Margin (Samuelson and Nordhaus, 2009): as the population increases, it leads to uses of poorer and poorer soils, productive efforts produce smaller and smaller returns.

In Ricardian economics, there is a notion that economic growth must come to a halt due to the scarcity of natural resources. In *Ricardo’s* theory, there are two reasons for rent: unequal fertility or more general differences in land quality (Koomen, Buurman, 2002; Barbier, 2013) and scarcity of land. According to Barbier (2013) and Hubacek and van den Bergh (2002) for *Mill* land was not merely a factor of production but also a provider of amenity services to human kind - its importance for the quality of life and the opportunities for experiencing solitude and natural beauty. This Mill’s postulate could be applied to the role indigenous

peoples assign to the land; the land is often inextricably linked with their traditions, culture, faith / religion and identity.

*Marx* (1887) did not see land as a fixed entity since the fertility of land could be affected by human labour. He thought that in the capitalist system there is an inherent tendency to decrease the fertility of land since the farmers who rent the land try to increase their return on investments before expiration of the lease. This theory seems to be able to explain negative environmental impacts of the global land grabbing phenomenon.

In the second half of the 19th century, the theory of production was replaced by a theory of allocation and prices. Land, resources, and energy started to be treated like any other factor of production and lost their status as unique factors of production (Hubacek and van den Bergh, 2002). The aggregate production function as conceptualized by this stream of classical economists can be represented in the equation:

$$Y = f(L, K, N),$$

where Y is aggregate output, L land, K capital and N = labour.

Neoclassical economists in general started to put less importance to land. In *Menger's* theory, input quantities can be varied: more land or more fertilizer can be employed to produce the same output (Menger, 2007). For *Marshall* (1920), the supply of land is much less elastic than the supply of capital goods since land had certain features that justified its special role in production - it is not always possible to augment the supply of land by draining swamps or irrigating deserts. He is also pointing to the tendency to Diminishing Returns in relation to land. For *Knight* land, as a factor of production, has no unique characteristics which should cause it to be set aside by itself in economic analysis because it is identical to and classified as capital (Cowan, 2016; Hubacek and van den Bergh, 2002) and the principles defining the optimum use of land are those drawn from the more general production economics principles. Land takes on unique importance only in respect to its use and allocation over time. By the second half of the 20th century land or more generally environmental resources, completely disappeared from the production function and the shift from land and other natural inputs to capital and labour alone, and from physical to abstract measures of capital, was completed

(Hubacek and van den Bergh, 2002). *Solow* (1956) did not include land in his production function:

$$Y = f(K,N),$$

where K is capital and N is labour.

In his later model, inquiring about the long-term prospects for an economy that uses exhaustible natural resources, he gives the production function the form (Hubacek and van den Bergh, 2002):

$$Y = f(D,K,N),$$

where D are exhaustible natural resources.

This production function has the property of constant unitary elasticity of substitution among inputs, which does not give any special role to natural resources.

The 1920s brought new sub-disciplines in the economic theory such as Agricultural Economics and Land Economics, both of which retained the classical belief in the uniqueness of the land resource and stressed land as the factor of production. It postulated that land suitable for agriculture is not constant over time but can change due to human intervention, such as the creation of nature areas which increases the potentially available agricultural area, while erosion, flooding and transformation to other uses have reduced it. The quality and productivity of land has been vastly influenced by the use of mechanized management practices, pesticides and insecticides. The use of farmland also often creates negative externalities (Samuelson and Nordhaus, 2009; Hubacek and van den Bergh, 2002).

Aspects of land returned to the public discussion in the late 1960s with pointing out the apparent limits of the Earth's resources facing the growth of human population and changes in consumption and production patterns (*Meadows* et al, 1972; Jeníček and Foltýn, 2003).



## ***2.2 Land grabbing and negative impacts of land concessions***

In response to the 2007-08 food and economic crisis, land grabbing represents an effort to reconstruct a stable political economic order, both on the part of investment capital seeking to relaunch accumulation and on the part of political actors and companies seeking to secure stable supplies of food and energy (Thaler, 2014) and an attempt by some countries to limit their dependence on international markets in order to improve their long-term food security (De Schutter, 2011). Foreign land acquisitions globally post the 2007-08 global economic and food price crisis has reached to at least 20 million to 56 million hectares of land (Deininger et al., 2011; Borras et al., 2011) or over 200 million hectares of land according to Anseew et al. (2012), Cotula (2012) and Margulis (2016).

However, as many (e.g. Borras and Franco, 2012; Baird, 2014; Cotula, 2012; Kaag and Zoomers, 2014) point out the global land grabbing catch-all-phrase as introduced by radical social movements and their sympathizers such as Spanish NGO GRAIN (2008) to frame and motivate political action suffers from limits and weaknesses and leads to over-generalization of the trends and problems. For instance in Cambodia the land appropriation, often combined with forced evictions, had already been occurring since late 1990s and was driven also by other factors such as Asian money laundering and elite capture (Baird, 2014), the Vietnamese military assuming control of border areas in the North-East inhabited by indigenous people (Blomberg and Roen, 2015), urban development (Sasin, Sola and Flower, 2017; Sasin and Sarom, 2015; UNHRC, 2012; ADHOC, 2014; Kaag and Zoomers, 2014; Ortega, 2016), Chinese investment into tourist industry as in the case of the Botum Sakor National Park (UNHRC, 2012; ADHOC, 2012) or in the aftermath of a natural disaster as documented by Uson (2015) after the Typhoon Haiyan in the Philippines. Japan has been outsourcing the production of food for many years and its overseas holdings are estimated to represent three times the size of its domestic arable land; China, which must feed 22% of the earth's population with only 9% of its arable land, has been leasing or buying land abroad since the 1990s, in countries such as Cuba or Mexico (De Schutter, 2011).

The outcomes and consequences of land concessions have potentially far-reaching and irreversible major consequences for both local economies and livelihoods of rural communities (Scoones et al., 2013). Loss of land tenure often deprives vulnerable people of their livelihoods, as a multidisciplinary World Bank team showed in 19 case studies from four

continents (Deininger et al. 2011). The positive contribution of the land concessions to the national economic development / growth, which is the main objective of the land concessions as proclaimed by respective host governments, is often questionable; the social and economic impacts on local communities could be disastrous, especially when combined with forced evictions, displacement without fair and just compensation or prior public consultation, involuntary resettlement or poorly planned relocation of people from their homes and farmlands. It increases poverty and causes limited access to income generation and debt; loss of land tenure deprive vulnerable people of their livelihoods and large scale land investors rarely employ numbers equal to those who lose their land tenure (UNDESA, 2010; Deininger, 2011; Sandker et al., 2007; Obidzinski et al., 2012; Sokhannaro, 2011; Schoneveld et al., 2011; Selvadurai et al., 2013). Most relocation / resettlement areas do not provide affected communities with access to adequate public services and infrastructure, health services or schools (Chao, 2013). Land acquisitions are not for growing food crops for domestic markets, but rather are part of the food and energy security goals of the investor's home country and can thus ultimately worsen the food security in target countries, often already food insecure (UNDESA, 2010; Deininger et al., 2011).

Major environmental problems, ranging from the destruction of primary forests with a severe impact on the biodiversity to the pollution of water resources, result from related land use changes. The heavy use of pesticides and chemical fertilizers is causing water pollution and poisoning of fish and increases the problem of water shortage of land-concession-affected communities related to access to a sufficient amount of water for drinking and food preparation, sanitation and personal and household hygiene as well as irrigation as shown by Ravanera and Gorra (2011) by the synthesis of country studies conducted by International Land Coalition (ILC) members in Indonesia, Nepal, Pakistan, India and the Philippines. To illustrate this on a concrete example of one of the major crops grown on land concessions – oil palm. Agribusinesses do not grow oil palm organically which means that the use of chemical-based inputs may pollute watersheds in ancestral domains and affect water supplies in the lowlands (Villanueva, 2011). The expansion of large-scale oil palm plantations in Indonesia has resulted in extensive deforestation as shown for example by Carlson et al. (2012), Lee et al. (2014), Sandker et al. (2007) and Obidzinski et al. (2012). The literature on oil palm cultivation confirms to large extent the environmental narrative of oil palm expansion as endangering both the environment and local communities as it comes with

serious social, economic and environmental costs with adverse impacts on indigenous peoples, forest-dwellers, other rural communities and forests. Research from countries such as Sierra Leone, Colombia and Ghana has shown that large areas of land and forest traditionally used by indigenous peoples have been expropriated (Yengoh and Armah, 2015; Maher, 2014; Schoneveld et al., 2011).

Areas of spiritual and cultural significance, often for indigenous communities such as religious, sacred, burial and historical sites, are encroached or destroyed as documented empirically in concrete cases in Cambodia, the Philippines and Laos by Hanssen (2007), Prachvuthy (2011), Neef et al. (2013) and Potter (2012) as well as by various NGOs on cases from Indonesia, the Philippines, Liberia or Colombia (Friends of Earth, 2008; Survival International, 2011; Global Witness, 2016; Environmental Investigation Agency, 2015). Uprooting of indigenous peoples from their land denies them the right to life and identity; their battle to protect land and resources is implicitly the struggle to preserve indigenous culture and traditions often inextricably linked to the land itself (Molintas, 2004).

Land concessions are unfortunately very often connected with land grabbing which will be defined here according Haakansson (2011) as land acquisitions or concessions, where one or more of the following factors are present:

- no involvement of free, prior and informed consent (FPIC)<sup>9</sup> of the affected land-users
- not based on a thorough assessment of the consequences or in disregard of social, economic and environmental impacts
- lack of transparency in contract awarding and benefits sharing or binding commitments about activities on the land
- not based on effective democratic planning, independent oversight and meaningful participation.

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<sup>9</sup> Indigenous Peoples Rights Act of the Philippines defines FPIC as the “consensus of *all* members of the indigenous cultural communities/indigenous peoples to be determined in accordance with their respective customary laws and practices free from any external manipulation, interference, coercion and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community” (GoP, 1997) prior to actions that affect their land and resource rights such as logging, mining, multipurpose dams, agribusiness plantations and other development projects.

Land grabbing is often enabled by legislations favouring the interests of the local elite over the poor, weak governance and rule of law and widespread corruption (Vos and Martinsson, 2017; Scurrah and Hirsch, 2015; Hohn, 2013) as well as well-intended policies in support of developing countries, such as the European Union preferential trade treatment for LDCs Everything-but-Arms (EBA) (Borras and Franco, 2011). The sad reality is that the land concessions (or portions of them) often stay un- or underutilized (Hanssen, 2007; Subedi, 2014; FSWG, 2012).

According to De Schutter (2011), the risks and associated social and environmental costs posed by the arrival of investors offering to develop agricultural land are too high for the local communities and the underutilized land could be better absorbed by agrarian reform schemes and by strengthening of small-scale farming.

### **2.2.1 Land concessions in Cambodia**

The Cambodian 2001 Land Law codifies land concessions<sup>10</sup> as “a mechanism for the government to grant ...state land... for agricultural and industrial-agricultural exploitation [i.e.] cultivation of food crops or industrial crops, raising of animals and aquaculture, construction such as a plant or factory and facilities for the processing of domestic agricultural raw products or a combination of some or all of the above activities“ (RGC, 2005). RGC (2014) considers granting of ELCs to private companies as its major strategy for economic development and declares the aim of land concession policy as to:

- i) develop an intensive agricultural base and promote capital investment in industrial-agriculture,
- ii) increase employment opportunities in rural areas, intensify and diversify livelihood opportunities and natural resource management and
- iii) generate revenue from concession fees, taxation and other charges.

This investment opportunity led to a rapid increase in the number of agribusiness companies operating in Cambodia over the last few years with the main agribusiness investment

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<sup>10</sup> In Cambodia there is also a mechanism of so-called Social Land Concessions which is meant as a redistribution of state-owned land to the poor, landless people. When referring to land concessions in this paper, unless otherwise stated, Economic Land Concessions or other land concessions to private investors are meant.

companies from Vietnam, Thailand, China, Indonesia and Singapore and some domestic investors who are forming conglomerates with operations in several sectors of investment, including agribusiness (Chao, 2013).

Official and publicly available data on ELCs are not regularly updated and are incomplete. The official list on MAFF web page does not include a considerable number of agricultural concessions that are known to exist, in some cases for several years though they might not be included in the list since it “is possible that these concessions were granted by authorities other than MAFF..., but it is of considerable concern that these projects are not cohesively documented“ (UNHRC, 2012). It is estimated that 3.9 million hectares of land, equivalent to 22.1% of the country’s total area, have been handed over to private investment, of which at least 2,657,470 hectares was transferred by the RGC to private sector investors by the end of 2012 in over 300 ELCs (Chao, 2013; UNHRC, 2012) but ELCs statistics published by RGC in June 2012 list 117 companies with a land surface of 1,181,522 hectares from January 1996 to 6 June 2012 (UNHRC, 2012). By 2013, ELCs for plantations of inter alia sugarcane, rubber, cassava, acacia, eucalyptus and oil palm under private sector investment covered around 65% of total arable land (Chao, 2013).

Cambodia is prone to weak implementation and enforcement of law and this “made it possible for influential individuals (often operating through legal entities) and groups to acquire large landholdings for speculative or unproductive purposes” (USAID, 2011; Subedi, 2014). The Cambodian economy is controlled by new elite – a sprawling network of Cambodian People’s Party politicians, military brass and business families with patronage to Prime Minister Hun Sen and his close associates (Strangio, 2014). This well-oiled system extends throughout Cambodian society and is widely accepted because it is how Cambodians understand the nature of power (*omnaich*), as not only being rich but also being above the law (Jacobsen and Stuart-Fox, 2013).

The 2001 Land Law stipulates that the maximum size of an economic land concession is 10,000 hectares, but many times this amount have been granted. As Global Witness (2013) reported, Vietnam Rubber Group and affiliated companies appear to have been allocated over sixteen times the legal limit of land. Some investors circumvent the limit by creating several different companies, which is illegal, too. Given the widespread criticism of the

implementation of land concessions policy, the Prime Minister Hun Sen issued a moratorium on the granting of ELCs in May 2012 and called for a review of existing land concessions stating that ELCs would be cancelled for those companies that fail to comply with applicable procedures and contracts, and who conduct illegal logging, encroach on land outside of the ELC, and leave the land vacant for resale (Subedi, 2014). However, ELCs were granted even after this moratorium – Chao (2013) refers to 33 such ELCs covering an area of 208,805 hectares as reported by ADHOC and UNHRC (2012) highlights five concessions located in protected areas with the justification that these leases were already being processed when the moratorium was declared.

### **2.2.2 Land concessions in the Philippines**

By 2011, agriculture only contributed a measly 11% to the Philippine GDP, which forced the government to rethink its strategy and open up more opportunities in agriculture - during the term of President Gloria Macapagal Arroyo, vast areas of agricultural and forestlands were allocated to agribusiness to cater to the growing demand for food crops and biodiesel production; this has continued up to the administration of President Benigno Aquino III who has also put emphasis on agribusiness as one of the drivers for economic development (Pulhin and Ramirez, 2013). Only between 2005 and 2010, 1.83 million hectares of land or 14% of the total country's agricultural lands was provided to agribusiness as land concessions. Based on government's plans additional target of 1.37 million hectares of land for agro-fuels related concessions was set (Villanueva, 2011; Pulhin and Ramirez, 2013). The palm oil industry in the Philippines is a growing sector propelled by the increase in demand both domestically and internationally. It was labelled as a “sunshine” priority industry under the Philippine Development Plan 2011-2016 and it is a major contributor in fulfilling the Philippine government's biofuel targets and seen as “peace-dividend development opportunity” for Mindanao (GoP, 2015; AFRIM, 2011). The majority of laws and policies in the Philippines to promote agribusiness were already in place even before the global food crisis facilitating the entry of Foreign Direct Investment (FDI) and turning the balance in its favour (Pulhin and Ramirez, 2013) but with the global food and economic crisis the government “aggressively encouraged domestic and foreign investors to seize investment opportunities in the countryside” (Borras and Franco, 2011). The most notorious large-scale land acquisition had to be suspended in the face of popular opposition and legal challenges, was a deal concerning

1 million hectares between government ministries and a Chinese consortium (de la Cruz, 2011).

Aside from agribusiness, mining is another sector that is in the limelight due to its potential earnings for the country. Foreign and domestic investment in mining has been encouraged by successive Philippine governments as an important source of revenue (Doyle et al., 2007; Tujan, 2002; Christian Aid, 2004). In 1995, a revised Mining Act was enacted to make it easier for foreign investors to obtain mining permits (Foster, 2012; Tujan, 2002). The successive Philippine governments in their attempts to woo foreign direct investment appeared willing to circumvent the country's laws protecting the environment and human rights and reduce standards below acceptable international practice according to the report of a fact-finding team visiting three mining-affected communities in Mindanao (Doyle et al., 2007). Mining industry demands a significant amount of area to operate which makes it extremely challenging to coexist with the indigenous people of surrounding communities who depend largely upon the land for their livelihoods (Hilson, 2002). Physical displacement, relocation and resettlement induced by mining industry are widely acknowledged as posing enormous risks to mining-affected communities (Owen and Kemp, 2015). As shown by Whitmore (2006) on several examples from across the Philippines, the land is frequently taken without obtaining FPIC, and indigenous peoples are suffering negative impact on their ways of life, health and environment. The mining operations have often negative impacts on social infrastructure (Moffat and Zhang, 2013).

The majority of lands in the Philippines are already occupied by farmers and indigenous peoples, regardless of whether they have legal land tenure or not, or in the process of distribution under the land reform which means that the government is expropriating lands for agribusiness at the expense of these communities and smallholder farmers (Pulhin and Ramirez, 2013; de la Cruz, 2011).

### ***2.3 Land redistribution***

According to Borras (2006) redistribution of wealth and power from the landed elite to landless and near landless people is the essence of land reform. Agrarian reforms worldwide have been attempting to “correct historical injustice committed against landless peasants” and

have been conceived based on a political-economic perspective of agrarian structure, where “power and power relations between different social classes within the state and in society are at the centre of a more egalitarian distribution of property rights over land resources” (Borras, 2007). Fuwa (2000) counters that the ultimate achievement of land reform should not be land redistribution as such but rather enabling reform beneficiaries to become competitive in the context of liberalized markets and reduced role of the state. Land reform entails equitable and rational change in agrarian structure by “compulsory, drastic and rapid means” resulting in increased access to land by the rural poor and secured tenure for those who actually work the land (Ghimire, 2001; Tai, 1974) which gives small cultivators “greater control over the use of land and greater leverage in their relationships with the rest of society” (Jacobs, 2013).

The advocates of land reform agree that simply redistributing land to the landless poor would not achieve equity nor efficiency of land reform; real reform should be accompanied by agricultural extension and emergency income support programs (Banerjee, 1999) or a mix of technical support and access to credit, markets and inputs (Cotula et al., 2006). Most advocates of agrarian reform have explicitly maintained no illusion that land redistribution is a “magic panacea to rural poverty and underdevelopment” (Borras, 2006); land redistribution is a necessary but insufficient condition for rural development and poverty eradication and must not be seen in isolation from broader support to the agricultural sector (Borras, 2006; Cotula et al., 2006).

Whilst the pursuit of land reform in 20th century was reinforced with the view that agriculture should be in the center of development agenda by the national governments, more prominent reason for adopting land reform was often to prevent rural unrest and struggle for social justice; land redistribution happened more likely when the rural poor formed a credible threat of revolt (Albertus, 2015; Fuwa, 2000). Other reasons for agrarian reform according to Cox et al. (2003) included existence of large tracks of land with low farming intensity, exploitative labour relations on large estates, land conflicts, collapse of large state, collective or cooperative farms. According to Cotula et al. (2006) redistributive land reforms have been motivated by three inter-related objectives:

- i) reduce poverty and landlessness in rural areas through more equitable access to land



- ii) improve social justice by shifting the balance between different groups in the ownership and control of land, and by restoring alienated land rights and
- iii) promote rural development by raising agricultural productivity and creating a class of productive smallholder farmers.

Platteau (1992) on case of sub-Saharan Africa and Borras (2007) argue that redistributive land reform was highly popular in official development agendas during the past century when it was generally accepted that large landed estates were economically inefficient because the land was underused - the creation of small family farms should maximize use of relatively scarce land resources by applying abundant rural labour to it. The decolonization struggle, post-conflict democratic reconstruction and consolidation, and the end of authoritarian regimes and subsequent transitions have also provided significant bases and imperatives for land reform. The international community has recognized the contribution more equitable access to land could make to the reduction of rural poverty, particularly at the International Conference on Agrarian Reform and Rural Development (ICARRD) of the Food and Agriculture Organization of the United Nations (FAO) in 2006 (De Schutter, 2011). Deininger and Binswanger (1999) show their scepticism about land reforms relying on expropriation because they “have been more successful in creating bureaucratic behemoths... than in redistributing land from large to small farmers” and because of their supply-driven nature such reforms lead to economic inefficiency, when productive farms are expropriated and subdivided into smaller, less productive farm units, when environmentally fragile, public lands are distributed, or when peasants unfit to become beneficiaries are given land. According to Jacobs (2013), the great majority of agrarian reforms have been incomplete, either redistributing little land or else allowing landlords or large commercial farmers to exert continued power. Land-redistribution-before-development approach has led to land redistribution-centred reforms where in most cases the state has failed to deliver support services to beneficiaries (Deininger and Binswanger, 1999).

Since World War II, consecutive Philippine governments have used land reform in various forms and intensity as a key element of their poverty reduction strategies, as well as a tool to address social unrest and insurgency in the rural areas (Balisacan, 2007). Land reform in the Philippines has had a long and dubious history marked by cycles of intense popular assertion that put the idea of land reform firmly on the national political agenda “in between long

periods of government inertia” (Borras and Franco, 2007). The political reality of land reform implementation in the Philippines has seen contestation by different social forces with differing interests and levels of bargaining power (Cruz and Manahan, 2014). Comprehensive Agrarian Reform Program (CARP), enacted in 1988, aimed to redistribute 10.3 million hectares of land to more or less 5 million landless peasant-families or 30 million individuals (Bejeno, 2010). CARP and its 2009 extension, the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER), was quite distinct from previous Philippine land reform initiatives because it went beyond land transfers to provision of basic support services, including access to credit and marketing assistance, with the aim to transform the beneficiaries into efficient agricultural producers and entrepreneurs (Velasco, 2011). CARP was an improvement over previous land reforms also in that it covered all agricultural lands and the entire rural landless labour force, including previously excluded seasonal farm workers and occupants of public lands (Velasco, 2011). However, CARP was a compromise law, accommodating demands from the landowning classes and agribusiness, and as such it contained legal loopholes that allowed mere regulation of existing tenancy forms, including the nefarious stock distribution option and leaseback agreements, provided for an ample list of exemptions for acquisition, established ‘fair market value’ for landowner compensation, created a payment amortization scheme that was unfavorable for beneficiaries and set a high retention limit that could reach 14 hectares (Borras, 2007; Tadem, 2015).

The Cambodian legislation counts with land redistribution as well. This is done in a form of social land concessions (SLCs) used to grant state private land to poor landless families for residential or farming purposes and to provide housing for veterans of the armed forces; by 2012, the total distribution of land for poor civilians in all forms accounted to 194,820 hectares for 30,588 households, including 3,965 houses (UNHRC, 2012; RGC, 2014). Although it is a positive sign of effort, there is a significant imbalance between the total area of social land concessions and that granted through economic land concessions; most social land concessions are given to veterans and disabled soldiers and affect rice fields and farmland of people who have been living in those areas for a long time (ADHOC, 2012). Sophal (2015) observed that the sites for SLCs are generally on less- or even un-fertile lands located in remote areas with lack of roads, clean water, electricity, school, and health centres.

### 3. AIMS AND METHODOLOGY

#### 3.1 *Goal and specific objectives*

Land grabbing is happening in many different forms and manners based on specific social, environmental, economic, legal, geopolitical and other circumstances and conditions with important differences within and between countries. The goal of this PhD thesis is to analyze the impact of and conditions / frameworks related to large-scale land concessions in South-East Asia with the specific objectives formulated as follows:

- 1) evaluate social and economic impact of large-scale land concessions on rural *communities relocated* as their consequence
- 2) evaluate social impact of agribusiness and mining industry on *indigenous peoples' communities*, analyse roles, objectives and strategies of the respective stakeholders in indigenous peoples' land tenure and describe the implementation gap between the indigenous peoples' rights in law and practice
- 3) analyse the challenges in successful implementation of the *land reform dealing with historical land grabs* and describe how these are addressed or confronted and determine the causes preventing / slowing down the implementation of the land redistribution component

In line with the above, this PhD thesis will explore three critical topics linked to the land grabbing in South-East Asia:

- i) impact of a more recent land concession in Cambodia that has not been provided for agribusiness but for China-originated tourism industry investment
- ii) security of land tenure of the indigenous peoples in the Philippines<sup>11</sup>, which have a well-developed domestic legal framework on indigenous rights, vis a vis agribusiness and mining supported by Government's priorities, policies and development strategies

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<sup>11</sup> There are estimated 14 to 17 million indigenous peoples in the Philippines, which represents 15% of the total country's population.

- iii) largest attempt on land distribution to landless (up to 5 million people) in South-East Asia – the Philippine land reform - to address colonial-area land grabbing and at the same time affected by new land grabs and competing with indigenous peoples' land tenure arrangements.

The three subtopics selected for the research – living conditions after relocation, indigenous peoples' tenure security and land redistribution to remedy historical land grabbing describe typical yet in a way specific cases and phenomena which are in forefront of not only political debates in Cambodia and the Philippines. Impact, factors, frameworks and conditions are similar and reoccurring across the South-East Asian region and the research findings might serve as important guide and lessons learned for countries where these issues are at different stages. The thesis will also serve as a contribution to renewed policy discussions on failures and implementation delays of Indigenous Peoples Rights Act (IPRA) and Comprehensive Agrarian Reform Program (CARP) and its extension in the Philippines.

## ***3.2 Methodology, theoretical framework and limitations***

### **3.2.1 Research approach and data collection**

This PhD Dissertation Thesis uses mainly qualitative analysis based on fieldwork and observation, personal account, related publicly available documents and secondary data to analyse the complex social, economic and political issues related to the land concessions and land grabbing in Cambodia and in the Philippines. These two countries were selected for research because, while sharing some key characteristics such as role of the elites, incorporation of indigenous rights in the domestic legal framework or not very socially minded economic model, they represent different economic, geographic, demographic, historiographic opposite poles in the South-East Asian region<sup>12</sup>. The Philippines are the second most populous country with Indonesia the most populous one and Vietnam the third one while Cambodia belong among the ones with lowest population followed only by Laos, Singapore and Brunei. Cambodia possesses the status of a Least Developed Country together with Myanmar and Laos, while the Philippines do not. Cambodia has the lowest GDP per capita comparable to Laos and Myanmar while the Philippines and Indonesia are somewhere

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<sup>12</sup> Understood here as ASEAN countries, i.e. without East Timor which is by many categorized as Pacific.

in the middle rank. The agricultural sector represents more than one fourth of Cambodian GDP while less than 10%. The Philippines are an insular country as is Indonesia while Cambodia is largely continental similarly to Vietnam, Laos, Myanmar and Thailand. The Philippines were colonized by Spain and USA while it was the France in Cambodia as in Laos and Vietnam. Before the end of the Cold War, Cambodia was a socialist state as was Laos, Vietnam and Myanmar, while the Philippines together with Indonesia and Thailand were a close US ally.

**Table 1: Socioeconomic indicators of Cambodia and the Philippines**

<b>Indicator</b>	<b>Cambodia</b>	<b>Philippines</b>
Population (2016)	15.7 M	103.3 M
Land area (sq. km)	176.5 K	298.1 K
GDP per capita PPP (2016)	3,735 USD	7,806 USD
% agriculture in GDP (2016)	26.70%	9.70%
% agriculture land out of total (2014)	30.90%	41.70%
Location	Continental	Insular
Former colonial power	France	Spain / USA
prior 1990s orientation	Communist	Capitalist
LDC	yes	no

*Source: World Bank, 2017*

The applied case study research approach was selected as a robust research method because it can provide holistic and in-depth explanation of contemporary complex real-life issues linked to land grabbing in particular and land tenure in general from the perspectives of a range of different stakeholders, including rural communities, exploring specific social, environmental, economic, legal and geopolitical circumstances. The case study describes not only outcomes but also processes, which is critical for human rights based approaches.

Because of the qualitative rather than quantitative nature of the research, the primary methodological approach of the field data collection was a combination of focus group discussions (FGD) and key informant and in-depth interviews to generate stakeholder information, objectives, strategies and perspectives.

The semi-structured discussion between FGD participants provided an opportunity to hear issues that may have not emerged from their interaction with the researchers alone. The interaction among the participants themselves lead to more emphasis on the points of view of the participants than those of the researchers and permit to uncover aspects of understanding that often remained hidden in the more conventional in-depth interviewing method. FGD enables to examine what people think, how they think, and why they think the way they do about the issues of importance to them without pressuring them into making decisions or reaching a consensus (Liamputtong, 2012). Key informant interviews (KII) were added to get additional perspective and triangulate on the data collected through desk research and the other fieldwork methods. The in-depth interviews were done in order to get in-depth understanding of particular issues (e.g. livelihoods, housing, basic services, intra-community relationship / social cohesion). Data were analysed using content analysis where recurring themes were identified and coded to reflect the emerging patterns, which were interpreted later by the authors employing phenomenological approach using abductive reasoning.

The field data were collected in September 2014 and November 2016 in Cambodia, May and July 2016 and January and February 2017 in the Philippines. The following semi-structured focus group discussions and key informant interviews were conducted:

- 32 focus group discussions, 26 in-depth and dozens informal interviews with peasants, farmers, fishermen or indigenous people
- 33 key informant interviews with public servants and officials
- 4 focus group discussions and 23 key informant interviews with NGO workers active in land issues

The detailed breakdown by case study is provided in the following table.

**Table 2: Overview of methods by case study**

<b>Case study</b>	<b>Country / Site</b>	<b>Main issue studied</b>	<b>Methodology</b>	<b>Data Collection</b>	<b>Main secondary sources</b>
1.	Cambodia / Koh Kong province, Botum Sakor National Park	Relocation after land concession	<ul style="list-style-type: none"> <li>- 10 FGDs with 151 community members</li> <li>- 12 KIIs with government officials at provincial and district levels</li> <li>- 5 in-depth interviews</li> <li>- service mapping of key basic services</li> <li>- community observations</li> <li>- water testing</li> </ul>	September 2014 <i>November 2016</i>	<ul style="list-style-type: none"> <li>- publicly available information from the Cambodian government</li> <li>- Cambodian English-language media</li> <li>- Report of the UN Special Rapporteur on human rights in Cambodia [UNHRC, 2012]</li> <li>- Cambodian NGOs</li> </ul>
2.	Philippines / Opol municipality, Misamis Oriental Province, Northern Mindanao	Indigenous Peoples' land rights; palm oil agribusiness land grabbing; mining	<ul style="list-style-type: none"> <li>- 6 FGDs with IPs</li> <li>- 6 in-depth interviews with tribal leaders</li> <li>- 8 KIIs with NCIP, CHR, DAR</li> <li>- 2 FGDs with NGOs</li> <li>- 6 in-depth interviews with NGO staff</li> <li>- community observations</li> <li>- informal interviews</li> </ul>	April & July 2016 February 2017	<ul style="list-style-type: none"> <li>- International Fact Finding Mission &amp; advocacy NGOs</li> <li>- companies' web pages and social media sites, their annual reports</li> </ul>
3.	Philippines / 5 provinces: Bataan (Luzon) Bukidnon & Misamis Oriental (Mindanao) Leyte and Negros Occidental (Visayas)	Land redistribution to address historical land grabs	<ul style="list-style-type: none"> <li>- 16 FGDs with ARBs</li> <li>- 12 in-depth interviews with ARB leaders</li> <li>- 12 KIIs with DAR, CHR and police representatives</li> <li>- 4 FGDs with local NGOs</li> <li>- 15 in-depth interviews with local NGO workers</li> </ul>	April & July 2016 January & February 2017	- Saturnino Borrás Jr.

The PhD Dissertation Thesis also relies on dozens of semi-structured interviews with key NGO workers, both national and international as well as government representatives at various levels that were conducted between August 2011 and June 2017 and helped to inform our understanding land tenure issues in Cambodia and the Philippines as well as their dynamics.

The selection of cases was also driven by the availability of data or their sensitivity and potential harm their publication could cause to informants as well as logistics considerations. They represent typical, yet in many ways specific cases, from areas not so well covered by other researchers.

### **3.2.2 Sites description**

#### *Botum Sakor National Park*

The Botum Sakor National Park in Cambodia's Koh Kong province is the study region of the first case study. Established in 1993, the 171,250-hectare Botum Sakor National Park is Cambodia's largest national park. In recent years, the Cambodian government has reclassified large tracts of land into sustainable use zones and granted economic land concessions within the National Park to at least nine private companies for agro-industrial crop planting and eco-tourism, commercial development, water reservoirs, and hydropower dams (UNHRC, 2012).

In April 2008, 36,000 hectares were excised from the Botum Sakor National Park and reclassified as state private land by Royal Decree (RGC, 2008) and thus became eligible for long-term land concessions. One month later, a 99-year lease contract was signed with UDG for the construction of a commercial development zone and resort to attract tourists and additional investment (UNHRC, 2012; ADHOC, 2012). This land covered a large portion of the coast in Kiri Sakor and Botum Sakor districts as well as 12 villages. Under the contract, UDG was authorized to develop infrastructure that would support the tourism sector, including casinos, condominiums, apartments and resorts, and to clear forest areas during the development (UNHRC, 2012). The Cambodian government was made responsible for the administrative functions associated with relocation and compensation and UDG was to bear



the costs of compensation and construction of the relocation site. In August 2011, the government issued a sub-decree to reclassify an additional 9,100 hectares as a sustainable use zone and granted a second land concession to UDG to develop a water reservoir and hydropower plant (UNHRC, 2012). The communities were relocated away from the coastal areas, although many of the communities depended on access to the Gulf of Thailand for their food and income. The villages affected by the land concession had been in existence for generations - the community members are a mix of families who settled in the area before the Sihanouk regime in the 1960s (UNHRC, 2012).

#### *Dulangan Ancestral Domain, Opol, Northern Mindanao*

The site of a second case study in Opol municipality of Misamis Oriental province, Mindanao was selected because several issues of interest for this research are present here. Firstly, the indigenous community has been seeking Certificate of Ancestral Domain Title (CADT) to secure rights over land and natural resources already since 2001, relatively long time. Secondly, the area has been targeted by A. Brown Company, Inc., and its subsidiaries Nakeen Corporation and ABERDI (further referred to collectively as “A. Brown”), for oil palm plantation in 2011. Although often referred to as an American owned company, the company is in fact 100% Filipino owned. Thirdly, two mining exploration concessions were awarded in the area. In 2011, Black Stone Mineral Resources Inc., a subsidiary of Hong Kong based company, received concession for exploration of gold and associated minerals and Filipinas (Prefab Bldg.) Systems Inc. obtained exploration concession for chromite (PMCDC, 2015). Opol consists of 14 barangays or villages. In six of these – Awang, Bagooboc, Tingalan, Nangaon, Caoyonan and Limonda - as well as in two barangays of neighbouring Mantiaco municipality – Mahayahay and Upper Malobog – Higaonon people form majority population with approximately 11,000 individuals. All these barangays have barangay tribal councils, a parallel local governance structure for indigenous people. Higaonon people have resided in Opol and Mantiaco since pre-colonial times. The ancestral domain was brought to the public attention by several advocacy NGOs after the controversial oil palm plantation by A. Brown started operating here in 2011. These organizations, including Pesticide Action Network Asia and the Pacific (PAN AP), Rural Missionaries of the Philippines, Peasant Movement of the Philippines (KMP), Kalumbay Regional Lumad Organization, Sentro Kitanglad, and the Asian Peasant Coalition, organized International Fact Finding Mission in May 2012 and were active in campaigning on this particular land grabbing issue well into 2013.

### *Philippine Land Reform Study Sites*

The rationale behind the province selection for the third case study dealing with the Philippine agrarian reform was that Leyte and Negros Occidental provinces rank among the provinces with lowest accomplishments in land acquisition and distribution. Bataan province was added because of the infamous land dispute of Sumalo farmers in Hermosa municipality, going back to 1989. Misamis Oriental and Bukidnon provinces could illustrate the specific issues related to the armed conflict on Mindanao and to indigenous peoples.

### **3.2.3 Theoretical framework**

The theoretical framework of my research is based on political economy, which assumes that resources are allocated not on the basis of relative efficiency or merit but according to power. Therefore, the behaviour, objectives and dynamics of various stakeholders in relation to land may only be understood in terms of their power and class position in the larger social system.

The research is building upon concepts of rights-based land grabbing “school” as formulated by De Schutter (2011):

- opportunity costs involved are too huge when land considered underutilized or vacant is given away to investors for the development of large-scale plantations, instead of strengthening access to land and water of local farming households / communities and being used more productively (and with larger poverty-reducing impacts), in ways that are both more equitable and more environmentally sustainable, by agrarian reform including the distribution of land to smallholder farmers
- there remains a considerable gap between the existing institutional and governance conditions in host states of land concessions and the regulatory framework that should be established in order for large-scale investments in land to truly benefit local communities.

### **3.2.4 Limitations**

While the advantages of case studies were describe above, the case study research approach represents inherent limitations. It can make no claims to be typical or generalizable; the

sample is small and idiosyncratic and the data predominantly non-numerical. There is no way to establish the statistics probability that results are representative of trends and dynamics. The findings generalizations and discussion thus relies largely on author's experience, conviction and leaning to the theoretical framework.

The applied methodology is relying on local testimony and description of the ex-ante situation based largely on the information reported by the evicted people, indigenous people, agrarian reform beneficiaries (or potential beneficiaries) and NGOs. As such, it could contain several potential sources of bias. Respondents might have unknowingly idealized the past because of emotional attachment to their previous homes and selective memory. Additionally, when describing the present, they might have on purpose withheld some crucial information or distort the facts in anticipation of help from the aid agencies conducting the field data collection<sup>13</sup>. As all self-reported data, there is a risk of exaggeration making some situations more significant than is actually suggested from other empirical data. Moreover, during focus group discussions some personal information and experiences may not be discussed because of social and cultural restrictions; certain participants may influence the group discussion being too dominant or aggressive or some participants may feel intimidated to speak openly in their presence. Key informants interviews are limited by the fact that the informants might be motivated not to provide correct information and it may be sometimes difficult to prove reliability of the information provided.

I see one of the main limitation of this research in the fact that repeated attempts to conduct semi-structured interviews with representatives of the companies or landlords failed and I thus had to rely only on publicly available information such as companies' web pages and social media sites, their annual reports as well as papers published by NGOs and activists. Additionally, land issues are a sensitive topic and the data provided by the respective governments in Cambodia and the Philippines remain incomplete and are not easily accessible by the public.

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<sup>13</sup> The field data in Cambodia were collected by international and national staff of Czech NGO People in Need and partly UNICEF, the collection of field data in the Philippines was facilitated and logistically supported by People in Need and two Philippine NGOs - KAISAHAN and Balaod Mindanaw.

Unlike in 2016, I could not visit Dulangan, the Higaonon Opol ancestral domain, in February 2017 because of presence of the New People's Army<sup>14</sup> in the area and all the focus group discussions and interviews had thus to be conducted outside of the ancestral domain in Poblacion and Cagayan de Oro.

Land grabbing and land reform are multi-objective processes involving ethical, political, social, economic and productive objectives among others. While such processes necessitate complex, long-term evaluation, my constraints in terms of time to be spent in the field and available resources allowed me for just a rapid field appraisal and extensive desk research.

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<sup>14</sup> The New People's Army (NPA) is the armed wing of the Maoist Communist Party of the Philippines (CPP). The NPA is designated as a Foreign Terrorist Organization by the U.S. State Department and as a terrorist group by the EU. The peace talks between the NPA and the Philippine Government which resumed in August 2016 were scrapped by the Philippine President in February 2017, when the NPA ambushed an army convoy and thus breaking a unilateral ceasefire.

## **4. RESULTS AND DISCUSSION**

The first three subchapters in this section summarize and discuss the results of the three articles; more detailed results are to be found in the articles annexed. In the last subchapter, I search for the commonalities, synthesize and discuss the results of the three case studies.

### ***4.1 Impact of land concessions in Botum Sakor National Park, Cambodia***

The economic land concessions in Cambodia suffer from a lack of free, prior and informed consent (FPIC) of affected land-users. The case study of Kiri Sakor and Botum Sakor districts confirmed the findings from other Cambodian land concessions documented in Srae Ambel district by Haakansson et al. (2011) and by Neef et al. (2013) for several land concessions in Kratie province.

The results of the research show that there is clear evidence that most of those affected by the Botum Sakor National Park land concession are worse off than before the relocation and will likely remain so in the short- to medium-term.

Relocated families were offered 0.5 hectare of residential land with a 6.5 metre by 7.5 metre constructed wooden house and a two or three hectare plot of farmland. Focus group discussion participants across all communities felt insecure with their land entitlement because the land is officially a protected area that has yet to be transformed into state private land so land titles can be issued to those affected. At the time of research, they did not possess the land tenure certificate for their farmlands, only a temporary title for the housing land. The land provided was not usable for farming without heavy groundwork to clear the forest, which they could not afford. Some families reported that their allocated farmland was as far as 5 to 6 km away from their house. The monetary value of compensation was from 200 USD to 8,000 USD per hectare depending on either documentation available or bargaining position (e.g. village chiefs receiving highest compensation). Compared to other land concessions in Cambodia<sup>15</sup>, this is much higher than what was recorded by Borrás and Franco (2011) in Omlaing commune of Kampong Speu province where “each household was given USD 25 disturbance compensation and dumped in a resettlement location lacking in both infrastructure and suitable farming potential... villagers... were offered USD 100 per hectare compensation

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<sup>15</sup> CIDSE (2009) documented several cases in Laos where concessionaires evicted people without paying any compensation to the land-users.

for the irrigated rice lands.” In case of Srae Ambel district, the farmers were offered only “a small compensation” to pay for the loss of crops and not the value of the land, since the farmers did not possess proper land titles (Haakansson et al., 2011). There were always some households which received no compensation - in four districts for which the corresponding data is available, the compensation was provided only to 74% of interviewed households with 80% in the South and only 16% in the North. “The government... claimed that it was their policy to provide fair compensation and cover the damages caused by evictions. However, there has usually been no agreement on the deals proposed by affected people, and they have been sent to remote relocation sites... with very little opportunities to earn a living” (ADHOC, 2012).

The housing provided was of poor quality with approximately 30-40% of the houses in the relocation villages were in poor condition, with the roof, windows or walls partially removed by wind or rain. Many villagers raised concerns about how it would cope in strong winds and other severe weather conditions. A small minority of families had invested their own money into upgrading, extending or maintaining their houses. No electricity system reached the villages, so they relied on generators and car batteries. None of the houses provided included a sanitation facility, and although some people found the means to build the sanitation facility themselves or received assistance from the Provincial Department of Rural Development, an estimated 95% of households practiced open defecation.

As was the case in other land concessions in Cambodia, the relocation of affected Botum Sakor National Park communities had disastrous effects on their livelihoods, income-generation opportunities and food security. The affected communities relied largely on fishing and farming low-lying agricultural lands in coastal areas and were unable to continue these activities once relocated. Since the relocation, most families have shifted from subsistence economic activities - largely producing their own food - to certain degree of market dependency that has had negative effects on the households’ budgets; villagers need to spend more buying food than prior to relocation. Some focus group discussion participants reported that they had a shortage of food during certain periods because they had no money. The focus group discussions were unanimous that their current livelihood activities could not provide the same level of income as previously (which some reported to be as high as 10-15 USD / day).

As many as 20% of the focus group discussion participants' households found work as hired labour with UDG, which paid 150 USD / month. Some Tanoun villagers who worked as golf caddies and hotel cleaning staff reported earning as much as 200 USD / month. However, many of them raised concerns about their long-term job security. Comparing this to results from other land concessions in Cambodia, Chev et al. (2011) reports that in Choam Sangke commune in Kampong Speu province, only 9% of people found work with the investor in 2006 and that the number decreased every year to 2% in 2010, earning 1.5 USD / day. Moreover, the work was seasonal and lasted only 2 to 3 months. In the case of the Srae Ambel district land concession, "people who lost all their land have had no choice but to work on the plantations. The pay is low and the work is irregular. When working at the Ly Young Pat's sugar plantation [one] can earn EUR 1.7 per day, but [one] will only have work 3-4 months a year" (Haakansson, et al. 2011). The Guardian reported from the Koh Kong sugar plantation that many villagers seek work from the very company they are now suing in British courts for evicting them (Hodal, 2013). Indigenous people affected by land concessions in Ratanakiri and Mondulkiri provinces interviewed by Prachvuthy (2011) "agreed that companies had provided employment, albeit limited – they observed that companies prefer hiring in-migrant workers to hiring indigenous people, as the former are more productive and agree to lower wages."

Interestingly, in the case of the Botum Sakor National Park land concession, strong resentment against working for the company responsible for the eviction was not observed, unlike that observed by Neef et al. (2013) in Kratie province, where villagers reiterated their strong determination that they would not work for the concessionaire. During interviews with indigenous people affected by land concessions in Ratanakiri and Mondulkiri provinces, Prachvuthy (2011) found that 76% of the respondents were unwilling to work for the concession company "even if... starving" because the work was hard "with no freedom"; moreover, the "lack of experience with wage labour... made working on a plantation hard for them, particularly as workers have to get up very early to travel to work and have limited time for lunch..., and [are] too angry with the company for taking their land and destroying their spirit forests."

People in Botum Sakor and Kiri Sakor districts who want to continue their original livelihoods – fishing – must travel 20 km (or stay illegally in basic shelters close to the sea). As with the indigenous people of Ratanakiri and Mondulkiri provinces, some families had to travel 20-35 km to collect non-timber forest products, their source of livelihoods, after the land concessions were awarded (Prachvuthy 2011).

Community members identified the poor state of the roads and the associated high cost of transportation as a significant barrier to accessing health care services. No new health care facilities were constructed as part of the relocation, and residents must travel to health care facilities more than 20 km from most of the relocation villages.

While 150 water sources, open and tube wells, were constructed mostly by UDG, focus group discussions stressed that access to drinking water remained a challenge, especially during the driest months of March and April when the wells dried up and families had to travel 400 to 500 meters to fetch water from streams or other available sources. Some people did not consider the water potable because of its strong metallic and mineral taste, which was confirmed by the research team. Rain water or river water were thus preferred drinking water sources. The water test conducted in March 2015 from one of the randomly selected wells in Tanoun village showed that the water did not meet national standards for drinking water in four characteristics.

Whereas most people in the focus group discussions and in-depth interviews felt that the access and quality of education has worsened compared to the pre-relocation situation, one community reported that because they were now closer to a school, it was easier for their children to attend the school than before the relocation. In the case of another village, the nearest primary school was reportedly 8 km away. Conversely, Prachvuthy (2011) recorded that in Mondulkiri and Ratanakiri provinces “companies had helped improve infrastructure in indigenous communities, through road, school and health centre construction.”

#### *Post-scriptum*

I re-visited the relocation sites of the Botum Sakor National Park in November 2016, more than two years after the original data were collected. Based on the field observations and in-



depth interviews with the relocated individuals and NGO workers active in the area, following results were documented:

- Most people have received their land tenure certificates, thus solving their land tenure security
- While estimated 10% houses stood empty, majority of people invested significantly into upgrading or extension of their houses
- NGOs constructed a new clinic and school buildings inside of relocation areas improving access to health care and education
- UDG maintains regularly the roads in the relocation sites; at the beginning of the dry season, all were passable without major difficulties
- Most people have still not been able to utilize the provided agriculture lands; however, some started small-scale cashew plantations on these lands and in their backyards and reported to be earning more than before the relocation
- Interviewed people worried less about the long-term prospects of their jobs with UDG after being trained and offered accommodation in the resort premises
- People have been investing in the installation of sanitation facilities (estimated 50% households) and rainwater roof-catchments

Further research, incl. application of quantitative methods, would be needed to evaluate long-term impact of the relocation. Further research would also be needed to determine the environmental impact and national park ecological stability.

#### ***4.2 Land concessions in Dulangan ancestral domain, Philippines***

The research results confirm what was observed by Xanthaki (2003), Simbolon (2009), Inman (2016), O’Faircheallaigh (2012) and Novellino (2000) that even the well-developed domestic legal framework for indigenous land rights does not ensure tenure security for indigenous peoples because the improper enforcement of these laws. As the testimonies collected in Dulangan ancestral domain in North Mindanao show, indigenous people have given their FPIC to the gold mining exploration in order to avoid frictions within the community regardless of what they considered as best for their community. As for the chromite mining exploration, the focus group discussion participants reported: “The problem is [the

companies] never tell people in advance the reason of the meeting or that this is actually an FPIC.” Issues were raised about the FPIC process of the oil palm land concession by number of activist NGOs, however the tribal council claims that the people supposedly “handpicked” for the process were the rightful land holders through a Community-based Forest Management Agreement unlike the supposed victims of land grabbing who the tribal leaders consider as encroachers. These discrepancies and inconsistencies with the FPIC process in Dulangan are in line with results from other land concessions in the Philippine indigenous peoples’ ancestral domains where various issues have been documented during the FPIC process; among other problems allegations of manipulation, bribery and serious violations of the rights of indigenous peoples (Doyle and Carino, 2013; UN, 2003; Goodland and Wicks, 2008; Doyle et al., 2007; Whitmore, 2006). The review of 34 FPIC cases in three Philippine regions conducted by GIZ (Calde et al., 2013) found that less than 50% of the studied cases attained the status of full and faithful compliance with the FPIC Guidelines and procedures and a substantial number (38.2%) of cases reported incidents of violations in the actual conduct of the FPIC.

Differences in visions, mandates and instruments of various government bodies contribute to delays in Certificate of Ancestral Domain Title (CADT) issuance, as well as lack of resources to conduct land surveys, delineations or hold coordination meetings between the various government bodies. Higaonon people of Dulangan have not obtained CADT until today despite having started the application process in 2001 because National Commission for Indigenous Peoples (NCIP) does not have sufficient capacities and resources to conduct land surveys of these large areas claimed though since President Duterte took office additional resources were provided to NCIP and the CADT awards might be speeded up. Another factor causing the delays in CADT process was the Joint Administrative Order 1-2012 of NCIP, DAR, Department of Environment and Natural Resources (DENR), and Land Registration Authority, which suspended all titling activities in identified contentious areas and created a joint committee mechanism to resolve the issues (GoP, 2012). However, these joint interdepartmental meetings in Misamis Oriental province have not been happening supposedly because of missing budget to hold these. The case study also confirms Prill-Brett (2007) that the practice promoted by NCIP of a supra-community domain application makes the process more complicated and slower and might be contradicting traditional decision-making.

The relationship between indigenous people and NGOs is not an easy one as one of the focus group discussion reported: “Since 2006 many NGOs were coming and going. They were asking about the issues, but then their projects ended and nothing has happened.” The interviewed NGOs see their role as to provide necessary skills to indigenous peoples and let them fight for their CADT themselves. There was also a problematic relationship between the tribal leaders and the International Fact Finding Mission led by several activist NGOs<sup>16</sup>. The mission avoided any contact with the tribal council (and vice-versa), and might have actually seen them as implicit in the land grabbing. The tribal leaders stressed that they managed to negotiate in the Memorandum of Agreement with A. Brown that 70% of the plantation workers would be local Higaonons.

The main problem in strengthening community land tenure seem to be disunity among the indigenous peoples, conflicting personal interests among tribal members and leaders bringing about tensions in social and personal relationships of several indigenous peoples’ leaders. There are more than 70 plus clans living in Dulungan ancestral domain and that their relations are sometime quite tense and “tribal dynamics” complicated. The research shows how companies are using divide-and-rule tactics and co-optation of some tribal members to enhance their business interests. These results are contradicting the black-and-white picture, which some activist NGOs portray in their land grabbing narratives. I have shown that the reality is more complicated and would require further long-term sociological / ethnological research.

While no doubt some community members can benefit from the mining and plantation operations, others who attempt to maintain their traditional ways of life suffer and fear what would happen if the mining operations moved from exploration to extraction phase.

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<sup>16</sup> Borras and Franco (2007) classify the Philippine non-governmental organizations into four categories - groups identified with the revolutionary Communist left, state-coopted organizations, conservative reformists and progressive left reformists. While the first category was largely behind the International Fact Finding Mission and advocacy campaign against the land grabbing in Opol, it was the representatives of the other categories, and mainly the latter two, that were informants for this research.

### ***4.3 “Reversed” land concessions – the Philippine agrarian reform***

Agrarian reform in the Philippines is a not an easy task compacted by the challenges it has to face, i.e. “opposition from landlords, criticism by civil society, suspicion by the private sector, cynicism by legislators, lack of financial and material resources as well as general public apathy” (Guardian, 2003). Pessimistic predictions and sweeping dismissal by some critics of the land reform accomplishments have not materialized and sizeable land redistribution has been achieved with around 7.7 million hectares of land, or one quarter of total Philippine land area or 80% of all agriculture land (De Los Reyes et al., 2017), distributed in the 27 years of the implementation of the Comprehensive Agrarian Reform Program (CARP) and its extension. However, as GTZ (2006) wrote then and is still true today, it is evident that the agrarian reform is far from being completed, especially in terms of compulsory acquisition of large private landholdings and their redistribution to the mass of landless peasants. As showed on the cases from five provinces, the agrarian reform faces a range of significant challenges.

The results of my research confirm what Cox et al. (2003) wrote on land reforms, that also in the Philippines the implementation of the agrarian reform encounters many critical constraints such as slow bureaucracy, lack of support services and landowning classes with the political and administrative connections to protect their vested interests leading to inadequate implementation of the reform laws. Similarly to what described Banerjee (1999), also the Philippine landowner class is well represented in the ruling elites, and is an enormous political power to block, stall, or undermine the land reform efforts. Landlords resort systematically to legal arguments as a way of delaying and thwarting the implementation of the agrarian reform and to de-legitimize farmers’ stakes and claims to the land. A popular tactic by landlords is to pay a group of people to claim the very same plot of land that has already been or is about to be allocated to other peasants under the agrarian reform. Agrarian reform beneficiaries experience threats and harassment and in many cases physical harm perpetrated by landlords or security guards, goons or paramilitaries hired by them. These results are confirmation of what has been written by Uson (2015), Borrás (2006), Guardian (2003), Villanueva (2011) and Bejeno (2010).

In Department of Agrarian Reform (DAR)’s perspective, it is not cost-effective to provide a package of support services to a handful of agrarian reform beneficiaries and support services are thus largely limited only to the Agrarian Reform Communities. In most cases, the lack of

adequate and appropriate support services, access to credit, farm implements, seeds, etc. remains a problem. As a result of weak managerial capacities of agrarian reform beneficiaries and limited access to credit not all beneficiaries become viable entrepreneurs and some may be forced to sell their newly acquired land because of their inability to generate sustainable income from it, inability to pay their amortization or ending in a debt-trap. This confirms results of Tadem (2015) and Elauria (2015).

In line with Tadem (2015) and Elvinia (2011), I showed that other significant obstacles in successful agrarian reform implementation and causes for exacerbation of land conflicts are land conversion and land grabbing. The lands included in CARP coverage were converted to housing estate and the municipalities made corresponding zoning ordinance despite the fact that such land conversions are illegal without prior DAR approval. A group of agrarian reform beneficiaries from Hinoba-an municipality, Negros Occidental province who have been farming the lands acquired through CARP since 1999 are concerned of a “possible eviction by the provincial government and local government unit because of a large-scale Japanese investment consisting of ecotourism project, airport and seaport.” In Bukidnon province, it took Sumilao farmers 21 years including a hunger strike and a two-month 1,700-kilometre walk from Mindanao to Manila DAR national offices, in effort to secure their land tenure against the planned land conversion for the establishment of a hog farm by the biggest agribusiness in the Philippines. Some of the CARP strategies such as leaseback, joint ventures and contract growing schemes have been heavily criticized as inimical to the rights and interests of small farmers because of low rent and unfulfilled promises of employment and other benefits; “many of the farmers who entered into such schemes remain impoverished while having abdicated their access to and control of their lands” (Villanueva, 2011). While CARP / CARPER prohibits the sale of lands awarded under the program, the law allows agrarian reform beneficiaries to enter into business contracts involving the lease of their lands for up to 50 years. This is virtually equivalent to selling away their lands and giving the lessor unlimited access, management and use of land resources. Republic Act 7900 “*An Act to Promote the Production, Processing, Marketing and Distribution of High-Valued Crops, Providing Funds Therefore, and for other Purposes*”, (GoP, 1995) allows farmer cooperatives to lease out up to 1,000 ha of their lands for a period of 25 years which threatens to reverse the gains of the land reform whose beneficiaries, in a weak bargaining position, are in danger of being pushed to lease land to corporations on disadvantageous terms (de la Cruz, 2011). As

Adam (2013) shows on a case study from Mindanao, business elites have managed to obtain control over lands redistributed by CARP through all sorts of informal arrangements and a majority of the coconut farmers there is trapped in new forms of debt-bondage and is forced to transfer the rights over their land.

#### ***4.4 Comparison of case studies and between countries***

##### *Free Prior and Informed Consent*

In line with the De Schutter's position forming the conceptual framework of this paper, I would argue that weak governance and lack of rule of law – be it because of low capacities of government institutions, collusion between the government officials or public servants with the land investors' and landlords' interest or other reasons – lead to improper enforcement and implementation of laws. FPIC, which is a requirement by law and precondition for award of a land / mining concession in both Cambodia and the Philippines, is being circumvent in too many cases. Peasants and indigenous peoples are thus prone to losing the land they use without being properly consulted and without providing their free and prior, informed consent. The land concessions in both Botum Sakor National Park and Opol were accompanied by number of irregularities with the FPIC process. According ADHOC (2012), the affected communities in Botum Sakor were not consulted about the project. While in Opol in one of the three cases, the consent was given only to avoid community friction and happened only after the mining exploration was granted, in other case, the people were not informed about the purpose of the meeting and that they actually gave their consent. In the last case of the palm oil agribusiness, the consultation was supposed to happen with all the members tribal council which was not the case.

According to Kenney-Lazar (2012), also in many cases in Laos, the companies began to clear village and households' land without any warning beforehand. At other times, the village or household was notified in advance that land within their village would be appropriated, yet they felt powerless to do anything about it. The Myanmar 2012 land laws do not require any FPIC because all the land is perceived as ultimately public.

### *Violence, harassment or threats, legal proceedings against peasants and indigenous peoples*

In all three case studies, I have documented how peasants and indigenous people face physical violence, harassment or threats from the land grabbers or landlords, their security guards, goons and sometimes even the army. In some cases, they also face protracted legal battles, including criminal charges. The main difference is that in the Philippines the legal proceedings are mostly initiated by the Government while in Cambodia it is by the companies or landlords. ADHOC (2012) reported for 2011 that as a result of land conflicts in Cambodia, one person killed, 427 people were charged with criminal offences in relation to the exercise of their right to peaceful protest, use of legal proceedings includes defamation, disinformation and incitement charges. In the Philippines, there are also reported cases of involuntary disappearance of farmers, indigenous leaders or environmental activists opposed to big agribusiness companies (Pulhin and Ramirez, 2013).

### *Ruling elites role in land tenure*

I would argue that the narrow elites have enormous impact on land concessions or land redistributions. In Cambodia, this is a sprawling network of Cambodian People's Party politicians, military brass and business families with patronage to Prime Minister Hun Sen and his close associates (Strangio, 2014). In the Philippines, it is the elite, land-holding families stemming mainly from the Spanish colonial times who control the economy and the politics. These elite members are often involved in land grabbing, especially when establishment of joint ventures are required. They are also important force to delay and block the land reform implementation and strong political power will be needed to challenge the elite's resistance. Thus far, many elites in the Philippines are left in dominant economic and political positions. In Myanmar, these are the "cronies", the business elite who are on favourable terms with the high-ranking military officers or even their close relatives, who were given land concessions.

### *Philippine land reform and Cambodian Social Land Concessions*

In 27 years of its implementation, the Philippine land reform managed to distribute around 7.7 million hectares of land while the Social Land Concession mechanism in Cambodia managed to distribute less than 200,000 hectares. Cambodian NGO LICADHO (2015) assessed the performance of the World Bank / GIZ Land Allocation for Social and Economic Development (LASED) project that was supposed to be a showcase for the Social Land Concessions. They

have documented challenges not unlike CARP / CARPER – slowly moving bureaucracy in providing land and issuing land title, limited supported services preventing beneficiaries to become economically viable producers so they end up as farmworkers or unskilled labour and conflicting land claims. The inability to prepare the allocated land for cultivation was reported by Social Land Concession beneficiaries, similarly to what reported respondents in relocation areas of Botum Sakor National Park.

Benefits of the agrarian reform are hampered by new land grabbing and land conversion and in this connection, it would thus be desirable to conduct further multidisciplinary research to determine the extent of land awarded or supposed to be awarded under the CARP / CARPER, which is subject to further land concessions or land grabbing.

### *Indigenous land rights*

I showed that a mere codification of the indigenous rights in the form of Indigenous Peoples Rights Act does not guarantee tenure security of the indigenous peoples in the Philippines. Similar conclusion is drawn by UNHRC (2012) for Cambodia - the 2001 Land Law recognizes the rights of indigenous peoples to collective ownership of their lands, including residential land and currently cultivated agricultural land as well as land reserved for shifting agriculture. Despite the efforts of indigenous communities to register as legal entities and eventually apply for land title, economic land concessions continue to be granted on lands also claimed by indigenous communities.

In Laos according the Baird and Shoemaker (2007), the non-recognition of indigenous rights goes as far that among Government's policy objectives to provide land concessions are efforts to give a chance to develop to ethnic minority groups, often looked upon as backward and underdeveloped by the dominant ethnic Lao population.

### *Conflict between land reform and indigenous rights*

Unfortunately, I did not have a chance to explore deeply in my research the conflict between the land reform and indigenous rights legal framework because in Opol municipality, the potential land conflict between IPRA ancestral domain efforts and CARP had been quickly resolved before the fieldwork began. However, I came during my times in the Philippines across number of cases where the two land tenure mechanisms were in conflict. According to



respondents from DAR almost all Mindanao is claimed by NCIP for indigenous peoples as their ancestral domains and if DAR would not issue land titles within the ancestral domains, they would not be able to implement the agrarian reform at all. This represents potentially a difficult dilemma for the Philippine Government whether to advance indigenous rights to the land distribution for the landless especially among the emerging claims that some indigenous people rediscover their “indigenesness” only because of the possibility to obtain land titles. Based on my observations I would also claim that the land reform would probably be able to secure more equitable access of indigenous peoples to land than the IPRA-based land titles because of the social dynamic and complicated clan relations.

## 5. CONCLUSION

Land grabbing is a serious issue in South-East Asia as I have shown on case studies from Cambodia and the Philippines, analysing the impacts, narratives and dynamics of large-scale land concessions, indigenous land rights and land redistribution. Though land grabbing occurs in many different manners based on the specific social, environmental, economic, legal and geopolitical circumstances, with important regional differences even within the countries, many of the presented results would be valid also for other South-East Asian countries, including Myanmar and Laos. Differences in visions, mandates and instruments of various government bodies responsible for land governance, lack of resources and coordination between them weaken land tenure security of indigenous peoples in countries, which have introduced indigenous rights, and collective land tenure into their domestic legal systems, such as Cambodia, the Philippines and Malaysia, and contribute to slow implementation of land redistribution to the landless in Cambodia and the Philippines.

There is a clear evidence that most of those affected by land concessions are worse off in terms of livelihoods, food and nutrition security, access to water, sanitation, education or health care, than before the relocation at least in the short- to medium-term, which represents high opportunity cost of large-scale land investment. While no doubt some community members can benefit from the mining and plantation operations, others, who attempt to maintain their traditional ways of life, suffer. To obtain more credible and authoritative analysis for long-term impact of the land-investment induced relocation further long-term multidisciplinary research, using also quantitative methods with established baselines, counterfactuals, comparative frames and careful sampling would be necessary.

Considerable capacity gap in the existing institutional and governance conditions regulating land use weaken the land tenure security of peasants and indigenous peoples, do not appropriately regulate the wide-ranging impacts of large-scale land investments and hamper the land redistribution to smallholder farmers which could represent a potential alternative to giving the land away to large investors. However, as the implementation of the Philippine land reform or Cambodian Social Land Concession mechanism shows slow bureaucracy, lack of support services and landowning classes with the political and administrative connections to protect their vested interests make it difficult for potential gains for peasants to materialize.

Moreover, the benefits of the agrarian reform are hampered by new land grabbing and land conversion.

I conclude that peasants and indigenous peoples in South-East Asia are in disadvantaged position against those who hold the power which means that their land rights and land tenure security are weak, they are deprived of their means of subsistence. Physical violence, harassment or threats towards the peasants, indigenous people (and urban poor) is inherent to land tenure issues in South-East Asia. Legal proceedings are used against them by the elite but also by the State.

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## **APPENDICES**



# **Appendix A: Social and Economic Impacts of Land Concessions on Rural Communities of Cambodia: Case Study of Botum Sakor National Park**

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Dear Mr. Jiri Hejkrlik,

We are pleased to inform you of our decision to accept your manuscript entitled "SOCIAL AND ECONOMIC IMPACTS OF LAND CONCESSIONS ON RURAL COMMUNITIES OF CAMBODIA: CASE STUDY OF BOTUM SAKOR NATIONAL PARK" for publication in the International Journal of Asia Pacific Studies. The article is now scheduled for Vol. 14, No. 1 issue (the first issue of 2018, tentative January 2018).

**SOCIAL AND ECONOMIC IMPACTS OF LAND CONCESSIONS ON RURAL  
COMMUNITIES OF CAMBODIA:  
CASE STUDY OF BOTUM SAKOR NATIONAL PARK**

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**ABSTRACT**

*Land grabbing is a serious issue in Cambodia, where land concessions covered approximately 65% of the total arable land in 2013. Because of the 36,000-hectare land concession in the Botum Sakor National Park granted by the Cambodian government to a Chinese company, more than 1,400 primarily fishing families have been relocated to new villages built inland, approximately 20 km from the coast. Using a case study research design, this paper provides a unique glimpse into the lives of those relocated by assessing their living conditions, livelihoods, food security, housing and access to basic services approximately four years after the relocation. The results show that those affected by the land concession are worse off than they were before the relocation and will likely remain so in the short to medium term. They have lost their livelihoods, their food and nutrition security have worsened, and their access to both health services and education is problematic. The roads and houses in the relocation sites are poorly built. There are limited water sources in the relocation villages, and the water does not meet the national standards for drinking water. Although some families did find jobs with the investment project, they were concerned about its long-term prospects.*

**Keywords:** large-scale land concessions; land grabbing; relocation; livelihood; food security; Cambodia.

## INTRODUCTION

Land grabbing is a serious issue in Cambodia. The 2007-08 global financial and food price crises and the growing demand for energy increased land investment by transnational corporations, international financial institutions, foreign governments, local business elites and other investors in developing countries, including Cambodia (De Schutter 2011; Deininger et al. 2011; UNDESA 2010), the land appropriation, often combined with forced evictions, had already been occurring in Cambodia since late 1990s. Other factors such as Asian money laundering and elite capture have driven land grabbing in Cambodia (Baird 2014). However, the consequences for small-holding farmers and indigenous people are same, regardless of who is responsible or what the driving forces for the land dispossession are; whether an investment was made to feed people in another country or escape the vulnerabilities of the stock market - issues identified as part of the global land grab meta-narrative-; by Chinese companies investing in logging or building hotels, casinos and housing complexes; or, as described by the Cambodia Daily, the Vietnamese military assuming control of border areas inhabited by indigenous people (Blomberg and Roen 2015).

Alliances among foreign investors, local business elite and state officials have enabled opportunities to be seized for appropriating resources and land grabbing in times of open markets and high indebtedness in developing countries (White et al. 2012). The governments of the Global South claim to sell land or provide long-term land leases or concessions to boost national economic growth and government revenue, promote agriculture intensification and agro-processing, for job creation, to increase export or to attract foreign direct investment (Cotula et al. 2009). Cambodian Land Law codifies land concessions<sup>i</sup> as a mechanism for the government to grant state land for agricultural and industrial-agricultural exploitation (RGC 2005). The Cambodian government considers granting economic land concessions to private companies as its major strategy for economic development with the aim of (RGC 2014):

- i) developing an intensive agricultural base and promoting capital investment in industrial-agriculture,
- ii) increasing employment opportunities in rural areas, intensifying and diversifying livelihood opportunities and natural resource management and
- iii) generating revenue from concession fees, taxation and other charges.

There is frequently an assumption of either an abundance of land or of the existence of idle, marginal, underutilized, fallow or vacant land in countries conducting large land deals. However, such land is often utilized by indigenous and other rural communities that do not have formal land rights (Borras and Franco 2011; Schneider 2011; Scoones et al. 2013; White et al. 2012). Their land use rights are often not codified in ‘modern’ law and are non-existent in any formal legal terms but are based on local traditions (UNDESA 2010); alternatively, in the case of Cambodia, people might have the right to use the land based on the existing legislation but have not formalized it. These land users are marginalised from formal land rights and access to the law and institutions (Cotula et al. 2009). Large-scale land investment often lacks transparency and adequate consultation processes and is characterized by uneven access to information and failure to implement the domestic legal framework, which is often relatively well developed on paper, resulting in widespread conflict over land ownership and use and in the marginalization of the affected communities (Cotula et al. 2009; Schneider 2011; Subedi 2014; UNHRC 2012).

The land concessions have major potential consequences for both economies and livelihoods (Scoones et al. 2013). Their social and economic impacts on local communities could be disastrous, especially when combined with forced evictions, displacement without fair and just compensation or prior public consultation, involuntary resettlement or poorly planned relocation of people from their homes and farm lands. Loss of land tenure deprives vulnerable people of their livelihoods, as a multidisciplinary World Bank team showed in 19 case studies from four continents (Deininger et al. 2011). Large-scale land investors rarely employ numbers of people equal to those who lose their land tenure (UNDESA 2010; Deininger et al. 2011). Most relocation areas do not provide affected communities with access to adequate public services and infrastructure, health services or schools, as the Forest Peoples Programme has documented in cases in Malaysia (Toh 2013) and Cambodia (Khiev 2013).

Major environmental problems, ranging from the destruction of forests to severe impacts on biodiversity to water resource pollution, result from related land use changes. The heavy use of pesticides and chemical fertilizers causes water pollution, poisons fish and increases the water shortage problem in communities affected by land concessions (Ravanera and Gorra 2011). Areas of spiritual and cultural significance for indigenous communities, are often encroached or destroyed, as documented empirically in concrete cases in Cambodia and Laos by Hanssen (2007), Prachvuthy (2011), and Neef et al. (2013). However, if the land concessions are regulated to mitigate negative impacts and maximize opportunities and if the

projects are well-executed, they can generate large benefits that can be shared with local people (Deininger et al. 2011; Borras et al. 2013).

According to Haakansson et al. (2011), approximately 56% of all arable land in Cambodia has been given to private companies for agro-industrial use, and Khiev (2013) claims that by 2013, such land concessions had already covered approximately 65% of the total arable land. Although some of these lands were gained for speculative purposes and were not developed, the communities have been evicted or are under serious threat of eviction and dispossession. Land concessions for agro-industrial use and other purposes supposedly meant that more than 22% of the country's total surface area was in the hands of private investors by the end of 2012 (Khiev 2013) though a significant proportion of these were awarded for mining exploration and will not be developed further. More than 770,000 Cambodians have been affected by land grabs and resulting conflicts over natural resources (ADHOC 2014).

Land grabbing occurs in many different manners based on the specific social, environmental, economic, legal and geopolitical circumstances, with important regional differences within countries. This paper illustrates how the practice of large-scale land concessions impacts local marginalized communities in southwestern Cambodia, an area that is largely overlooked by researchers due to its relative inaccessibility.

The research questions were formulated as follows:

- How have the livelihoods and income-generation opportunities and food and nutrition security of communities affected by large-scale land concession changed after relocation and compensation? Have the affected communities found long-term job opportunities with the land concession project?
- How have the living standards, including housing and tenure security and access to basic services such as education, health care, transportation and water/sanitation of the communities affected by large-scale land concession changed after the relocation and compensation?

This paper examines an infamous large-scale land concession in the Botum Sakor National Park in Koh Kong province, where the Cambodian government granted an economic land concession to Union Development Group Company, Ltd. (UDG). More than 1,400 families in

12 coastal communities were living on the land in question, and most have been relocated to 10 new inland villages, approximately 20 km from the coast.

*Cambodia: Socio-economic overview*

80% of the 15.1 million Cambodian population live in rural areas (WB 2014) and are dependent on natural resources and subsistence farming is the most prevalent form of livelihood. According to the Food and Agriculture Organization (FAO) (2011a, 2011b), 50% of the population is engaged in fisheries during certain periods of the year, and this sector provides approximately 75% of the total animal protein intake for the population.

Cambodia has recorded healthy economic growth in recent years and the per capita GDP based on purchasing power parity is almost 3,000 USD (WB 2014). Inequality has increased, in part due to the growing concentration of productive assets, especially land (USAID 2011).

Although one quarter of the country’s total area has been recognized as protected (WB 2014), the rate of deforestation is one of the fastest in the world, with an average annual deforestation rate of 2% since 1970 (USAID 2011). Deforestation and the subsequent expansion of permanent low-land monocultures have severely disrupted the agro-ecosystem stability and affected the landscape-wide environmental stability and resilience (Khiev 2013).

**Table 1 – Selected socio-economic indicators**

<b>Indicator</b>	<b>Cambodia</b>
Population (2013 est.)	15.1 Mil.
% Population living in rural areas (2011)	80%
GDP per capita PPP (2012 est.)	3,000 USD
% Labour force in agriculture (2010 est./ 2011)	56%
% Population engaged in fisheries (2011 est.)	50%
Gini coefficient	37.9%
Protected areas (% of country`s total area)	24%
Average annual deforestation rate (1970-2010)	2%

Sources: WB (2014), FAO (2011a), USAID (2011).

### *Historical and legal aspects of land tenure in Cambodia*

Attempts to introduce formal private land ownership by the French colonial administration in the late 1800s and the first half of the 20th century and by post-colonial governments were partially successful in the rice-growing plains but were largely unsuccessful in upland and forest areas (Sophal and Acharya 2002). Even where settled agriculture was the norm, the notion of land as private property contrasted with traditional ownership practices (Haakansson et al. 2011). The Khmer Rouge regime abolished private property in 1975, uprooted communities from their traditional lands, destroyed most land records and nationalized all the land. Recognition of private ownership of land began again only in the mid-1980s (Sophal and Acharya 2002; Engval and Kokko 2007; Westeröd 2010). The Land Law introduced in 1992 allowed people to apply for land certificates; the land ownership was limited to 0.2 ha for housing and possession was restricted to up to five ha agricultural land; if such agricultural land was left vacant for more than three years, it reverted to state ownership (Sophal and Acharya 2002; Engval and Kokko 2007). At the end of the millennium, approximately 70 to 80% of the total rural population possessed agricultural land, but only 1% had legal title to their land (Boreak 2000).

The 2001 Land Law provided for more widespread granting of land titles; those who occupied and enjoyed uncontested possession of land for at least five years prior to 31 August 2001 and met other conditions gained legal possession rights that could be transferred to full ownership (RGC 2002). However, implementation and enforcement of the law has been problematic. According to Westeröd (2010), at the end of the first decade of the third millennium only 10% of Cambodian land had been officially titled. Although significant progress has been made, there are concerns about the exclusion of households and communities from land titling (UNHRC 2012). The 2001 Land Law recognizes five categories of land: private land, state public land, state private land, common property and indigenous land. State public land cannot be subject to sale, transfer and economic or social land concessions. If state public land loses its public interest value, it may become state private land through formal re-classification. Such state private land may be subject to long-term leases, economic or social land concessions, sales or transfers of rights (RGC 2002). The Protected Areas Law, which came into force in January 2008, introduced a new zoning system of protected areas to effectively manage their conservation and development. They were divided into four distinct zones: core zones, conservation zones, sustainable use zones, and community zones. No clearance or building is allowed in the core or conservation zones

and any development within the sustainable use or community zones can only take place with government approval (Subedi 2014). The UNHRC (2012) reports that concessions granted to private companies within protected areas covered more than 500,000 ha, whereas Khiev (2013) specifically recorded 18 economic land concessions covering 272,597 ha.

#### *Land concessions in Cambodia*

Official and publicly available data on land concessions are incomplete and are not updated regularly (UNHRC 2012). It is estimated that 3.9 million ha of land, equivalent to 22.1% of the country's total area, have been handed over to private investment, of which at least 2,657,470 ha was transferred by the government to private sector investors by the end of 2012 in more than 300 land concessions (Khiev 2013; UNHRC 2012). However, official statistics on economic land concessions published by the government in June 2012 listed 117 companies with only 1,181,522 ha from January 1996 to 6 June 2012 (UNHRC 2012). By 2013, land concessions for plantations of inter alia sugarcane, rubber, cassava, acacia, eucalyptus and palm oil under private sector investment covered approximately 65% of the total arable land (Khiev 2013). Many of these land concessions have been only partially developed or are undeveloped and were motivated by speculative or unproductive purposes (Toh 2013, USAID 2011, Löhr 2011).

Cambodia is prone to weak implementation and enforcement of the law; this

‘made it possible for influential individuals... and groups to acquire large landholdings’ (USAID 2011).

The Cambodian economy is controlled by a new elite – a sprawling network of Cambodian People's Party politicians, military brass and business families with patronage to Prime Minister Hun Sen and his close associates (Strangio 2014). This well-oiled system extends throughout Cambodian society and is widely accepted because it is how Cambodians understand the nature of power (*omnaich*), as not only being rich but also being above the law (Jacobsen and Stuart-Fox 2013).

The 2001 Land Law stipulates that the maximum size of an economic land concession is 10,000 ha, but many times this amount have been granted. As Global Witness (2013) reported, Vietnam Rubber Group and affiliated companies appear to have



been allocated over sixteen times the legal limit of land. Some investors circumvent the limit by creating several different companies, which is illegal, too. Given the widespread criticism of the implementation of ELC policy, Prime Minister Hun Sen issued a moratorium on granting economic land concessions in May 2012 and called for a review of the existing land concessions, stating that they would be cancelled for companies that fail to comply with applicable procedures and contracts or that conduct illegal logging, encroach on land outside the land concession or leave the land vacant for resale (Subedi 2014). However, land concessions were granted even after this moratorium, with the justification that these leases were already being processed when the moratorium was declared; Khiev (2013) noted 33 such land concessions covering 208,805 ha, and UNHRC (2012) highlighted five concessions in protected areas.

## **METHODOLOGY**

The methodology is based on a case study of the Botum Sakor National Park in Cambodia's Koh Kong province as the study region. Established in 1993, the 171,250-ha Botum Sakor National Park is Cambodia's largest national park. In recent years, the Cambodian government has reclassified large tracts of land into sustainable use zones and granted economic land concessions within the National Park to at least nine private companies for agro-industrial crop planting and eco-tourism, commercial development, water reservoirs, and hydropower dams (UNHRC 2012).

Koh Kong province is in the southwest and has a long, undeveloped coastline on the Gulf of Thailand and a mountainous, forested and largely inaccessible interior. The national parks, waterfalls, mangrove forests, islands and coral reefs have primarily been marketed as an eco-tourism destination in recent years. Koh Kong's economy largely benefits from cross-border trade and the tourist industry. The livelihoods of most rural people depend on agriculture and the forest or on fisheries in coastal areas. The main crop is rice cultivated on more than 9,000 ha, followed by fruit and permanent crops grown on almost 7,000 ha (CDC 2015). The annual fish production is estimated to be 34,600 tonnes of saltwater fish and 11,000 tonnes of freshwater fish, followed by limited aquaculture (CDC 2015). According to the FAO (2011b), the fisheries communities of Koh Kong are slightly better off than others in the country due to more productive fishing grounds.

The field data were collected in September 2014 by a team of nine development practitioners combining several qualitative methods: 10 focus group discussions with 151 community members (54% of whom were women) conducted at each relocation site, 12 key informant interviews with selected government officials at provincial and district levels, including the provincial Vice-Governor and community leaders, service mapping (with geo-tagging) of key basic services (e.g., health, education), community observations and five in-depth interviews with affected individuals. Additionally, a water sample from one randomly selected well was taken in March 2015 for a physical and chemical analysis conducted by the Industrial Laboratory Center of Cambodia in Phnom Penh.

The primary methodological approach of the field data collection was focus group discussion because of the qualitative rather than quantitative nature of the research. The research team used convenience sampling and attempted to include approximately 10% of the relocated families in the focus group discussions. The semi-structured discussion between focus group discussion participants provided the researchers with an opportunity to hear issues that may have not emerged from their individual interaction with the researchers. The interaction among the participants led to increased emphasis on the participants' perspectives rather than those of the researchers and permitted discovery of aspects of understanding that often remained hidden in the more conventional in-depth interviewing method. As Liamputtong (2012) wrote, focus group discussion enables an examination of how and why people think the way they do about the issues that are important to them without pressuring them into making decisions or reaching a consensus.

Key informant interviews and in-depth interviews were added to obtain additional perspectives and triangulate the data collected through other field work methods and desk research.

***Table 2: Focus group discussions conducted***

District	Village	Participants	
		Total	Females
Kiri Sakor	Peam Kay	15	6
Kiri Sakor	Preak Smach	16	7
Kiri Sakor	Kien Kralach	20	9
Kiri Sakor	Tani	12	5
Kiri Sakor	Pnhy Meas	23	14

Kiri Sakor	Cham Lornng Kor	11	7
Botum Sakor	Tanoun	18	9
Botum Sakor	Bak Roneash	14	12
Botum Sakor	Toul Por	7	6
Botum Sakor	Preak Kjong	15	7
<b>TOTAL</b>		<b>151</b>	<b>82</b>

To obtain a better understanding of the history and background of the Botum Sakor National Park economic land concession, the fieldwork data were supplemented with a review of a range of secondary sources: publicly available information from the Cambodian government, Cambodian English-language media, the ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi. Addendum: A human rights analysis of economic and other land concessions in Cambodia’ presented to United Nations Human Rights Council as well as reports from Cambodian national NGOs.

The paper also relies on dozens of semi-structured interviews with key NGO workers that were conducted between 2011 and 2016 and helped inform our understanding of land grabbing in Cambodia; their information is described in the discussion section.

The methodology implies that this study has the following limitations:

- i) The description of the ex-ante situation of the relocated communities relies largely on the information reported by the people affected by the land concession and thus could contain several potential sources of bias because no independently verifiable baseline information on the situation, living conditions, livelihoods, and housing was available prior the relocations.
- ii) As with other land concessions in Cambodia, there is a general lack of transparency and information surrounding this land concession. The data provided by the Cambodian government remain incomplete and are not easily accessible by the public.

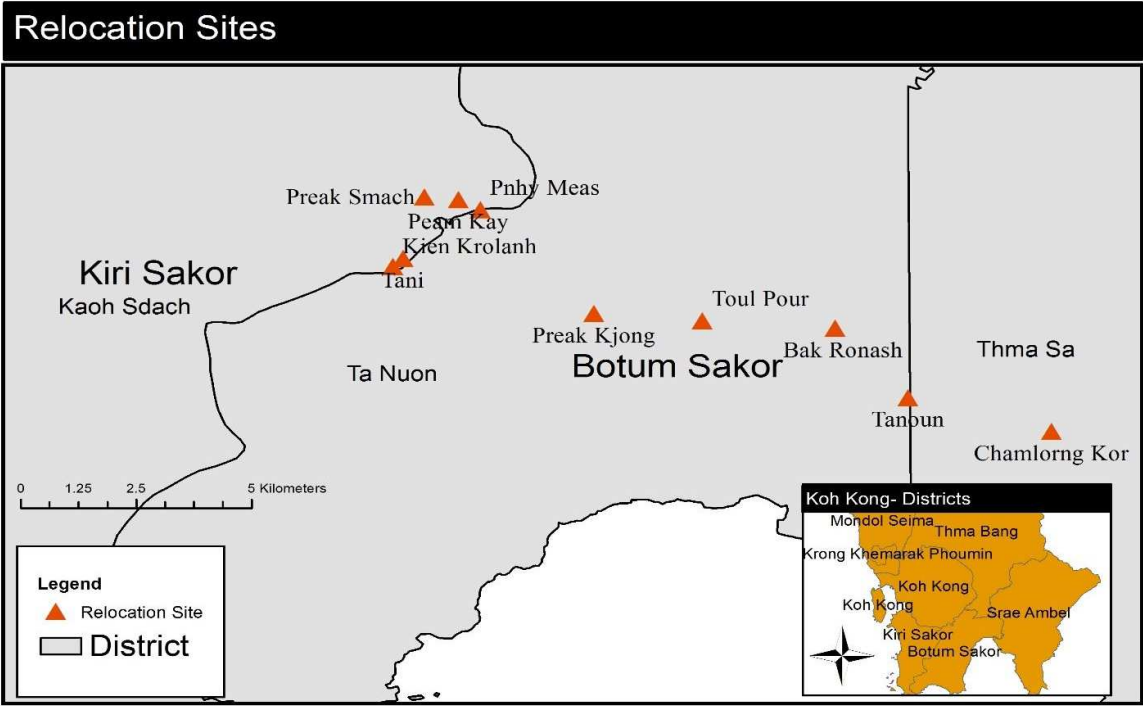
## RESULTS

### *Granting of a land concession to UDG*

In April 2008, 36,000 ha were excised from the Botum Sakor National Park and reclassified as state private land by Royal Decree (RGC 2008) and thus became eligible for long-term

land concessions. One month later, a 99-year lease contract was signed with UDG for the construction of a commercial development zone and resort to attract tourists and additional investment (UNHRC 2012; ADHOC 2012). This land covered a large portion of the coast in Kiri Sakor and Botum Sakor districts as well as 12 villages. Under the contract, UDG was authorized to develop infrastructure that would support the tourism sector, including casinos, condominiums, apartments and resorts, and to clear forest areas during the development (UNHRC 2012). However, villagers and some opposition politicians claimed in the Cambodia Daily,

‘that large parts of the concession have been instead turned into plantations for cassava and palm oil trees’ (Crothers and Reaksmeay 2014).



**Map 1: Relocation sites in Botum Sakor and Kiri Sakor districts**

The Cambodian government was made responsible for the administrative functions associated with relocation and compensation and UDG was to bear the costs of compensation and construction of the relocation site. In August 2011, the government issued a sub-decree to reclassify an additional 9,100 ha as a sustainable use zone and granted a second land concession to UDG to develop a water reservoir and hydropower plant (UNHRC 2012). The

communities were relocated away from the coastal areas, although many of the communities depended on access to the Gulf of Thailand for their food and income. The villages affected by the land concession had been in existence for generations - the community members are a mix of families who settled in the area before the Sihanouk regime in the 1960s (UNHRC 2012).

According to Cambodian NGO ADHOC (2012), the affected communities were not consulted about the project and its potential impacts but only noticed company representatives and governmental officials travelling throughout their communes and measuring land before the contract was signed in 2008. Some people became aware

‘of this only when the company came to gradually clear, dismantle, and burn down their houses from the beginning of 2011... Though people filed complaints with the local authorities and relevant institutions at national level..., there has never been any proper resolution.’

The communities were reportedly officially informed of the project for the first time in November 2009 during a visit by government officials and UDG representatives (UNHRC 2012). They were informed that they were on state land and were therefore obligated to move. They were offered relocation (a single-family house at the relocation site approximately 20 kilometres from the coast and the allocation of residential and farming land) and compensation, depending on the status of the land and the level of documentation that the household possessed (between USD 250 and USD 8,000 per ha of farmland). Negotiations for compensation packages took place in 2010, and approximately 1,000 families were relocated in 2011. Some families resisted relocation and continue to do so, and some of the villagers reported that they accepted the compensation under pressure, threat, or lack of information or alternatives (UNHRC, 2012). Crothers and Reaksmeay (2014) quoted the NGO Forum in the Cambodia Daily that

‘398 of the 1,963 affected families have yet to receive any compensation for loss of land.’

The resistance of the communities affected by the relocation was described by Touch and Neef (2015) using the land concession in Botum Sakor National Park as a case study. The villagers tried to challenge the actions of UDG and its high-level government backers through

a combination of open and collective defiance, advocacy resistance, everyday politics and official resistance, albeit with limited success. In May 2010, approximately 200 families travelled to Phnom Penh to submit a complaint and call on the Prime Minister to intervene in the land dispute and redress the inadequate compensation packages. In December 2011, National Route 48 was blocked for eight hours by relocated families. In March 2012, community members travelled to Phnom Penh to participate in the ASEAN People's Forum and submit a complaint to the Chinese Embassy. They were briefly detained at the police commissariat and escorted back to their villages. In February 2014, UDG security guards, backed by soldiers, reportedly destroyed 44 houses in Tanoun and Koh Sdech communes, which resulted in a protest by 100 villagers who stayed outside the UDG offices for two days. Violence erupted again in November 2014 at UDG construction sites, where some defiant protesters remained. In two separate incidents, UDG security guards reportedly destroyed 17 houses of residents that had resisted relocation.

#### *Land tenure security, housing and sanitation at the relocation site*

The relocation site is spread over 4,000 ha deep inside the Botum Sakor National Park, approximately 20 km from the coast. According to key informant interviews conducted, 1,412 families or 5,791 individuals had been relocated as of September 2014. However, according to focus group discussions and in-depth interviews, some families later migrated from the relocation site, leaving an estimated 10-20% of the houses empty, as observed by the research team.

Based on the findings from key informant interviews and focus group discussions, relocated families were offered 0.5 ha of residential land with a 6.5 m by 7.5 m constructed wooden house and a two or three ha plot of farmland. Focus group discussion participants across all communities felt insecure with their land entitlement because the land is officially a protected area that has yet to be transformed into state private land so land titles can be issued to those affected. At the time of research, they did not possess the land tenure certificate for their farm lands, only a temporary title for the housing land. Many families reported during focus group discussions that the land provided was not usable for farming without heavy ground work to clear the forest, which they could not afford. Some families reported that their allocated farmland was as far as 5 to 6 km away from their house. It was reported during several focus group discussions that a few families had sold this allocated farm land because they needed the cash to feed their families.

It was reported and confirmed by research team observations that the housing provided was of poor quality. Many villagers raised concerns about how it would cope in strong winds and other severe weather conditions. The field team observed that at least two houses had already collapsed during storms, according to information provided by the occupants of the neighbouring houses. The research team observed that approximately 30-40% of the houses in the relocation villages were in poor condition, with the roof, windows or walls partially removed by wind or rain. The team also documented incidences in which it was no longer possible to access the houses because large crevices had opened between the road and the property. Some families have installed makeshift bridges to overcome this, but others have abandoned their homes. A small minority of families had invested their own money into upgrading, extending or maintaining their houses. No electricity system reached the villages, so they relied on generators and car batteries. None of the houses provided included a sanitation facility, and although some people found the means to build them themselves or received assistance from the Provincial Department of Rural Development, an estimated 95% of households practiced open defecation. It was observed that, on average, the communities had approximately 5 to 6 latrines.

During the semi-structured interview, the provincial Vice-Governor acknowledged that the living conditions of the displaced communities were worse after the move than before.

#### *Food security, nutrition and livelihoods*

One of the most significant challenges reported during the focus group discussions and in-depth interviews was the change in livelihoods and income-generation opportunities resulting in negative impacts on food security and nutrition. Many families, such as that of 32-year-old Sao Bunheat with two children, had relied on fishing and farming low-lying agricultural lands in coastal areas and were often unable to continue these activities once relocated.

Focus group discussion participants from all villages unanimously agreed that there has been a significant shift in the types of food they eat since the relocation. The mere distance from coastal areas has had a reported negative impact on dietary diversity. Previously, they were eating rice, fish, seafood and vegetables that they caught or produced themselves. In the low-lying coastal areas, many villagers had their own small gardens and grew a range of vegetables, farming rice, with a reported production of over three tons of rice per season per household, and corn and catching fish, meaning that they had relatively

plentiful access to diverse food. Since the relocation, only a limited number of villagers have established home gardens, and they no longer produce rice. Fish has been substituted in some peoples' diets with meat bought infrequently from the market.

Since the relocation, most families have shifted from subsistence economic activities - largely producing their own food - to certain degree of market dependency that has had negative effects on the households' budgets; villagers need to spend more buying food than prior to relocation. Some focus group discussion participants reported that they had a shortage of food during certain periods because they had no money. Despite the challenges of accessing a variety of food stuffs, they did not report any signs or symptoms related to malnutrition such as stunting or wasting in children and these were not observed by the research team during their time spent in the communities.

The focus group discussions were unanimous that their current livelihood activities could not provide the same level of income as previously (which some reported to be as high as 10-15 USD/day). Ms. Thoeun Khorn, for instance, whose family was relocated from Preak Kjong village to Tanoun commune told the researchers that before relocation her family produced 3 tonnes of rice per season and corn and other crops year round but

'has been unable to utilise the agricultural land provided as part of the compensation package from the company due to its being hilly and forested'.

As many as 20% of the focus group discussion participants' households found work as hired labour with UDG, which paid 150 USD/month. Some Tanoun villagers who worked as golf caddies and hotel cleaning staff reported earning as much as 200 USD/month. However, many of them raised concerns about their long-term job security. Other existing income-generation opportunities at the relocation site were irregular as noted in focus group discussions, key informant interviews, in-depth interviews and research team observations; they included selling unskilled labour in the community, small-scale enterprise activities such as grocery shops or recycling, forest-related livelihoods, including the illegal harvesting of forest trees for house construction and producing charcoal, and income-generation activities linked to collection of non-timber forest products such as rattan, mushrooms, herbs and honey. Forty-nine-year-old Mr. Sok Phan, living with his wife and four children, reported that he could only find very low and irregular income from collecting non-timber forest products and his unskilled labour. He was considering migration to another area to meet the family's needs.



Respondents agreed that many of the community members continue to fish and that it remains their primary source of income. However, they noted that there were additional costs associated with this because they had to travel using roads that were in poor condition. Some of the fishing families did not regularly stay at the relocation site and have returned to their old villages to stay with their former fellow community members who resisted relocation or have set up a temporary shelter to fish. Due to the difficulty in securing livelihoods, it was often seen as necessary for children to participate in such livelihood activities, in lieu of attending school.

Participants identified potential opportunities for new, alternative livelihoods (animal husbandry or farming cash crops such as cassava, cashew, jackfruit, mango, aromatic culinary herbs, and pineapple) but they often felt they lacked the necessary technical skills or start-up capital required.

After the relocation, many families found it difficult to support themselves and consequently had to spend their savings and survive on the dwindling financial compensation they received. They estimated that the number of families indebted with micro-financial institutions<sup>ii</sup> was 10% in Tani, over 50% in Pnhy Meas, 60-80% in Peam Kay, 70-100% in Toul Por, 99% in Tanoun and 100% in Cham Lornng Kor and that their ability to repay was uncertain, given the lack of income-generating opportunities.

#### *Access to and quality of basic services and water*

In some villages, the roads are worn away by rain or flood water, making transportation between and within villages very challenging. At least two areas visited by the research team were passable only by a 4x4 vehicle or on foot.

During discussions and interviews, community members identified the poor state of the roads and the associated high cost of transportation as a significant barrier to accessing health care services. No new health care facilities were constructed as part of the relocation, and residents must travel to health care facilities outside the relocation areas, i.e., a health post in Preak Smach and health centres in Thmor Sar, which is reportedly often closed, and Koh Sdeach, both of which are more than 20 km from most of the relocation villages. Moreover, the health centre in Koh Sdeach is located on King Island, off the west coast of Kiri Sakor, and getting there requires a 15-minute boat crossing that can be dangerous or impossible during bad weather. The physical condition of these health facilities was found to be inadequate when visited by the research team. The health post in Preak Smach is in a

converted house that was in a dilapidated state with virtually no equipment, supplies or material. At the time of the research team visit, the post was unstaffed, overgrown with grass and appeared to have been unused for some time. Focus group discussion participants also commented negatively on frequently absent health workers, particularly at this health post. Two-months-pregnant Ms. Thoeun Khorn planned to go to Thmor Sar commune for antenatal care and delivery, which is approximately 30 km from her new home.

One-hundred-fifty water sources, open and tube wells, were constructed, mostly by UDG according to findings from key informant interviews. Additional wells have been added in some communities, e.g., in Preak Kjong, as observed by the research team. However, focus group discussions stressed that access to drinking water remained a challenge, especially during the driest months of March and April when the wells dried up and families had to travel 400 to 500 meters to fetch water from streams or other available sources. It was observed by the research team that only 5 wells serve a community of 79 families in Tanoun. Some people in the focus group discussions mentioned that they did not consider the water potable because of its strong metallic and mineral taste, which was confirmed by the research team. Rain water or river water were thus preferred drinking water sources. The water test conducted in March 2015 from one of the randomly selected wells in Tanoun village showed that the water did not meet national standards for drinking water in at least four characteristics: Ph 5.58 (the standard is 6.5-8.5), Fe 8.68 mg/L (the standard less than 0.3 mg/L), NO<sub>2</sub> 22 mg/L (the standard less than 3 mg/L) and turbidity 57 NTU (the standard less than 5 NTU).

The educational infrastructure varied greatly by community, from brand new, not yet open schools with sanitation and other facilities to run-down wooden structures that required repair to no schools within easy walking distance. Four schools were constructed by UDG and two more buildings were constructed by NGOs. According to Mr. Sien Sok Ry, the principal of Peam Kay School, there were only two wooden school rooms in the village but the school must accommodate more than 150 children from grades 1 to 6. Whereas most people in the focus group discussions and in-depth interviews felt that the access and quality of education has worsened compared to the pre-relocation situation, one community reported that because they were now closer to a school, it was thus easier for their children to attend than before the relocation. In the case of another village, the nearest primary school was reportedly 8 km away. In most cases, children had to travel 2-3 km to reach a school, often walking along

dangerous roads and through flooded areas. The research team observed that the sanitation facilities were not functioning in Peam Kay School and that there was no water available.

### **BOTUM SAKOR CASE STUDY IN RELATION TO OTHER ECONOMIC LAND CONCESSIONS IN RURAL CAMBODIA**

The economic land concessions in Cambodia suffer from a lack of free, prior and informed consent of affected land-users. The case study of Kiri Sakor and Botum Sakor districts confirmed the findings documented in Srae Ambel district by Haakansson et al. (2011) and by Neef et al. (2013) for several land concessions in Kratie province.

In terms of compensation, the affected communities in the Kiri Sakor and Botum Sakor districts received 0.5 ha of housing land with a built house, 2 to 3 ha of farm land (though forested and without legal title) and financial compensation of USD 250 to 8,000 per ha of farmland. They were relatively better treated than others in Cambodia. Borrás and Franco (2011) documented the land concession in Omlaing commune in Kampong Speu province where

‘each household was given USD 25 disturbance compensation and dumped in a resettlement location lacking in both infrastructure and suitable farming potential... Most of the villagers who had farms inside the contested land and who had been settled there for a long time were offered USD 100 per hectare compensation for the irrigated rice lands.’

Chev et al. (2011) reported that in Choam Sangke commune of the same province, 35% of households were granted less than 0.5 ha, 16.7% were granted 0.5 to 1 ha, 18% were granted more than 1 ha and 10% were evicted without any compensation. All of the families had to rebuild housing at their cost. Prachvuthy (2011) documented in Monduliri province that

‘compensation has been USD 200 per hectare depending on the family, with families... of village chiefs or local authorities, receiving better compensation.’

In the case of Srae Ambel district, the farmers were offered only ‘a small compensation’ for the loss of crops, not the value of the land, because the farmers did not possess land titles (Haakansson et al. 2011).

The 20% of people who found work with the investor in the Botum Sakor National Park land concession is relatively high compared to other land concessions in Cambodia and at 150-200 USD/month they also earn much more than is common elsewhere. However, there are still concerns in the affected communities of Botum Sakor about how long the job opportunities with UDG will remain available. Chev et al. (2011) reports that in Choam Sangke commune in Kampong Speu province, only 9% of people found work with the investor in 2006 and that the number decreased every year to 2% in 2010, earning 1.5 USD/day. Moreover, the work was seasonal and lasted only 2 to 3 months. In the case of the Srae Ambel district land concession

‘some people who lost all their land have had no choice but to work on the plantations. The pay is low and the work is irregular. When working at the Ly Young Pat’s sugar plantation (one) can earn EUR 1.7 per day, but (one) will only have work 3-4 months a year’ (Haakansson et al. 2011).

The Guardian reported from the Koh Kong sugar plantation that many villagers seek work from the very company they are now suing in British courts for evicting them (Hodal 2013).

Indigenous people affected by land concessions in Ratanakiri and Mondulhiri provinces interviewed by Prachvuthy (2011)

‘agreed that companies had provided employment, albeit limited – they observed that companies prefer hiring in-migrant workers to hiring indigenous people, as the former are more productive and agree to lower wages.’

The initial wage per day was approximately USD 5 but a few months later, after bringing in outside workers, this decreased to USD 3.65. Interestingly, in the case of the Botum Sakor National Park land concession, strong resentment against working for the company responsible for the eviction was not observed, unlike that observed by Neef et al. (2013) in Kratie province, where villagers reiterated their strong determination that they would not work for the concessionaire. During interviews with indigenous people affected by land

concessions in Ratanakiri and Mondulakiri provinces, Prachvuthy (2011) found that 76% of the respondents were unwilling to work for the concession company because the work was hard ‘with no freedom’ and the

‘lack of experience with wage labour... made working on a plantation hard for them, particularly as workers have to get up very early to travel to work and have limited time for lunch..., and too angry with the company for taking their land and destroying their spirit forests...; 58-year old man said that I and my generation will not work for those concession companies even if we are starving.’

As was the case in other land concessions in Cambodia, the relocation of affected Botum Sakor National Park communities had disastrous effects on their livelihoods, income-generation opportunities and food security. In Srae Ambel district,

‘food insecurity has increased as farmers have lost valuable farmland, grazing land and access to the forest. Affected farmers can no longer grow enough food to sustain their families. Poverty has risen in the area because the farmers have no more or little land left to cultivate’ (Haakansson et al. 2011).

People in Botum Sakor and Kiri Sakor districts who want to continue their original livelihoods – fishing – must travel 20 km (or stay illegally in basic shelters close to the sea). As with the indigenous people of Ratanakiri and Mondulakiri provinces, some families had to travel 20-35 km to collect non-timber forest products, their source of livelihoods, after the land concessions were awarded (Prachvuthy 2011). Interestingly, non-timber forest products and timber or firewood have been identified as a potential source of livelihoods and income for the relocated people of Botum Sakor and Kiri Sakor districts whereas in other documented cases, land concessions meant that people lost this opportunity or that it became more difficult for them (see Chev et al. 2011 for Choam Sangke commune in Kampong Speu province, Prachvuthy, 2011 for Ratanakiri and Mondulakiri provinces and Neef et al., 2013 for Kbal Damrey commune, Kratie province). Families in the Botum Sakor National Park are indebted with various micro-credit schemes and face difficulties in repaying loans due to the loss of income sources, as documented in Srae Ambel district (Haakansson et al. 2011). There is increased pressure to keep children out of school in the relocation areas of the Botum Sakor

National Park to help with income-generation for the family, as observed in Srae Ambel district (Haakansson et al. 2011) or the Guardian who interviewed 38-year-old mother Chea Sok, who was affected by the sugar plantation concession:

‘I had to pull my kids out of school and send them to work on the plantation after they took our land away because we couldn't afford to eat’ (Hodal 2013).

Except for one village where it is easier for children to attend school than before the relocation, the public infrastructure and access to basic services has worsened in the Botum Sakor National Park. Conversely, Prachvuthy (2011) recorded that in Mondulkiri and Ratanakiri provinces

‘companies had helped improve infrastructure in indigenous communities, through road, school and health centre construction.’

Interestingly, although the investors or Cambodian government should be responsible for building public infrastructure at the relocation sites, NGOs sometimes stepped in. An NGO worker whose organization started building health clinic and sanitation facilities in the relocation areas of Botum Sakor and Kiri Sakor districts told us

‘UDG has given money to the government to build decent infrastructure in the relocation sites but the infrastructure has either not been built or has been built in very poor quality. We acknowledge that it is wrong and not very systematic to substitute the government but if we do not do it, no one will and lives of people will remain miserable.’

UDG, through Mr. Wang Chao, its Communication Manager, confirmed in April 2015 that the issues of compensation and relocation are to be handled by the government:

‘UDG does not have the technical ability to solve these problems, company still lacks the capacity to solve the community issues because we have never done it before. The government is taking care of the relocation issues and promised to compensate those living legally in the area, and evict those who were living there illegally. We financially

supported this, but the company cannot identify who is legal or not, and leaves that to the government.’

## **CONCLUSION**

This research was, as Scoones et al. (2013) described in their article, rather ‘quick and dirty’ and involved a short fact-finding mission and rapid assessment. Some of the methods used, especially focus group discussions and observation, could have been influenced by the stances of those who facilitated the discussions or provided the observation data, by people who come from the INGO/UN background. Long-term, in-depth academic research using quantitative methods with established baselines, counterfactuals, comparative frames and careful sampling is necessary for more credible and authoritative data and analysis.

It will be important to see whether relocated people obtain land titles for the new lands because this could improve tenure security for some of them. The question also remains whether the affected people will be able to keep their jobs with the land concession project after it is developed. Further research might be needed to determine whether the selection of sites for the relocation inside the national park has led to further negative environmental impacts because the forest required clearing for the relocation sites and the influx of people will likely increase the number of incidents of forest clearing, poaching and environmental pollution in this environmentally sensitive area.

We conclude that there is clear evidence that most of those affected by the Botum Sakor National Park land concessions are worse off than before the relocation and will likely remain so in the short- to medium-term. However, as the coastal waters of Koh Kong are depleted by overfishing, switching to alternative livelihoods – if people are provided with necessary skills and start-up financial support - might represent an opportunity for sustainable long-term food and income security for those affected. Determining if this is the case would require further multidisciplinary research.

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<sup>i</sup> In Cambodia, there is also a mechanism of so-called social land concessions intended as a redistribution of state-owned land to poor, land-less people. When referring to land concessions in this paper, unless otherwise stated, economic land concessions are meant.

<sup>ii</sup> Unfortunately, the research team was not able to determine what percentage of families took a loan from micro-financial institutions prior to the relocation, if the percentage has increased or if families took additional loans because of the relocation.

# Appendix B: Indigenous Peoples' Struggle for Secure Land Tenure in the Philippines: Case Study of Higaonon Tribe in Opol, Mindanao

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## Indigenous Peoples' Struggle for Secure Land Tenure in the Philippines: Case Study of Higaonon Tribe in Opol, Mindanao

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### Abstract

Indigenous peoples worldwide struggle for control over land and natural resources against encroachment of state interests, external development and commercial pressures such as agribusiness, dams, logging and mining. Their battle to protect land and natural resources is at the same time the struggle to preserve indigenous culture and traditions often inextricably linked to the land itself. The Philippine Indigenous Peoples Rights Act recognizes the indigenous peoples' rights to their ancestral lands and domains and offers a way of improving their land tenure security. The article employs case study design to illustrate the implementation gap between the rights of indigenous peoples in law and practice and the role different stakeholders play in securing indigenous peoples' land tenure and dealing with palm oil agribusiness and mining industries' interests in ancestral domains on the case of Higaonon tribe in Misamis Oriental province, Mindanao. The methodology for data collection was focus group discussions and key informant interviews with representatives of tribal leaders and members, non-government organizations and government bodies. Our results indicate that conflicting laws and mandates of various government bodies and lack of coordination between them, as well as lack of resources and political will to implement the Indigenous Peoples Rights Act are important factors behind slow issuance of ancestral domain titles. At the same time, we show that significant factor in the land tenure insecurity of indigenous peoples is disunity within the tribe and conflicting interests of its members and clans used by companies to further enhance their business interests.

**Keywords:** land grabbing, indigenous peoples, ancestral domain, agribusiness, palm oil, mining

### 1. Introduction

Indigenous people worldwide struggle for control over what they claim as *their* land and *their* natural resources. In the times of globalization, they encounter encroachment of state interests, external development and commercial pressures such as large-scale agribusiness, logging and mining into their traditional lands. This accelerates deforestation and exploitation of natural resources in what has remained from their ancestral domains after the colonial period during which indigenous peoples had lost vast amounts of their ancestral lands. Uprooting of indigenous peoples from their land denies them the right to life and identity; their battle to protect land and resources is implicitly the struggle to preserve indigenous culture and traditions often inextricably linked to the land itself. As shown by Göcke (2013), Perera (2009), Carino (2009) and many others, the loss of land has also led to social, political and economic marginalization; indigenous peoples have become disadvantaged by almost every standard compared to the dominant society - including income, education, housing, health, and life expectancy.

Having developed from very different historical origins, modern legal systems and indigenous customary laws often contradict each other in their land tenure concepts (Molintas, 2004; Carino, 2012; Arquiza, 2005). Lands that governments claim as idle, marginal and uncultivated and therefore target for land concessions, investment or development are in reality often existing agricultural lands in ancestral domains where various customary land tenure arrangements are already in place (White et al., 2012; Borrás & Franco, 2011; Schneider, 2011; Scoones et al., 2013; AFRIM, 2011).

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Indigenous people worldwide struggle for control over what they claim as *their* land and *their* natural resources. In the times of globalization, they encounter encroachment of state interests, external development and commercial pressures such as large-scale agribusiness, logging and mining into their traditional lands. This accelerates deforestation and exploitation of natural resources in what has remained from their ancestral domains after the colonial period during which indigenous peoples had lost vast amounts of their ancestral lands. Uprooting of indigenous peoples from their land denies them the right to life and identity; their battle to protect land and resources is implicitly the struggle to preserve indigenous culture and traditions often inextricably linked to the land itself. As shown by Göcke (2013), Perera (2009), Carino (2009) and many others, the loss of land has also led to social, political and economic marginalization; indigenous peoples have become disadvantaged by almost every standard compared to the dominant society - including income, education, housing, health, and life expectancy.

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The legal concept of indigenous rights in international law represents recognition for indigenous peoples' collective rights to land and livelihood strategies within nation-state structures that have discriminated against them (Perera, 2009). Several countries, including the Philippines, Malaysia and Cambodia, have recognized indigenous land rights in their national legislations and have introduced corresponding domestic legal instruments to protect communal land rights and resources. However, despite these legal instruments, indigenous peoples are still disadvantaged because the lack of political motivation to properly enforce these laws or produce the regulations for implementing them impedes their full realisation (Xanthaki, 2003; Simbolon, 2009; Inman, 2016; O'Faircheallaigh, 2012; Novellino, 2000).



Indigenous land rights in the Philippines have attracted surprisingly relatively little interest from international development scholars despite the increased pressure on indigenous peoples' land and natural resources in recent years fueled by the global land rush and ongoing armed conflicts. This paper strives to contribute to the renewed policy discussion on failures in the Indigenous Peoples Rights Act (IPRA) implementation and delays in its enforcement brought to spotlight by the Philippine president Rodrigo Duterte. This paper, using a case study design, aims to show that the mere existence of a domestic legal framework towards the rights of indigenous peoples in the Philippines does not ensure indigenous peoples' land tenure security vis a vis agribusiness and mining industry. Two main objectives of this paper could be described as to:

- a) illustrate implementation gap between the rights of indigenous peoples in law and practice and significant delays in land titling under IPRA and explore reasons behind these gaps and delays
- b) explore roles of different stakeholders such as indigenous communities and their tribal councils and farmers' organizations, non-governmental organizations (NGOs) and various government agencies in the process of securing Certificates of Ancestral Domain Titles (CADT); and the interaction between them and commercial interests in ancestral domain.

This study examines the land related conflicts in Opol municipality, Misamis Oriental province. The ancestral domain was brought to the public attention by several advocacy NGOs after a controversial oil palm plantation started operating here in 2011. These organizations, including Pesticide Action Network Asia and the Pacific (PAN AP), Rural Missionaries of the Philippines, Peasant Movement of the Philippines (KMP), Kalumbay Regional Lumad Organization, Sentro Kitanglad, and the Asian Peasant Coalition, organized International Fact Finding Mission in May 2012 and were active in campaigning on this particular land grabbing issue well into 2013.

The paper is structured in following way – the next section focuses on issues around indigenous peoples and the corresponding legal framework related to land tenure in the Philippines and provides literature overview of palm oil and mining industries' impact on

local communities, especially indigenous peoples, with special emphasis on the Philippines. The third section provides the description of our case study area and the methodology employed. The fourth section then presents the results combined with discussion on the role of the state, NGOs and private businesses in indigenous peoples' land alienation, tribal unity and the disparity between the legal framework and its implementation.

## **2. Indigenous peoples' land tenure and impact of mining and palm oil industries**

### ***2.1 Indigenous peoples and land tenure framework in the Philippines***

Estimated 10 to 15% of the Philippine population belongs to distinct indigenous communities who retain a close link with their traditions, have a special relationship with their ancestral land, territory and resources and their livelihoods tend to be subsistence-oriented (Molintas, 2004; Carino, 2012). In the 1970s pressure upon indigenous communities' land base, rich in natural resources, intensified as the national economy became increasingly foreign-dominated and export-oriented; as a result, indigenous communities have been besieged by a growing number of corporations engaged in mining, logging, plantations, and other export industries (Molintas, 2004; USAID, 2011). Indigenous peoples are among the poorest and most marginalized sectors of Philippine society experiencing neglect and discrimination in the provision of basic social services by the government (Carino, 2012; Rey, 2010).

What essentially distinguishes the indigenous peoples from the rest of the Philippine population is their concept of land and everything connected to it as granted and entrusted by one Creator/deity for everyone to harness, cultivate, sustain, and live on. Because of this divine origin of land, it is sacred and thus not subject to ownership, sale, purchase or lease. The adoption of a contemporary, Western model of land ownership that favours individual property rights and formal legal land titles is at odds with customary systems in which land is collectively held and inherited by communities and managed under the leadership of chieftains or *datus* (Bolton & Leguro, 2015; IOM & World Bank, 2013; Carino, 2012; Molintas, 2004). The superimposition of colonial laws started with a legal fiction, the so-called Regalian Doctrine, which declared that the Crown of Spain owned all lands in the archipelago by virtue of conquest. This would later become the theoretical bedrock upon which Philippine land laws were based; the 1894 Maura Law denied and contradicted

customary land tenure laws by declaring that any lands not titled in 1880 would revert to the state (Molintas, 2004; Lynch, 2005). The Regalian Doctrine remained in favour throughout the American administration of the Philippines, providing legal justification for controlling the islands' natural resources (Crisologo-Mendoza & Prill-Brett, 2009; Tujan, 2002; Rey, 2010; Lynch, 2005) - the 1905 Mining Law gave the Americans the right to acquire public land for mining purposes and enabled extraction of mineral resources from the indigenous territories. Among post-colonial pieces of legislation that would further deprive the indigenous peoples of their ancestral lands, was the 1975 Revised Forestry Code which provided that all land with a slope of 18 degrees or more is a public land (GoP, 1975); the indigenous peoples have traditionally practiced sustainable agriculture on such slopes in their ancestral territories (Molintas, 2004).

The passage of a landmark legislation for indigenous peoples in 1997, the Indigenous Peoples Rights Act (IPRA), has increased the prospects for sustaining communal land management in indigenous areas of the Philippines. This Act recognizes the indigenous peoples' rights to their ancestral lands and domains, sets forth the concept of communal/collective land ownership and is offering a way for securing land tenure to indigenous communities (Crisologo-Mendoza & Prill-Brett, 2009; Arquiza, 2005). However, the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples observed inadequate implementation of this Act, particularly because it conflicts with other laws such as the 1995 Mining Act (UN, 2003). The existence of multiple government agencies charged with land administration and their different regulatory systems and instruments, as well as lack of coordination between them and local government units result in competing and overlapping tenures, when different agencies may issue tenurial instruments to different parties for the same parcel of land, based on each agency's respective mandate (Bolton & Leguro, 2015; Llanto & Ballestredos, 2003; Novellino, 2000).

IPRA led to the creation of the National Commission on Indigenous Peoples (NCIP), which has the mandate to implement the law and is the final authority in the issuance of ancestral domain land titles (GoP, 1997). IPRA defines ancestral domains as areas belonging to indigenous peoples and that are necessary to ensure their economic, social and cultural welfare. Ancestral domains comprise of lands, inland waters, coastal areas and natural

resources occupied or possessed by indigenous people communally since time immemorial, continuously... except when interrupted by war, *force majeure*, displacement or as a consequence of government projects or voluntary dealings between government and private individuals/corporations (GoP, 1997). However, the ancestral domain certification process is being criticised because of its incorrect assumptions that all those interested in applying for titles are literate and able to grasp Western legal practices as well as have the financial means and time to go through these relatively costly procedures; many indigenous peoples are not aware that there is such a thing as land titling at first place (Foster, 2012; Molintas, 2004).

A significant safeguard provided by IPRA is the incorporation of the principle of ‘free, prior and informed consent’ (FPIC) requiring consent from indigenous communities prior to actions that affect their land and resource rights such as logging, mining, multipurpose dams, agribusiness plantations and other development projects. IPRA defines it as the “consensus of *all* members of the indigenous cultural communities/indigenous peoples to be determined in accordance with their respective customary laws and practices free from any external manipulation, interference, coercion and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community” (GoP, 1997). Various issues have been documented against the FPIC process citing among other problems allegations of manipulation, bribery and serious violations of the rights of indigenous peoples to pave way for economic activities (Doyle & Carino, 2013; UN, 2003; Goodland & Wicks, 2008; Doyle et al., 2007; Whitmore, 2006). The review of 34 FPIC cases in three Philippine regions, incl. Mindanao, conducted by GIZ found that less than 50% of the studied cases attained the status of full and faithful compliance with the FPIC Guidelines and procedures and a substantial number (38.2%) of cases reported incidents of violations in the actual conduct of the FPIC (Calde et al., 2013).

## ***2.2 Negative impact of palm oil agribusiness on indigenous people***

Governments, multilateral funding institutions and the private sector, including banks, support and promote mainly the large-scale, agro-industrial model of palm oil production; palm oil sector has become one of the fastest growing mono-cropping plantations in the tropics because of its high yield per hectare and low production costs (Tauli-Corpuz & Tamang, 2007). The palm oil industry is a growing sector also in the Philippines propelled by the

increase in demand both domestically and internationally. It was labelled as a ‘sunshine’ priority industry under the Philippine Development Plan 2011-2016 and it is a major contributor in fulfilling the Philippine government’s biofuel targets and seen as “peace-dividend development opportunity” for Mindanao (GoP, 2015; AFRIM, 2011).

The literature on oil palm cultivation confirms to large extent the environmental narrative of oil palm expansion as endangering both the environment and local communities as it comes with serious social, economic and environmental costs with adverse impacts on indigenous peoples, forest-dwellers and forests. Research from countries such as Sierra Leone, Colombia and Ghana has shown that large areas of land and forest traditionally used by indigenous peoples have been expropriated (Yengoh & Armah, 2015; Maher, 2014; Schoneveld et al., 2011). This phenomenon is also particularly frequent in South-East Asian countries with weak land tenure regimes (Hall, 2011; Prachvuthy, 2011). Agribusinesses do not grow oil palm organically which means that the use of chemical-based inputs may pollute watersheds in ancestral domains and affect water supplies in the lowlands (Villanueva, 2011). The expansion of large-scale oil palm plantations in Indonesia has resulted in extensive deforestation as shown for example by Carlson et al. (2012), Lee et al. (2014), Sandker et al. (2007) and Obidzinski et al. (2012). The promoters of oil palm plantations claim that the industry will reduce unemployment and alleviate poverty; yet these claims are highly contested (for example Sandker et al., 2007; Obidzinski et al., 2012; Sokhannaro, 2011; Schoneveld et al., 2011; Selvadurai et al., 2013). Religious, sacred, burial and historical sites of indigenous peoples are destroyed because of oil palm expansion as was the case of Dayaks in Kalimantan (Potter, 2012) and as documented by NGOs on cases from Indonesia, Palawan island of the Philippines, Liberia or Colombia (Friends of Earth, 2008; Survival International, 2011; Global Witness, 2016; Environmental Investigation Agency, 2015).

### ***2.3 Mining industry, local communities, and indigenous peoples***

Foreign and domestic investment in mining has been encouraged by successive Philippine governments as an important source of revenue (Doyle et al., 2007; Tujan, 2002; Christian Aid, 2004). In 1995, a revised Mining Act was enacted to make it easier for foreign investors to obtain mining permits (Foster, 2012; Tujan, 2002).

Mining industry demands a significant amount of area to operate which makes it extremely challenging to coexist with the indigenous people of surrounding communities who depend largely upon the land for their livelihoods (Hilson, 2002). Physical displacement, relocation and resettlement induced by mining industry are widely acknowledged as posing enormous risks to mining-affected communities (Owen & Kemp, 2015). As shown by Whitmore (2006) on several examples from across the Philippines, the land is frequently taken without obtaining FPIC, and indigenous peoples are suffering negative impact on their ways of life, health and environment. The mining operations have often negative impacts on social infrastructure (Moffat & Zhang, 2013).

The Philippine governments in their attempts to woo foreign direct investment appeared willing to circumvent the country's laws protecting the environment and human rights and reduce standards below acceptable international practice according to the report of a fact finding team visiting three mining-affected communities in Mindanao (Doyle et al., 2007). While the laws require FPIC of the affected communities, the evidence suggests that the responsible government agencies have failed to effectively apply the law due to limited resources, both in terms of budget and expertise required to deal with complex matters of consent in indigenous communities (Christian Aid, 2004; Franco, 2014; Doyle & Carino, 2013; Collins, 2016). The consent is sometimes obtained through misinformation, misrepresentation, bribery and intimidation; several incidents where companies violated the legal guidelines and engineered the required consent were reported for instance by Doyle et al. (2007).

The literature is divided regarding the impact of mining on poverty levels. Though Loayza and Rigolini (2016) recorded lower poverty levels in mining districts of Peru, they found the inequality there larger than in non-mining districts. Boquiren (2008) has shown that poverty is in fact worse in mining than in non-mining areas of the Philippines. Moreover, roads built by the logging companies make indigenous areas accessible to domestic outsiders who immigrate in large numbers with negative social, economic and environmental consequences (Foster, 2012). While companies express their commitment to high environmental standards and good relations with their host communities, the communities themselves tell of the repeated violations of the environmental standards and human rights by companies and their

employees (Christian Aid, 2004; Thomson & Joyce, 1997; OECD, 2002). Examples of responsible mining in the Philippines barely exist with a few exceptions such as Coral Bay in Palawan or Philex's operation in Benguet (Foundation for Environmental Security and Sustainability, 2007).

### **3. Research Methodology**

In order to illustrate the implementation gap between the rights of indigenous peoples in law and practice in the Philippines, social impact of agribusiness and mining industry on indigenous peoples' communities and roles played by different stakeholders, the paper employs qualitative descriptive case study design. This has enabled exploration and deeper analysis of community-level factors affecting the process of securing land tenure and negotiation with private companies and government bodies.

#### ***3.1 Data collection and analysis***

Because of the qualitative rather than quantitative nature of the research, the primary methodological approach to the field data collection were 8 focus group discussions and 20 in-depth interviews. Data were analysed using content analysis where recurring themes were identified and coded to reflect the emerging patterns, which were interpreted later by the authors employing phenomenological approach using abductive reasoning.

The primary data were collected in April and July 2016 with additional data collection in February 2017 combining several methods – 6 focus group discussions with tribal council and barangay representatives, 2 focus group discussions with staff of local NGOs working with indigenous peoples in Northern Mindanao, 6 in-depth interviews with tribal leaders, 6 in-depth interviews with local NGO workers, 8 key informant interviews with representatives of provincial NCIP, national and provincial Commission for Human Rights (CHR) and provincial office of Department of Agrarian Reform (DAR) as well as dozens of informal discussions with members of Higaonon tribe. The semi-structured discussion among focus group discussion participants provided an opportunity to hear issues that may have not emerged from participants' individual interaction with researchers. Moreover, their interaction led to increased emphasis on the participants' perspectives rather than ours and permitted

discovery of aspects of understanding that would have otherwise remained hidden in the more conventional in-depth interviewing method. We supplemented the interviews and focus group discussions with field observations and the collection of relevant publicly available documents.

The paper also relies on dozens of semi-structured interviews with key Philippine and expatriate NGO workers and Philippine government representatives that were conducted by the first author between November 2013 and February 2017 and that helped to inform our understanding of indigenous peoples' rights, mining, agribusiness and land issues and their dynamics in the Philippines. In this regard, it is important to mention the huge ideological divisions of the Philippine civil society. Borras and Franco (2007) classify the organizations into four categories - groups identified with the revolutionary Communist left, state-coopted organizations, conservative reformists and progressive left reformists. While the first category was largely behind the campaign against the land grabbing in Opol, it was the representatives of the other groups, and mainly the latter two, that were informants for our research.

We see the main limitation of this paper in the fact that it is relying too much on local testimony and description of the ex-ante situation based largely on the information reported by the indigenous people and NGOs. As such, it could contain several potential sources of bias. Repeated attempts to conduct semi-structured interviews with representatives of the companies failed and we thus had to rely only on publicly available information such as companies' web pages and social media sites, their annual reports as well as papers published by NGOs and activists who were engaged in Opol case mainly in 2011-13. Unlike in 2016, the authors could not visit the ancestral domain in February 2017 because of presence of the New People's Army in the area and all the focus group discussions and interviews had to be conducted outside of the ancestral domain in Poblacion and Cagayan de Oro.

### ***3.2 Site description***

Opol is a municipality in Misamis Oriental province covering an area of 17 513 hectares. Its boundary lies some 11 kilometres west of Cagayan de Oro, one of the major cities in Mindanao. According to official 2015 census, Opol municipality had population of 61 503



(Philippine Statistics Authority, 2017). Opol consists of 14 barangays or villages. In six of these – Awang, Bagooboc, Tingalan, Nangaon, Caoyonan and Limonda - as well as in two barangays of neighbouring Mantiaco municipality – Mahayahay and Upper Malobog – Higaonon people form majority population with approximately 11 000 individuals. All these barangays have barangay tribal councils, a parallel local governance structure for indigenous people. Ancestors of these Higaonon people have resided in Opol and Mantiaco since pre-colonial times. The name Higaonon means ‘people of the mountains’. Higaonon are one of the 18 ethnic groups of Lumads, a generic term embracing all non-Muslim hill tribes of Mindanao, which means ‘native, indigenous, local, grown to a place’ in Cebuano/Visaya language. Lumads form the largest grouping of indigenous peoples in the country with a total population of 2.1 million.

The site of this study was selected because several issues of interest for this research are present here. Firstly, the indigenous community has been seeking Certificate of Ancestral Domain Title (CADT) to secure rights over land and natural resources already since 2001. Secondly, the area has been targeted by A. Brown Company, Inc., and its subsidiaries Nakeen Corporation and ABERDI (further referred to collectively as ‘A. Brown’), for oil palm plantation in 2011. Although often referred to as an American owned company, the company is in fact 100% Filipino owned. Thirdly, two mining exploration concessions were awarded in the area. In 2011, Black Stone Mineral Resources Inc., a subsidiary of Hong Kong based company, received concession for exploration of gold and associated minerals and Filipinas (Prefab Bldg.) Systems Inc. obtained exploration concession for chromite (PMCDC, 2015).

## **4. Results and Discussion**

### ***4.1 Application for Certificate of Ancestral Domain***

The first claim for CADT in Opol was made in 2001 for only one of the eight Higanon-majority barangays. According to a focus group discussion with tribal leaders and interviews with NGO workers, after the pressure from NCIP, a large, joint claim for all Higaonon-majority barangays was developed in 2006 rather than applying for separate CADTs in each barangay. According to Prill-Brett (2007), this is a widespread practice that may appear to be efficient in simplifying the application process, however, it might not match with a traditional

mechanism for managing such supra-community domain and might not be an effective strategy to foster sustainable resource management, community equity and social justice. As shown also by this case study, the application process is not made quicker by this - Higaonon people of Dulangan have not obtained CADT until today. They are currently in the latest stages of the process of drafting Ancestral Domain Sustainable Development and Protection Plan that is one of the pre-conditions for issuance of CADT. According to the focus group discussion with tribal leaders and interview with an NCIP representative, the planning process should finish in March 2017 by presentation of the draft plan to the indigenous community, its validation and approval.

During the focus group discussions, tribal leaders expressed their hope that the land survey by NCIP will happen soon so that the boundary of the ancestral domain could be finally set after years of waiting. However, the NGO informants were convinced during the July 2016 discussion that this would not happen any time soon: “unless the President fulfils his election campaign promise of allocating additional resources to NCIP to be capable of fast-tracking the processing and approval of applications for CADTs. NCIP does not have sufficient capacities and resources to conduct land surveys of these large areas claimed.” In February 2017, the NCIP informant claimed that the plan is to conduct the land survey, delineation and award CADT for Dulangan within next six months: “We are under the pressure from the President to speed up the CADT cases and while Congress has not approved increase in budget allocation to NCIP, we have received funds for the land surveys from other budget lines of the Office of the President.” Municipal administration has pledged funds for delineation, too, according to him and NGO informants. Tribal focus group discussion participants had no knowledge of any of these.

One of the factors causing the delays in CADT process mentioned by all tribal, NGO and NCIP informants was Joint Administrative Order 1-2012 of NCIP, DAR, Department of Environment and Natural Resources (DENR), and Land Registration Authority, which suspended all titling activities in identified contentious areas and created a joint committee mechanism to resolve the issues (GoP, 2012). NGO informants were critical about how functional and effective this mechanism is and NCIP representative told us: “These are very tough meetings when they happen. However, because we had no funding to hold them, they

had become discontinued and that is why some of the CADT applications stalled. Fortunately, this year we were allocated budget at least for food at these meetings so we should revive them.” In this connection, it would be interesting to mention the opinion of the interviewed DAR representatives: “Almost all Mindanao is claimed by NCIP and by indigenous peoples as their ancestral domains. We have to issue our land titles within the ancestral domains if we are to implement the agrarian reform at all.”

According to the NGO informants, another factor delaying the CADT processing is historically poor relationship between Dulangan chief *datu* and Mayor of Opol municipality which also means that Opol has no mandatory indigenous representative in the municipal council: “While the Mayor will never let him sit on the council, *datu* will not let anyone else from the tribe to take over this role.” Tribal focus group discussion participants were also speaking about a conflict between them and NCIP in the past: “We used to have arguments with them; they even refused to recognize our tribal council and wanted to establish another one by themselves. But now NCIP understands their function and role and our relation has significantly improved.”

One of the tribal focus group discussion participants said: “Since 2006 many NGOs were coming and going. They were asking about the issues, but then their projects ended and nothing has happened. Efforts of NGOs are not recognized by NCIP and there is a problematic relationship between NGOs and NCIP.” In contradiction to this, our NCIP informant cited concrete examples of collaboration with NGOs for example on land surveying or delineation of ancestral domains. The tribal focus group discussion participants agreed among themselves that they would want from a specific NGO supporting their cause to play more pro-active role in solving the problems of Dulangan ancestral domain: “The NGO and NCIP should sit together and review what has been done and what the next steps should be.” However, the NGO informants and focus group discussion participants were convinced that their role is “to provide necessary skills to indigenous peoples and they have to fight for their CADT themselves. We can’t do it for them, since they would have no ownership then.” In this connection it would be interesting to refer to McDermott (2000) who is skeptical about motivation of some of the Philippine NGOs, according to him the focus on indigenous peoples “is currently the *raison d’être* for a number of NGOs and serves them as an effective

strategy for raising foreign interest and funds.”

#### ***4.2 Activists’ land grabbing narrative versus tribal leaders’ one***

In the narrative based on the International Fact Finding Mission and disseminated by the activist NGOs’ campaigns (for example Quijano, 2012; KALUMBAY et al., 2011; Asia Monitor Resource Center, 2013), we are told that A. Brown has grabbed the land from a group of indigenous farmers who formed Sarahogon Bagooboc Farmers Association (SBFA). They resettled and farmed the land taken earlier from the tribe and granted as Forest Land Grazing Lease Agreement by DENR to a private company that later abandoned it. In 2002, this same land was, following years of petitions to regain the indigenous lands, granted to DENR-facilitated formation Kahugpongan sa Mag-uuma sa Barangay Tingalan (KMBT) instead to SBFA under a Community-based Forest Management Agreement. In February 2011, A. Brown in preparation for oil palm plantation operations organized community meeting with handpicked community members while community leaders were not invited and given a voice (Quijano, 2012). These handpicked members were from KMBT and signed Memorandum of Agreement with A. Brown after being told that though A. Brown possessed the land now, farmers would not be displaced if they chose not to sign their lands over to A. Brown and would be compensated if they chose to leave (Quijano, 2012). In direct violation of the A. Brown-KMBT Memorandum of Agreement and without FPIC with the wider community – some Higaonon families found out that their farmland was included in A. Brown plantation only when the area was marked off by sticks on the ground by A. Brown personnel -, A. Brown began constructing an access road and planting palms in local farmers’ fields and ancestral sites (KALUMBAY et al., 2011). A sacred hilltop, which served as the burial ground of the ancestors, was quarried by the company for road construction (Quijano, 2012). The company also planted oil palm in a ritual area called Bagonsilibo, an act considered as desecration by tribal elders. A tree marking the burial ground and ritual area was cut down by A. Brown personnel (KALUMBAY et al., 2011).

However, during the focus group discussions the authors held with tribal leaders, a contradicting picture has emerged: “The International Fact Finding Mission avoided any contact with the tribal council so they had hardly all the information. As a result we did not attend any of their advocacy events or the congressional hearing.” According to *datus*, SBFA

farmers had encroached the land and it was KMBT legally in charge of the land. KMBT had thus the backing of the tribal council and the people negotiating with A. Brown could hardly be called 'handpicked'. They stressed that they managed to negotiate in the Memorandum of Agreement with A. Brown that 70% of the plantation workers would be local Higaonons. The destroyed ritual area of Bagonsilibo is a Higaonon sacred place but it is actually in neighbouring ancestral domain in Cagayan de Oro municipality not in Dulangan and has nothing to do with A. Brown oil palm plantation according to focus group discussion participants. "It depends on your Memorandum of Agreement with the company. In our case destroying of ritual areas would not be possible; things like this are under our control," *datus* agreed during the discussion.

#### ***4.3 Social cohesion and community disagreements***

NGOs in their campaign (for example Asia Monitor Resource Center, 2013; KALUMBAY et al., 2011; Quijano, 2012) documented incidents of harassment, intimidation and violence, including destruction of crops, burning of houses and death threats, commenced immediately after A. Brown started operations. The worst incident was 2012 killing of Gilbert Paborada, leader of resistance against A. Brown, and of Rolen Langala, his successor, a year later. The cases have remained unresolved but Paborada's family and some Higaonon residents claimed that the killing of Paborada was directly related to his work as a leader of the 'resistance movement' against A. Brown oil palm expansion in Opol. Interviewed CHR representative told us that there is "enough circumstance to lead to conclusion that Gilbert Paborada's death was connected with his struggle against A. Brown. However, CHR is not doing 'police work', so we cannot prove it. The investigation resolution was submitted to the House of Representatives." Interestingly CHR 2012 report is not that conclusive citing barangay treasurer and at the same time KMBT board member who "does not believe A. Brown has something to do with the killing of Gilbert as the victim's uncle and the former barangay captain are employees of A. Brown" (CHR, 2013). Tribal leaders said during the focus group discussion in regard to Paborada's killing: "He was not fighting for the cause of the whole tribe but only his group of farmers SBFA. He established his own organization Pangalasag [to represent the tribal interests against A. Brown] despite strong opposition of the tribal council against it." When we asked NGO informants why Paborada's death was not mentioned during the focus group discussions and in-depth interviews held in July 2016, they explained that

there are more than 70 plus clans living in Dulangan and that their relations are sometime quite tense and referred to complicated 'tribal dynamics'.

It was observed by the authors and confirmed with the informants that a number of families in Tingalan and Bagooboc barangays started small-scale oil palm farming selling their produce to A. Brown. At the same time, according to focus group discussions with community leaders and in-depth interviews with NGO staff, some of the household leased their land to the company for the period of 25 years for a mere 9,000 pesos (approximately 180 USD). Tribal leaders claimed that the total land area leased directly by individuals and families to A. Brown for oil palm plantation was 325 hectares.

During the in-depth interviews, companies' divide-and-rule tactics weakening social cohesion among the Higaonon was mentioned several times. This tactics supposedly includes the co-optation of some indigenous leaders through bribery, both direct (money offers) and indirect (promises of jobs, social services, and over-all prosperity): "Those who disagree with the companies get co-opted by high paid jobs or by being promoted." The authors observed that captains in two barangays were able to build new above-standard houses.

According the in-depth interviews, mining company Blackstone initiated community meeting for FPIC only after the exploration concession had been granted by the Philippine Mining Development Corporation and DENR. While initially barangay tribal council was against the exploration, barangay council agreed. "We wanted to avoid community friction so after facilitation between the two councils, tribal council gave its approval at the end," explained *datus* during the focus group discussion. The reasons behind disagreement between the tribal barangay council on the one hand and barangay officials and some community members on the other hand over consent with mining exploration in Nangaon was explained by focus group discussion: "The company offered minimum daily wage of 300 pesos (approximately 6 USD) which was simply irresistible for some of our people."

The mining company Filipinas Systems held reportedly two community assemblies in Awang barangay as part of the FPIC process for exploration and the next step is drafting of

Memorandum of Agreement between Filipinas Systems and the tribal council of Awang barangay (PMDC, 2015). Tribal focus group discussion participants informed us in February 2017 that “last week there was another community meeting in Awang to secure FPIC. The problem is they never tell people in advance the reason of the meeting or that this is actually an FPIC.”

#### ***4.4 Future plans with ancestral domain***

The indigenous culture, customs and traditions in Dulangan are dying out as observed in the field and confirmed by focus group discussions and in-depth interviews with the tribal leaders. One of the NGO informants even claimed during an informal discussion that some of the “indigenous peoples [in Mindanao] do not observe traditions and customs anymore. Often they would organize themselves as indigenous group and re-discover their culture and traditions simply to secure land because the government believes that all indigenous communities are entitled to ancestral domain.”

In July 2016 it seemed like the Higaonon’s ultimate goal in Dulangan was to obtain the CADT and that they did not give much thought how they would approach A. Brown and Blackstone after they have secured recognition of their ancestral domain rights. “We do not know what we would demand from the companies once our claim is granted,” was repeated several times during the focus group discussion as well as informal and in-depth interviews. The situation was quite different in February 2017. After the indigenous community undertook several steps of the Ancestral Domain Sustainable Development and Protection planning, their plan was to leave 40% of the land as protected area without any farming, hunting or mining. In the remaining areas, focus group discussion participants talked about artisanal, small-scale mining among other livelihoods activities. “We have established five cooperatives which will extract gold and nickel in a traditional way.” In order to do this, they have even started collaboration with a Chinese mining company. While some focus group discussion participants raised concerns about possible environmental impact of mining, others pointed to the fact that mining was practiced traditionally by the indigenous people here in the past and that *dulangan* actually means ‘mine’.

During the focus group discussions, participants from more remote barangays mentioned they do not want to develop the area for intensive agriculture. Rather they want to keep it for their traditional livelihoods: “We cut trees only when timber is needed for construction because they are sacred to us. We want to continue with swidden farming of food crops as well as *abaca* – Manila hemp - and raising of ducks and chicken, hunting of wild pigs and birds and fishing in rivers and creeks. We also want to continue harvesting non-timber forest products such as rattan, *bagacay* [of the *Bambuseae* tribe], wild food and medicinal plants.” At the same time we observed, that discussion participants from barangays closer to the main road, where they are engaged in ‘modern’ farming, were less bound by traditional livelihoods: “We want to farm rice, corn, cassava, bananas and coconut... in a way integrating modern and traditional farming. In this regard we might need some external assistance in switching from chemical pesticides and fertilizers that we use now to organic ones.”

During the focus group discussions and in-depth interviews, all Higaonons claimed to hold no particular grudge against the non-indigenous settlers who currently reside in their villages. They would allow them to stay after receiving the CADT. They would however more strongly insist that the settlers respect indigenous customs and traditions. Admission of new settlers will supposedly be decision made by each barangay separately. One tribal leader reported: “In Nangaon we won’t allow any new settlers because we can see that settlers just create additional problems for us. And I believe this will be probably the case for all barangays with currently low numbers of settlers.”

There has been an interesting development regarding the mining companies and agribusiness in Opol recently. A. Brown has temporarily suspended their operations in Opol in August 2016 for 6 months without informing the tribal leaders. 143 people, out of which 100 were local Higaonon, have lost their jobs as a result. Tribal focus group discussion participants said in February 2017 that they “had a meeting with A. Brown last week. A. Brown has no plans to restart operations in Opol and will return all the land to KMBT and tribe under the condition that we must sell our [oil palm] bunches only to A. Brown. We will meet again to tell them we want to cancel Memorandum of Agreement because they are not fulfilling it. The question is what will happen to people who leased them their land. A. Brown wants them to pay back for the oil palms planted.”



According to focus group discussion with tribal leaders, Blackstone exploration concession ran until February: “but they had already stopped before. Now they only have one person guarding there.” It is important to note in this connection that mining industry experience suggests that only less than 10% advanced exploration programs actually turn into full-scale mining operations (Thomson & Joyce, 1997).

## **5. Conclusion**

This paper has sought to clarify the difficult situation faced by indigenous communities in the Philippines when confronted by State-backed efforts to promote agribusiness and mining in their ancestral lands and domains. Although the paper focuses on the Northern Mindanao experience, some of the problems and issues presented here may well apply to other indigenous areas in the Philippines and even elsewhere. We have shown the significance of land and its complexities to the indigenous peoples and problems in implementation of IPRA, specifically in issuance of CADT. Differences in visions, mandates and instruments of various government bodies contribute to delays in CADT issuance, as well as lack of resources to conduct land surveys, delineations or hold coordination meetings between the various government bodies.

As the testimonies collected in this case study have shown, indigenous people have given their FPIC to mining exploration in order to avoid frictions within the community regardless of what they considered as best for their community. While no doubt some community members can benefit from the mining and plantation operations, others who attempt to maintain their traditional ways of life suffer and fear what would happen if the operations moved from exploration to extraction phase. The main problem in strengthening community land tenure seems to be disunity among the indigenous peoples, conflicting personal interests among tribal members and leaders bringing about tensions in social and personal relationships of several indigenous peoples’ leaders. This is contradicting the black-and-white picture, which some activist NGOs portray in their land grabbing narratives. We have also shown how companies are using divide-and-rule tactics and co-optation of some tribal members to enhance their business interests.

We have shown that conflicts over decision-making on resource allocation lead to further weakening of tribal social cohesion. However, additional in-depth research of intra-tribal relations and dynamics would be needed to better understand the complexities of indigenous decision-making on land and natural resources related issues. We were not able to determine legitimacy of the tribal leaders dealing with external stakeholders across the clans, generations and socio-economic strata.

We conclude here that the mere existence of communal ancestral domain tenurial instruments does not automatically lead to sustainable environmental management or to social justice.

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# Appendix C: Socio-economic Assessment of the Philippine Agrarian Reform

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## Socio-economic Assessment of the Philippine Agrarian Reform

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### Abstract

This paper, using qualitative research methods, aims to assess the challenges faced by the Philippine Comprehensive Agrarian Reform Program and its extension on the selected cases from five Philippine provinces. In 27 years of its implementation, the agrarian reform has achieved land redistribution of around 7.7 million hectares despite the periodical lack of political will and opposition from landlords, sometimes violent or through protracted legal battles. Support services focus almost exclusively on Agrarian Reform Communities, in which such services are funded mostly through the official development assistance from abroad rather than government's budget. Limited availability of support services to those agrarian reform beneficiaries located outside of Agrarian Reform Communities prevents them from becoming economically viable producers and seriously taints whatever land distribution may have accomplished. Some reform beneficiaries may have been awarded their land on paper but were not able to take possession of the land or must have abdicated control of it.

### Keywords

Comprehensive Agrarian Reform Program (CARP), land reform, land redistribution, landlordism, land conflict, agriculture support services.

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### Introduction

Agrarian reform in the Philippines is not an easy task compacted by the challenges it has to face – "opposition from landlords, criticism by civil society, suspicion by the private sector, cynicism by legislators, lack of financial and material resources as well as general public apathy" (Guardian, 2003). However, it is widely recognized that the agrarian reform has contributed to the improvement of lives of a substantial number of Philippine peasants, though the actual impact of the reform on the rural poor "may not have been as large as its proponents would have liked to see" (World Bank, 2009). Pessimistic predictions and sweeping dismissal by some critics of the land reform accomplishments have not materialized and sizeable land redistribution has been achieved with around 7.7 million hectares of land, or one quarter of total Philippine land area or 80% of all agriculture land (De Los Reyes et al., 2017), distributed in the 27 years of the implementation of the Comprehensive Agrarian Reform Program (CARP) and its extension. As GTZ (2006) wrote then and is still true today, it is evident that

the agrarian reform is far from being completed, especially in terms of compulsory acquisition of large private landholdings and their redistribution to the mass of landless peasants. The remaining lands are the most contentious landholdings, most tedious and difficult to acquire and distribute (Focus on Global South, 2013). Moreover, in some cases, agrarian reform beneficiaries may have been awarded their land on paper, but have not been able to take actual possession of the land or have abdicated the control of it. Many others have been left without meaningful support that would enable them to become economically viable producers.

The current Philippine president Rodrigo Duterte called the agrarian reform implementation a 'farce' and a 'total failure' during his election campaign. After assuming the office, he made support services alongside land distribution one of his policy priorities, reversed the "long-standing presidential pattern of ignoring agrarian reform's social justice principles" (Tadem, 2016) and appointed Rafael Mariano, a former activist of peasant class origins, as Department of Agrarian Reform (DAR) Secretary. Mariano immediately initiated a review

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though the actual impact of the reform on the rural poor “may not have been as large as its proponents would have liked to see” (World Bank, 2009). Pessimistic predictions and sweeping dismissal by some critics of the land reform accomplishments have not materialized and sizeable land redistribution has been achieved with around 7.7 million hectares of land, or one quarter of total Philippine land area or 80% of all agriculture land (De Los Reyes et al., 2017), distributed in the 27 years of the implementation of the Comprehensive Agrarian Reform Program (CARP) and its extension. As GTZ (2006) wrote then and is still true today, it is evident that the agrarian reform is far from being completed, especially in terms of compulsory acquisition of large private landholdings and their redistribution to the mass of landless peasants. The remaining lands are the most contentious landholdings, most tedious and difficult to acquire and distribute (Focus on Global South, 2013). Moreover, in some cases, agrarian reform beneficiaries may have been awarded their land on paper, but have not been able to take actual possession of the land or have abdicated the control of it. Many others have been left without meaningful support that would enable them to become economically viable producers.

The current Philippine president Rodrigo Duterte called the agrarian reform implementation a ‘farce’ and a ‘total failure’ during his election campaign. After assuming the office, he made support services alongside land distribution one of his policy priorities, reversed the “long-standing presidential pattern of ignoring agrarian reform’s social justice principles” (Tadem, 2016) and appointed Rafael Mariano, a former activist of peasant class origins, as Department of Agrarian Reform (DAR) Secretary. Mariano immediately initiated a review of ‘anti-farmer decisions’ sparking a policy discussion on the future of the agrarian reform. While the former pro-reform elements in the civil society and bureaucracy advocate for another CARP extension, the Secretary would prefer to roll out much more radical Genuine Agrarian Reform that would go as far as free distribution of land to farmers. This paper is an attempt to contribute to the current policy discussion as well as to the literature on the land reform in the Philippines in particular and in developing countries in general by highlighting the successes and failures of CARP and its extension at micro-level and challenges in its implementation.

### ***1.1 Concepts of land/agrarian reform***

Agrarian reforms worldwide have been attempting to “correct historical injustice committed against landless peasants” and have been conceived based on a political-economic perspective

of agrarian structure, where “power and power relations between different social classes within the state and in society are at the center of a more egalitarian distribution of property rights over land resources” (Borras, 2007). According to Borras (2006) redistribution of wealth and power from the landed elite to landless and near landless people is the essence of land reform. Fuwa (2000) counters that the ultimate achievement of land reform should not be land redistribution as such but rather enabling reform beneficiaries to become competitive in the context of liberalized markets and reduced role of the state. Land reform entails equitable and rational change in agrarian structure by “compulsory, drastic and rapid means” resulting in increased access to land by the rural poor and secured tenure for those who actually work the land (Ghimire, 2001; Tai, 1974) which gives small cultivators “greater control over the use of land and greater leverage in their relationships with the rest of society” (Jacobs, 2013).

The terms 'land reform' and 'agrarian reform' are often used interchangeably, even in this text, but are actually not precisely the same. Banerjee (1999), Jacobs (2013), Tai (1974) and others limit the 'land reform' to its narrow definition of redistributing land to rural poor, while 'agrarian reform' is considered to have a wider meaning embracing improvements in both land tenure and agricultural organization, including provision of infrastructure, services and, sometimes, a whole program of redistributive and democratic reforms. Adams (1995) sees 'agrarian reform' as a construct of the Cold War to counter the concept of 'communist' land reform. Cohen (1978) defines 'agrarian reform' as “a multi-disciplined set of interrelated aims and means capable of combating the ills” of the “feudal and quasi-feudal institutional agrarian structure.” None the less, advocates of land reform agree that simply redistributing land to the landless poor would not achieve equity nor efficiency of land reform; real reform should be accompanied by agricultural extension and emergency income support programs (Banerjee, 1999) or a mix of technical support and access to credit, markets and inputs (Cotula et al., 2006). Most advocates of agrarian reform have explicitly maintained no illusion that land redistribution is a “magic panacea to rural poverty and underdevelopment” (Borras, 2006); land redistribution is a necessary but insufficient condition for rural development and poverty eradication and must not be seen in isolation from broader support to the agricultural sector (Borras, 2006; Cotula et al., 2006).

Whilst the pursuit of land reform in 20th century was reinforced with the view that agriculture should be in the center of development agenda by the national governments, more prominent

reason for adopting land reform was often to prevent rural unrest and struggle for social justice; land redistribution happened more likely when the rural poor formed a credible threat of revolt (Albertus, 2015; Fuwa, 2000). Other reasons for agrarian reform according to Cox et al. (2003) included existence of large tracks of land with low farming intensity, exploitative labor relations on large estates, land conflicts, collapse of large state, collective or cooperative farms. According to Cotula et al. (2006) redistributive land reforms have been motivated by three inter-related objectives: i) to reduce poverty and landlessness in rural areas through more equitable access to land, ii) to improve social justice by shifting the balance between different groups in the ownership and control of land, and by restoring alienated land rights and iii) to promote rural development by raising agricultural productivity and creating a class of productive smallholder farmers.

Platteau (1992) and Borras (2007) sum up that redistributive land reform was highly popular in official development agendas during the past century when it was generally accepted that large landed estates were economically inefficient because the land was underused - the creation of small family farms should maximize use of relatively scarce land resources by applying abundant rural labor to it. The decolonization struggle, post-conflict democratic reconstruction and consolidation, and the end of authoritarian regimes and subsequent transitions have also provided significant bases and imperatives for land reform. Deininger and Binswanger (1999) show their skepticism about land reforms relying on expropriation because they “have been more successful in creating bureaucratic behemoths... than in redistributing land from large to small farmers” and because of their supply-driven nature such reforms lead to economic inefficiency, when productive farms are expropriated and subdivided into smaller, less productive farm units, when environmentally fragile, public lands are distributed, or when peasants unfit to become beneficiaries are given land. According to Jacobs (2013), the great majority of agrarian reforms have been incomplete, either redistributing little land or else allowing landlords or large commercial farmers to exert continued power. Land-redistribution-*before*-development approach has led to land redistribution-centered reforms where in most cases the state has failed to deliver support services to beneficiaries (Deininger 1999).

## ***1.2 Rolling out land reform in the Philippines***

The history of the colonial rule in the Philippines by the Spanish and Americans led to the process of land acquisition by the elite, land-grabbing and privileged access to legal formalities creating a system of property rights that tends to appear arbitrary to peasants (Putzel, 1992). For centuries, agricultural lands have been in the possession of a few powerful landlords and corporations, the majority of people remained as tenants, farm workers and landless agricultural laborers, a reality that has contributed to the widespread rural poverty (Elvinia, 2011). Prior to the initiation of land reform in the Philippines, almost 50% of the rural population was landless (Elauria, 2015). Since World War II, consecutive Philippine governments have used land reform in various forms and intensity as a key element of their poverty reduction strategies, as well as a tool to address social unrest and insurgency in the rural areas (Balisacan, 2007). Land reform in the Philippines has had a long and dubious history marked by cycles of intense popular assertion that put the idea of land reform firmly on the national political agenda “in between long periods of government inertia” (Borras and Franco, 2007). The political reality of land reform implementation in the Philippines has seen contestation by different social forces with differing interests and levels of bargaining power (Cruz and Manahan, 2014).

CARP, enacted in 1988, aimed to redistribute 10.3 million hectares of land to more or less 5 million landless peasant-families or 30 million individuals (Bejeno, 2010). CARP and its 2009 extension, the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER), was quite distinct from previous Philippine land reform initiatives because it went beyond land transfers to provision of basic support services, including access to credit and marketing assistance, with the aim to transform the beneficiaries into efficient agricultural producers and entrepreneurs (Velesco, 2011). CARP was an improvement over previous land reforms also in that it covered all agricultural lands and the entire rural landless labor force, including previously excluded seasonal farm workers and occupants of public lands (Velesco, 2011). However, CARP was a compromise law, accommodating demands from the landowning classes and agribusiness, and as such it contained legal loopholes that allowed mere regulation of existing tenancy forms, including the nefarious stock distribution option and leaseback agreements, provided for an ample list of exemptions for acquisition, established ‘fair market value’ for landowner compensation, created a payment amortization



scheme that was unfavorable for beneficiaries and set a high retention limit that could reach 14 hectares (Borras, 2007; Tadem, 2015).

Landowners have been resistant, sometimes violently, to CARP. In some cases, beneficiaries have been unable to take actual possession of formally awarded lands due to strong, violent opposition from a landlord, or protracted legal battles launched by landlords (Borras, 2006). Numerous reports have surfaced of agrarian reform beneficiaries being harassed, intimidated, raped, evicted, robbed or killed by landlords, their paramilitaries or hired goons (Guardian, 2003; Villanueva, 2011; Bejeno, 2010). While Binswanger and Deininger (1996) argue that the main reason for landlords' resistance to land reforms is a payment often below the market price, the Philippine landowners were compensated generously receiving on average 133% of the market value of their land under the Aquino administration (Riedinger, 1995). One possible explanation for this overpricing made by Putzel (1992) is corruption of Land Bank officials in charge of land valuation. The other possible explanation is daily pressure and harassment of DAR officials by landlords, some of whom might hold high positions within the local administrations (Borras and Franco, 2007).

CARP is further hampered by rampant land conversions and displacements of peasant communities, incursions of property developers, other rent-seekers and special economic zones and the expansion of urban areas into the countryside as well as an ineffectual bureaucracy (Tadem 2015; Elvinia, 2011). DAR is a huge and diverse state bureaucracy composed of an army of 15,000 personnel scattered nationwide who, like other government employees, are not well paid and moreover as with other Philippine government agencies 'political patrons' play a role in their appointments and recruitment (Borras and Franco, 2007).

### ***1.3 CARP's objectives and achievements***

The goal of the land reform in the Philippines was initially to break up large farms and redistribute the land into small plots to be cultivated by landless small family farmers (Borras and Franco, 2006). Subject of compulsory land acquisitions under CARP were private agricultural land holdings larger than 5 hectares, regardless of crops or fruits produced, with some notable exceptions. While the average farm size in the Philippines is two

hectares, CARP award ceiling to landless farmers and regular farmworkers was fixed at three hectares (Government of the Philippines, 1988). CARP's objectives of improving equity and productivity in the agriculture sector by distributing agricultural lands to landless farmers, farm workers and tenants were geared towards achieving the constitutional obligation of promoting social justice and rural development (Senate, 2008). CARP basically consists of three key components (Elvinia, 2011): i) land tenure improvement that deals with the acquisition and distribution of lands, ii) support services which involve the provision of extension services, credit, and infrastructure support to agrarian reform beneficiaries and iii) settlement of cases relating to landlord-tenant relationship and cases pertaining to land valuation and disputes.

The CARP implementation recorded significant delays and thus it had to be extended through promulgation of CARPER which also contained new provisions that favored beneficiaries in terms of land acquisition and distribution such as the indefeasibility of awarded beneficiary lands, recognition of usufruct rights, a grace period for amortization payments, speeding up the process of awarding lands, removal of the stock-distribution option, outlawing the conversion of irrigable and irrigated lands, automatic coverage of lands targeted for conversion pending for five years, reintroduction of compulsory acquisition and voluntary-offers-of-sale as main redistribution modes, as well as recognition of women as beneficiaries (Tadem, 2015; Bejeno, 2010; Cruz and Manahan, 2015).

Much has been written elsewhere on CARP/CARPER's accomplishments and failures. Low budget allocation, since it is the Congress, the bastion of landowning classes and their allies, that makes yearly decisions on budget allocations to the various CARP components, as well as low budget utilization have been a major constraint for the agrarian reform (Fuwa, 2000; Tadem 2015; Borrás and Franco, 2007). Because of these limited funds, in 1993 the government launched the Agrarian Reform Community approach to beneficiary development, which focuses the delivery of support services to selected areas, rather than dispersing the delivery to all areas covered by CARP (World Bank, 2009). The Agrarian Reform Communities have become the 'show-window of the agrarian reform' and when officially assessing the CARP impact, the focus is always on these (Guardian, 2013), even if only 27% agrarian reform beneficiaries are actually located in one of the Agrarian Reform Communities (Tadem, 2016).

What made CARP moderately successful during the period of 1992 – 2000, was the way in which pro-reform forces in society linked up with pockets of pro-reformists within the agrarian reform bureaucracy to convert less-than-ideal openings for agrarian reform into actual redistribution of land (Borras et al., 2007). “Various studies found that benefits such as improvements in tenure security, higher income of farmer-beneficiaries and higher yields brought about by increased inputs and investments on land were derived from the CARP implementation” (Senate, 2008). According to the study using panel data of 1,800 households by Reyes (2002), CARP has led to higher real per capita incomes and reduced poverty incidence between 1990 and 2000; real per capita incomes of agrarian reform beneficiaries increased by 12.2% between 1990 and 2000 and the difference in the poverty incidence between agrarian beneficiaries and non-beneficiaries has widened to 11.2 percentage points in 2000. However, Adamopoulos and Restuccia (2014) used a quantitative model and micro-level data to imply that CARP in fact reduced agricultural productivity by 17% and according to World Bank (2009) the “progress in CARP implementation in the past two decades has been extremely slow” and only mildly successful at reducing rural poverty.

According to Tadem (2016), DAR and other government agencies have been negligent in the provision of timely and adequate support services to agrarian reform beneficiaries, preventing them from becoming economically viable producers and seriously tainting whatever land distribution may have accomplished; as of December 2013, only 44% all agrarian reform beneficiaries had access to support services, with 27% of them living in Agrarian Reform Communities, which are mostly funded by foreign aid. Agrarian reform beneficiaries lack access to financial services and thus majority of their credit comes from loan sharks or *aryendadors* and traders who charge usurious interest rates (Tadem, 2016). Unable to shell out the money, the farmers are forced to lease their land to the *aryendandor* to pay for their debt. Most CARP beneficiaries “either lack the entrepreneurial skills required to efficiently manage their land or factor prices are too high that it becomes too costly for the farmer to enter into the market” and thus s/he turns to leasing or selling the land (Elauria, 2015). Adam (2013) shows on a case study from Mindanao that a majority of the coconut farmers there is trapped in new forms of debt-bondage and is forced to transfer the rights over their land. Among CARP strategies were leaseback, joint ventures and contract growing schemes, which have been heavily criticized as inimical to the rights and interests of small farmers because of

low rent and unfulfilled promises of employment and other benefits; “many of the farmers who entered into such schemes remain impoverished while having abdicated their access to and control of their lands” (Villanueva, 2011). While CARP/CARPER prohibits the sale of lands awarded under the program, the law allows agrarian reform beneficiaries to enter into business contracts involving the lease of their lands for up to 50 years. This is virtually equivalent to selling away their lands and giving the lessor unlimited access, management and use of land resources. As Adam (2013) shows on a case study from Mindanao, business elites have managed to obtain control over lands redistributed by CARP through all sorts of informal arrangements.

Among rather failed approaches to agrarian reform in the Philippines was the voluntary land transfers scheme. In 2002, President Arroyo administration adopted the voluntary land transfer scheme as the main strategy for land reform with the aim to cut down government spending on land acquisition (Borras, 2005). As it turned out later, the voluntary land transfers usually faked redistribution via paper sales and use of the on paper beneficiaries who are either family members, “dummies, coerced tenants and farm workers or people completely unaware of the transaction” (Borras, 2007).

## **2. Materials and methods**

Despite the relatively large literature on the land reform in the Philippines, which we attempted to review in the previous section of this paper, and official quantitative statistics on land redistribution, which offer an important but insufficient means of assessment of CARP/CARPER success, little has been systematically documented on the impact and prospects of land reform implementation at the micro level. There are also significant regional differences and variations in CARP/CARPER implementation, which call for a more qualitative analysis and comparative research methods to add another layer to the official ‘big-picture’ data and information. In line with this, the main objective of this research is thus to highlight the challenges in CARP/CARPER implementation in five Philippine provinces. For this purpose, the following research questions were formulated:

- What are the challenges in successful implementation of CARP/CARPER and how are they addressed or confronted?

- What are the causes preventing implementation of the land redistribution component?
- What is the availability of support services to agrarian reform beneficiaries?

While responding to these questions in order to avoid repetition and to follow interrelation between some aspects, the results/discussion section is divided into four sub-sections dealing with opposition by landlords, DAR, availability of support services and other causes of land conflicts. The rationale behind the province selection was that Leyte and Negros Occidental provinces rank among the provinces with lowest accomplishments in land acquisition and distribution. Bataan province was added because of the infamous land dispute of Sumalo farmers in Hermosa municipality, going back to 1989. Misamis Oriental and Bukidnon provinces could illustrate the specific issues related to the armed conflict on Mindanao and to indigenous peoples.

This paper uses mainly qualitative analysis based on fieldwork and observation, personal account, related publicly available documents and secondary data to analyze the complex social, economic and political issues related to the agrarian reform in the Philippines. Because of the qualitative rather than quantitative nature of the research, the primary methodological approach of the field data collection was a combination of 20 focus group discussions and 39 in-depth interviews to generate stakeholder information and perspectives about the impact, challenges and prospects of CARP/CARPER implementation. The field data were collected in May and July 2016 and January - February 2017 with the July 2016 experience helping to further fine-tune the design of the questioning and formulation of questions. The following semi-structured focus group discussions and key informant interviews were conducted:

- 16 focus group discussions with agrarian reform beneficiaries from Negros Occidental, Bukidnon, Misamis Oriental, Bataan and Leyte provinces, with minimum 7 and maximum 17 participants per group; 12 in-depth interviews with leaders of agrarian reform beneficiaries' groups or federations of these in Leyte and Bukidnon provinces
- 8 key informant interviews with DAR representatives in Misamis Oriental, Negros Occidental and Leyte provinces; 3 key informant interviews with Commission for Human Rights (CHR) employees at national level and in Misamis Oriental province and 1 key informant interview with police officer in Leyte province

- 4 focus group discussions with local NGO workers with minimum 5 and maximum 13 participants per group; 15 in-depth interviews with local NGO workers active in agrarian reform issues – 2 in Leyte, 3 in Misamis Oriental and 2 in Negros Occidental provinces as well as 8 at national level. The NGOs included KAISAHAN, established by one of the former DAR Secretaries in 1990, and ANGOC, active in land reform monitoring since 2010.

The semi-structured discussion between focus group discussion participants provided us with an opportunity to hear issues that may have not emerged from participants' individual interaction with us. The interaction among the participants led to increased emphasis on the participants' rather than our perspectives and permitted discovery of aspects of understanding that often remain hidden in the more conventional in-depth interviewing methods. Data were analyzed using content analysis where recurring themes were identified and coded to reflect the emerging patterns, which were interpreted later by the authors employing phenomenological approach using abductive reasoning. The paper also relies on dozens of semi-structured interviews with key Philippine and expatriate NGO workers and Philippine government representatives at various levels that were conducted by the first and second authors between November 2013 and February 2017 and helped to inform our understanding of CARP and land tenure issues in the Philippines as well as their dynamics.

We see the main limitation of this paper in the fact that agrarian reform is a multi-objective process involving ethical, political, social, economic and productive objectives among others. While such process necessitates complex, long-term evaluation, our constraints in terms of time and resources allowed us for just a rapid field appraisal. Moreover, in terms of sources of information we had to rely largely on peasants and local NGO workers and to smaller extent on DAR and CHR employees, all of which could contain several potential sources of bias, but were not able to conduct interviews with any of the landlords or local government representatives to triangulate the data and confront the reported information.

### 3. Results and discussion

#### *3.1 Opposition to CARP/CARPER from landlords*

During the focus group discussions and in-depth interviews across all studied provinces, opposition by landlords, either violent or through legal actions, was identified as a major setback in the completion of land redistribution. Agrarian reform beneficiaries reported to experience threats and harassment and in many cases physical harm. Negros DAR Regional Director recalled a daughter of an agrarian reform beneficiaries' leader having been raped, six assassinations of agrarian reform beneficiaries or prospective beneficiaries in 2016 only and many agrarian reform related harassment cases. Municipal Agrarian Reform Officer (MARO) in Ormoc municipality of Leyte province proclaimed the “resistance of landlords as the main challenge” for the land redistribution whereas landlords have the “access to state machinery and it is easier for them to mobilize trucks [full] of army [personnel] to protect their lands” than for agrarian reform beneficiaries to get police protection. According to DAR Regional Director, a landowner in Negros Occidental province engaged security guards to harass DAR land surveyors in order to delay coverage of his land by the agrarian reform.

Based on the anecdotal evidence collected by the authors during this research, a popular tactic by landlords is to pay a group of people to claim the very same plot of land that has already been or is about to be allocated to other peasants under the agrarian reform. During our research, we came to know at least four such cases in Leyte and two in Negros Occidental. In at least two of these Leyte cases, farmers disqualified by DAR were paid by the landlord to prevent those who received land ownership certificate from taking the actual possession of the land.

DAR informant in Misamis Oriental province reported that the “opposition from land owners to installation is very common. Sometimes it is because they claim that the Land Bank valued their lands less than market rate.” To make sure that the agrarian reform beneficiaries are able to take possession of the awarded land, DAR has to “schedule dialogue with local government units and police...” and make sure that police are present during the actual installation process.

In Cauayan municipality of Negros Occidental province, the ‘blue guards’ hired by the landlord used threats, intimidation and harassment to farmers and forced people to leave their homes and even closed down the church. In Cagayan de Oro municipality of Misamis Oriental province, a group of farmers claiming 18 hectares under CARP reported “harassment by hired goons who sprayed bullets” at them and destroyed at least 400 of their banana ‘trees’. In Sugbongcogo municipality of Misamis Oriental province, a group of peasants who were awarded land ownership certificates for a 13.5-hectare coconut plantation were threatened and physically assaulted by the landlord’s security guards until they gave up their efforts to take possession of the land. It was only few years later that an NGO and DAR under police protection helped them to finally take possession of the land. Even after that, the first harvest was taken by the people sent by the landlord, second time the farmers were able to harvest but the trucks with the harvest were confiscated by the landlord-hired good; this was confirmed by several DAR informants.

Landlords resort systematically to legal arguments as a way of delaying and thwarting the implementation of the agrarian reform and to de-legitimize farmers’ stakes and claims to the land. The Sugbongcogo case has reached all the way to the Supreme Court where it has been pending for more than one year now. In a separate case of Sugbongcogo, the landlord filed motions for reconsideration to demand exclusion of several agrarian reform beneficiaries on the ground that they were either owning land or residing elsewhere. Such petitions of exclusion are also common in Negros Occidental according to DAR Regional Director and KAISAHAN. In Kabankalan municipality of Negros Occidental, the landowner representative is using a legal catch that the notification of coverage was supposedly not delivered properly to and received by the landowner in 2014 and with the CARPER expiration, DAR is not legally able to reissue the notification of coverage anymore.

In some cases, landowners have filed cases of qualified theft and trespassing when tenants entered fields they had been farming for years or when they tried to harvest crops they had planted. Protest actions of agrarian reform beneficiaries or prospective beneficiaries are being criminalized as was the case of Sumalo farmers in Bataan province where our CHR informant, who used to be their legal defender, “unarmed farmers, including women, are prosecuted for threatening and coercing heavily armed guards.” Often security guards are filing these cases rather than landowners directly. In Cauayan municipality of Negros



Occidental province there is a standing warrant of arrest against three peasants for supposed arson; they have been in hiding for seven years and could not attend hearings of the civil court cases related to their land. Interestingly, this particular group of agrarian reform beneficiaries adopted the tactics of counter-claims and there has already been 21 cases in total filed by either of the sides included coercion, harassment, ejection, serious physical injury; most of these have already been decided in favor of the farmers.

Another delaying tactics employed by landowners according to Negros DAR Regional Director are so-called ‘chop chop titles’ where the land ownership is transferred to dummies or distant family members. DAR can “still cover these lands but it takes quite a long time” to prove that the land division was only virtual or artificial in order to avoid compulsory acquisition.

Negros DAR Regional Director shared one of the strategies to overcome the opposition of landlords: “Landlords sometimes change their stance after they are visited by the Church representatives because you cannot say no to the Bishop.” DAR informants in Misamis Oriental province explained how the mayor is instrumental in overcoming the landlord opposition: “Last time when the landowner was evicting the agrarian reform beneficiaries from the CARP land, the mayor went with the police to help them back; the peasants are his voters.” However, this cannot be expected when the political leaders come from landowning family clans like Llarazabals-Loconsins in Ormoc or Bantugs-Benitez, Starkes and Guanzons of Negros Occidental.

In concluding this subchapter, let us quote Negros DAR Regional Director: “CARP has been experiencing strong resistance from landowners even if due process has been observed. Would their resistance to a more radical Genuine Agrarian Reform not be much stronger?”

### ***3.2 DAR capacities, performance and perceptions***

The peasant focus group discussion participants mostly agreed that DAR despite ‘being slow at times’ is ‘on their side’. Participants of one focus group discussion claimed: “DAR staff has become interested in the peasants’ plight only after Mariano became the Secretary.” At the same time, during several focus group discussions in Misamis Oriental and Negros

Occidental, agrarian reform beneficiaries and prospective beneficiaries shared several anecdotes of collusion between DAR officials, at municipal and barangay (the lowest administrative unit) levels, with landowners and real estate developers in order to evade the land acquisition. Participants of one of the Negros Occidental focus group discussions agreed among themselves: “DAR and Department of Agriculture are very supportive, but the problem lies with the officials of local government units who are in pay of landlords.” Interestingly, there is a large variability in barangay captains’ attitude to farmers – from barangay captains who are actually agrarian reform beneficiaries themselves and are criminalized for their leadership efforts as in Sumalo of Bataan province, over barangay captains who are sympathetic or at least indifferent to peasants’ plight to barangay captains who are likely corrupt or loyal to their landholding political patrons as our focus group discussion and interviews indicated.

One of the reasons why some agrarian reform beneficiaries in at least three sites in Negros Occidental were not able to get possession of their lands was the fact that the land boundaries according GPS coordinates on issued land ownership certificates were located in the ocean. While during the focus group discussion, the farmers were convinced that this indicates to corruption of DAR or Land Bank officials, DAR Regional Director had a different explanation: “We rushed in order to meet the July 2014 deadline for land acquisition by CARPER, so some mistakes during land survey have been made.” In Sagay municipality, the area of CARPER lands in the sea is as large as 500 hectares. DAR can correct some of these obviously erroneous land redistributions, especially if the notice of coverage has been published, however, the Regional Director expects that “landowners will use [such errors] to file cases [disputing] the land redistributions. For notices with major problems and not published yet, the farmers have no choice but to wait for a promulgation of the new [agrarian reform] law which would warrant DAR” to continue with land acquisition. In Kabankalan municipality, the focus group discussion participants reported that a one-time MARO threatened them with a gun during their non-violent protest and that later their 1995 file was supposedly lost by another MARO and thus they needed to restart the application process from the beginning. In Bago municipality of Negros Occidental province, Calumangan farmers have not hesitated to file a legal case against DAR for delaying CARP implementation in their case.

While there is a widespread assumption that CARP/CARPER faces lack of financial resources given the landlords' influence on the Senate, the key informant interviews conducted as a part of this research largely contradicted it. Provincial Agrarian Reform Officer (PARO) of Misamis Oriental reported that the office has "more than enough funds" for CARPER implementation and the problem is rather in recurrent underspending of these funds. This contrasted with the situation in Leyte province, where MARO in Ormoc reported lack of financial resources in the past few years while stressing the recent positive change under the new Duterte's administration. The difference in funding levels between these two provinces could probably be explained by the fact that, lying on the conflict-affected island of Mindanao, Misamis Oriental province is a primary target for foreign development assistance and most of the funds come from donors and lenders such as the European Union, Japan International Cooperation Agency (JICA), International Fund for Agricultural Development (IFAD), World Bank and Asian Development Bank (ADB) rather than through the government's annual budget allocation. The relative availability of foreign originated funds to support CARP was also reported in Negros Occidental by interviewed DAR and NGO employees.

### ***3.3 Availability of support services to agrarian reform beneficiaries***

The lack of support services and access to credit is a common problem reported by all the agrarian reform beneficiaries and NGO informants during the focus group discussions and in-depth interviews. Out of the 12 installed agrarian reform beneficiaries groups in Leyte, none has received any support services or had access to credit and finance from the government with the exception of one group of agrarian reform beneficiaries receiving a two-wheel tractor for paddy cultivation from the Department of Agriculture. Where limited support services were provided, these came rather from NGOs such as KAISAHAN rather than from the government; local government unit included some of the agrarian reform beneficiaries into their training program and seeds distribution program but they did not provide any machinery. MARO reported not to have had any funds for support services in 2016.

PARO in Cagayan de Oro stressed the fact that support services extended through Agrarian Reform Communities are available to all peasants regardless whether they obtained land through CARP/CARPER or not. At the same time, agrarian reform beneficiaries, who are not

organized and living in an Agrarian Reform Community, do not receive any support in Misamis Oriental province. The largely foreign funded projects to Agrarian Reform Communities focus on high value crops such turmeric and cocoa as well as post-harvest facilities and value chain development for coco sugar or *abaca* fiber. The support also includes Farmer Business School, social entrepreneurship, sanitation in rural barangays and even biofuel production. Negros DAR Regional Director confirmed that in Negros Occidental, provision of support services is limited only to those who are organized. In creating necessary economy of scale for sugar cane cultivation, DAR has a real success story to report: “64 sugar block farms pulled their small landholdings to create larger farms which were then provided with technical assistance and establishment of nurseries with new crop varieties. The complete package included institutional development, shredders, farm equipment, cane loaders, organic fertilizers, tractors... They were also able to access agrarian credit program through the Land Bank.” According to an informant from PAKISAMA, a national peasant confederation: “There are special show-case projects in three municipalities of Bukidnon province which receive a lot of support. These are especially resettlement areas [of the surrendered Huk rebel from 1950s]. In contrast to this, there are Agrarian Reform Communities, like Sumilao, that receive only limited support and even that takes too long. For example, mechanical dryer approved in 2013 by Department of Agriculture, has not been received yet. At the beginning DAR has provided us with 2 million pesos [approximately 40,000 USD] of seed funds and Department of Agriculture post-harvest facilities, but more is needed to bring about value addition.”

An interesting opinion agreed among one focus group discussion participants in Negros Occidental was that “if DAR favors you, you get more” in terms of support services. In Escalante municipality of Negros Occidental, interviewed agrarian reform beneficiaries received financial support through the Land Bank and DAR, as well as training from DAR in accounting, financial management, strategic planning and leadership. One focus group discussion participants in Kabankalan municipality of Negros Occidental claimed that “DAR does not provide any support services here. We only know about one association around South Carlos which has received one tractor.” Focus group discussion participants in Sugbongcogo municipality told us about planned Department of Agriculture distribution of cacao and coffee seedlings that was stopped by DAR because their “case was pending at the Supreme Court.” Unlike in Leyte province, where NGOs are virtually the only provider of

support services, Negros DAR Regional Director was critical about the fact that “NGOs focus just on farmers getting the land, but they lack the attention to what happens after that.”

According to the NGO informants different DAR offices approach support services differently. In Negros Occidental “DAR is more effective compared to Negros Oriental where farmers can’t get anything. In Negros Occidental farmers receive land ownership certificate in the morning and paycheck in the afternoon while elsewhere, farmers have to borrow from a loan shark using land ownership certificate as [collateral] security.” During the focus group discussions and in-depth interviews farmers in Leyte and Negros Occidental often mentioned problematic access to credit. In both provinces, *aryendo* is reported to be rampant; in Leyte farmers reported that they take 3-month loans from rice traders with the usurious 30% interest rate per month, while in Negros Occidental the interest rate was supposedly 20% per month. Leyte farmers told us of a group of agrarian reform beneficiaries who lost effective control of their lands because of a failed harvest and consequently their inability to repay the loan. Improvements in credit access will thus continue to be an important condition for achieving sustainable outcome of the agrarian reform.

The agrarian reform involves transition of peasants from mere dependent farmworkers to new farmer-owners. According to Negros DAR Regional Director, “attitude of farmers in the former sugar plantations and their feudal mindset from *hacienda* represent another challenge for the agrarian reform implementation and this needs to be addressed. As farmworkers, they are used to believe and obey whatever their landlord tells them. They are not able of critical, independent thinking.” This important component of social transformation is left out by the agrarian reform and thus should be complemented by the civil society. According to Negros DAR Regional Director “in order to sustain the gains of the agrarian reform this needs to be done already by the time of the land distribution,” so that the beneficiaries are ready to become viable entrepreneurs.

### ***3.4 Other causes of land conflicts***

Other causes for exacerbation of land conflicts and significant obstacles in successful agrarian reform implementation are premature land conversion, land grabbing, voluntary-offer-to-sell and conflicts with ancestral domain scheme under the Indigenous Peoples Rights Act as will

be illustrated by following eight cases. In Kabankalan municipality of Negros Occidental province, three months after a 1,703-hectare sugar cane plantation was included in CARP coverage, MARO informed the farmers according to their narrative “that the land will be converted to housing estate and that municipality will make corresponding zoning ordinance.” Such conversion is illegal without prior DAR approval, which has not been given in this case as Negros DAR Regional Director confirmed. In the meantime, the housing construction has been ongoing. Similarly in Cagayan de Oro municipality of Misamis Oriental province, 18 hectares of land has been put under the notification of coverage by DAR in January 2008 but before DAR managed to issue land ownership certificates, the application for land conversion from agriculture land to a housing project has been approved by the municipality. Informant from a group of agrarian reform beneficiaries from Hinoba-an municipality, Negros Occidental province who have been farming the lands acquired through CARP since 1999 told us about their concerns of a “possible eviction by the provincial government and local government unit because of a large-scale Japanese investment consisting of ecotourism project, airport and seaport.”

In 1989 Sumalo farmers in Bataan province were offered 124 hectares of land through voluntary-offer-to-sell mechanism but before this had been processed, the landowner applied for land conversion. The farmers thus filed a petition to the Office of the President and succeeded in stopping the conversion. However, with the Supreme Court reversed the decision based on a technicality in 2006. After five years, during which farmers experienced harassment, staged several rallies, including one in front of DAR national office that lasted 1 year, 8 months and 6 days, DAR revoked the conversion because the land had not developed by the landowner in line with the approved conversion as prescribed by the law. However, the farmers have not obtained the control of the land yet. Another infamous case are Sumilao farmers of Bukidnon province who were struggling for 21 years to get land under CARP. In the last years of this struggle, their efforts were directed against the planned land conversion for the establishment of a hog farm by the San Miguel Foods Inc. Their efforts included hunger strike and a two-month 1,700-kilometre walk from Mindanao to Manila DAR national offices in 2007. Three years after this walk, the farmers have been awarded land ownership certificates for 144 hectares of land.

An NGO informant described how in Negros Occidental province Cuanco corporation supposedly used voluntary-offer-to-sell scheme to keep control of the land through lease back mechanism. After the voluntary-offer-to-sell was made, Cuanco built irrigation scheme and established orchards for pili nut, rambutan, durian and green *tambis* that led to very high valuation of the land which the farmers were not possibly able to pay. As a part of the leaseback package, Cuanco promised to pay rent of 10,000 to 15,000 pesos (200 to 300 USD) per hectare per year, provide jobs and payment of the annual amortization. However, reportedly, no jobs have been extended so far and amortization is yet to be paid.

We wrote elsewhere on the land tenure issues faced by indigenous peoples in Mindanao. One of the interviewed DAR representatives in Misamis Oriental cited as another reason for slow CARP/CARPER implementation that “almost all Mindanao is claimed by indigenous peoples as their ancestral domains. We have to issue our land titles within the ancestral domains if we are to implement the agrarian reform at all.” This informant also added that some indigenous people actually prefer to obtain the land titles through CARP rather than as ancestral domain based on the Indigenous Peoples Rights Act because under CARP “it comes together with support services.” Several government informants, including CHR representative in Manila, referred to a recent violent conflict resulting in several deaths within one tribal community in Bukidnon province between a group of indigenous peoples who claimed ancestral domain titles and another indigenous group who received the land ownership certificates under CARP and leased it to an agribusiness for a large-scale pineapple plantation. A case from Malaybalay municipality of Bukidnon province shows that land redistribution may not only be delayed because of landlords, developers or agribusiness. A particular plot of land here had to be surveyed already five times by DAR, as the focus group discussion participants reported, because boundary stones were removed by other peasants from the same barangay who claimed to be legitimate beneficiaries as well.

## **4. Conclusion**

It is difficult to define success or failure of an agrarian reform. The land redistribution achieved by CARP together with support services and infrastructure provided to the Agrarian Reform Communities are undisputable success. However, as we showed on the cases from five provinces, the agrarian reform faces a range of significant challenges. We conclude in

line with Cox et al. (2003), that also in the Philippines the implementation of agrarian reform encounters many critical constraints such as slow bureaucracy, lack of support services and landowning classes with the political and administrative connections to protect their vested interests leading to inadequate implementation of the reform laws. We showed how landlords resort systematically to legal arguments as a way of delaying the implementation of the agrarian reform and to de-legitimize farmers' claims to the land. In DAR's perspective, it is not cost-effective to provide a package of support services to a handful of agrarian reform beneficiaries and support services are thus largely limited only to the Agrarian Reform Communities. In most cases, the lack of adequate and appropriate support services, access to credit, farm implements, seeds, etc. remains a problem. As a result of weak managerial capacities of agrarian reform beneficiaries and limited access to credit not all beneficiaries become viable entrepreneurs and some may be forced to sell their newly acquired land because of their inability to generate sustainable income from it, inability to pay their amortization or ending in a debt-trap.

When discussing land reform, its political aspects are no less important than its economic aspects. The landowner class tends to be well represented in the ruling elites of most developing countries, which gives "them enormous political power that they can use to block, stall, or undermine efforts to carry out land reforms" (Banerjee, 1999). As shows the experience of "Taiwan and South Korea, where successful land redistribution took place after the end of a major war and under the 'communist' threat, and... Indian states of Kerala and West Bengal, where land reforms were key elements in egalitarian social change," the success of a land reform "ultimately depends upon strong political power allied to land reform challenging resistance by landed interests" (Cotula et al. 2006). We are reaching the same conclusion as Lavelle (2013) formulated in connection with the land reform in Venezuela that rather than confronting power structures the agrarian reform in the Philippines left landowners in dominant economic positions.

Many questions for further multidisciplinary research unfold from our work both in terms of land/agrarian reform in general or CARP/CARPER in particular. Is there a correlation between left-wing insurgency and extreme inequity in the land distribution in rural areas? What is the relationship between the land inequality and the poverty reduction potential of agricultural growth? What is the impact of CARP/CARPER on competitiveness or economic



welfare of the agrarian reform beneficiaries? How has the relevance of land distribution to small farmers been changing over the almost three decades of the agrarian reform implementation given the rural-urban migration, aging farmer population and decrease in the relative importance of agriculture in the Philippine gross domestic product? Is the assumption that land reform may help keep people in rural areas instead of them moving to cities correct? Since there is not enough land available to provide to all the prospective agrarian reform beneficiaries, what are the alternatives? For cultivation of certain crops, such as sugar cane, economy of scale is critical, what are the best effective ways to consolidate the distributed lands?

The authors are aware that a complex and progressing program like the agrarian reform in the Philippines is difficult to capture in its entirety, hence this study does not claim to cover fully all the relevant aspects. However, we believe that our results will provide useful information and guidance for policy makers as well as for other researchers.

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