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PHOTOS BY JIMMY DOMINGO

## Understanding Land Grabbing, Land Rights in the 21st Century

Issues or problems associated with land have become more multi-layered in the 21st century. In the Philippines, a number of “pro-poor” land laws were enacted after the Marcos dictatorship. These laws were products of social movements’ struggles and mass movement assertions on land rights in a democratic set-up. The 1987 Constitution has a very strong social justice component which recognizes the rights of farmers/peasants to land, of fisherfolk to traditional fishing ground, and of indigenous peoples (IPs) to ancestral lands.

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One of the enabling laws proceeding from the Constitution should have helped fulfill the farmers right to land. But it has now taken 27 years for the Comprehensive Agrarian Reform Program, one of the longest running agrarian reform programs under a democratic form of government, to be implemented. CARP was crafted according to the ideals and interests of landless tillers and agrarian reform advocates, but ended up as a law plugged with provisions upholding landed elite interests dominating Philippine Congress. Farmers and fishers do not just have to contend with an agrarian reform program that has not been completed and is found most wanting after almost three decades, but complicating their situation, both those who have been targeted as agrarian reform beneficiaries and those who have been issued CLOAs and titles, is the phenomenon called land grabbing.

In this special, double edition of *Focus Policy Review*, this is one of the main themes discussed. It is critical for farmers and advocates of land rights as well as the general public to understand how and why land grabbing is happening to make a more effective, strategic campaigning to address and stop it. As the lead article underscores, “land grabbing...have almost always been framed within the themes of economic investment, human rights, and governance. Underpinning these themes is the issue of power...” because land grabbing is a political issue with economic goals. We need to know the basics about land grabbing—the who, what, where, and how—in order to grasp the complexities of the issue. What

***These developments that have allowed land grabbing and disaster capitalism have been helped, if not pushed, by government’s own policies.***

has happened and continues to happen in the development of Boracay for tourism is a compelling case on this.

A more recent context for land grabbing has emerged. In the aftermath of super typhoon Yolanda/Haiyan, disaster capitalism exacerbated the conflicts around lands and the situation of the survivors, many of whom are rural poor or belong to farming and fishing communities. Government’s recovery and rebuilding initiatives have paved the way for the entry of corporations/land developers whose interests collide with those of the affected rural communities. The article *When Disasters Clear the Land: Narratives of Post-Yolanda Land Contestations* discusses how the implementation of the agrarian reform program has been stalled in the aftermath of the disaster, and how this gap is now becoming an opportunity for more corporations rather than for the recovery of the affected communities.

These developments that have allowed land grabbing and disaster capitalism to take place and gain ground have been helped, if not pushed, by government’s own policies, specifically on investments and private-public partnerships. In the piece *More Investments in Land: Aquino’s Policies*, readers will get a view of the specific policy initiatives of government as well as existing laws that are conflicting with or even undermining farmers and rural poor’s land rights.

Land grabbing and the struggle for land rights are not merely local or national; policies and actors outside the Philippines are not only affecting these phenomena but are in fact the main drivers behind these. The regional (Asian) and global contexts of land grabbing and other recently emerging land-related issues, such as challenges and threats to land rights, are provided in the articles *Challenging Financial Sector Backing to Land Enclosures* and *Financialization of the Global Food System and its Implication for Local Land Investments*.

Land grabbing should be understood in the context of land rights, defined as the right to use, control, own, and benefit from the land’s wealth. In as much as global corporations create and/or resort to instruments that back them up in their practices and activities that are in conflict with land rights, there are on the other hand legal tools that uphold and promote these rights, and it would help activists, advocates, and campaigners to deepen their knowledge of these tools, which are discussed in the write-up *International Human Rights Instruments and Legal Tools for the Global Governance of Land, Forests, Fisheries, and Natural Resources*. **R CVMilitante**

# Standing on Contentious Grounds: Land Grabbing, Philippine Style

By Mary Ann Manahan, Jerik Cruz, and Danilo Carranza

Land grabbing as presently practiced “primarily refers to large-scale land acquisitions following the 2007-2008 world food price crisis. Obtaining water resources is usually critical to the acquisitions, so that it has led to an associated trend of water grabbing.”<sup>1</sup> It is typically accomplished through illegitimate means and which involves exploitation of land-associated resources such as water, minerals, forests. The actors at the losing end from whom these resources are ‘grabbed’ are often rural smallholders, such as farmers, fisherfolk, and indigenous peoples. While this definition of land grabbing has been widely adopted, discussions on land grabbing across the international community, especially among civil society organizations, have almost always been framed within the themes of economic investment, human rights, and governance.

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PHOTO BY JIMMY DOMINGO



*Fenced in/fenced out. Farmers and residents in the village of Sumalo, Hermosa, Bataan endure modern-day enclosures as they contest the ownership of 214 hectares of agricultural lands vs a real estate company*

◀ **STANDING ON CONTENTIOUS GROUNDS...from page 3**

Underpinning these themes is the issue of power: why are the resources ‘grabbed’; who are the ‘grabbers’ and why are they able to do these; who decides over the use of the resources; who is benefited and who are exploited. Land grabbing is a political issue that is also driven by economic objectives. The State plays a key role as one of the main actors either allowing the phenomenon or regulating it. It is not only a main actor, but the agency from which these decisions may originate. Either the State is weak and cannot implement laws to protect the lands for the benefit of the public, or it promotes corporate interest.

In the Philippines, in the midst of an unfinished agrarian reform program ineffectively and inefficiently implemented by government, many landless and land-dependent rural poor communities face the spectre of forcible evictions, dispossession, displacement, and hunger as consequences of systematic land grabbing by landlords and local and foreign corporations and investors. Land grabbing has emerged as one of the most pressing social justice issues affecting the Philippine countryside. But while land grabbing in the country is hardly new, the ongoing wave of land grabs endangering the rights of rural communities involves certain features that distinguish it from large-scale land seizures in the past and as they happened in other parts of the globe.

**Re-concentration and consolidation**

Based on a highly cited 2010 World Bank (WB) report<sup>2</sup>, the Philippines was the second top ‘destination’ country, or recipient country according to the parlance of the WB, in the Asia-Pacific where large-scale land acquisitions occurred in that period. The Philippine government earmarked 3.1 million hectares of lands for investments by multinational companies and foreign governments, indicating government’s aggressiveness in investment policy for land and land-related resources.

With policy pronouncements and an enabling environment geared towards investments (see article on *Investment Policies under the Aquino Administration*), land grabbing in the country has escalated over the past six years in different guises. These primary forms of land-grabbing involve old and new forms of feudal land acquisitions

and land accumulation for real estate development, tourism, special economic zones, mining, dams, industrial agriculture purposes, and new investments on ‘clean’ energy. These types of ‘investments’ put a lot of pressure on thousands of rural poor who are dependent on land and immediate water resources for food and livelihoods. The weak enforcement of pro-poor land policies such as the Comprehensive Agrarian Reform Program (CARP), Indigenous People’s Rights Act (IPRA), and Community-Based Forest Management Program (CBFMP) has reinforced and encouraged land grabbing. The situation is further aggravated by government’s failure to protect the most basic rights of the affected communities who are arbitrarily being driven out of lands they till as well as by recent policy pronouncements to clear the land in the name of ‘safety’ from climate change-induced disasters, such as what is happening in areas devastated by super typhoon Haiyan/Yolanda in 2013. (See article on page 10)

**Special economic zones and tourism**

The systematic wave of land grabbing is illustrated in a number of cases. First is the case triggered by the momentum for real estate, tourism, and development of special economic zones. This is coming from long-standing efforts of landed elites to evade the 27-year old Comprehensive Agrarian Reform Program. Thus, their route is towards land-use conversions (both legal and illegal), as well as for cashing-in on the latest Philippine property market boom, which has been ongoing since 2010. From that year onwards, key economic sectors associated with the property acquisition and development boom, especially in real estate, and construction and financial intermediation, have outstripped the Philippines’ national growth rates, reflecting highly-intensified economic activity in these sectors.

Among the most prominent cases involved in this form of land grabs are those of 12,923-hectare Aurora Pacific Economic Zone and Freeport Authority (APECO) in Casiguran, Aurora, located more than 300 kilometres from Manila. With one of the most influential political dynasties, the Angaras, behind it, the special economic zone was created through a law backed by government. The Angaras are known government officials and politicians in the national legislature and local government units. These positions have allegedly allowed them to not only

# *Land grabbing is a political issue that is also driven by economic objectives.*

determine land use and zoning, but more importantly, to receive significant economic rents and benefits from such a project at the expense of smallholder residents and tenants, among them indigenous peoples, fishers, and farmers.

Another example is the re-development for eco-tourism of the 1,160-hectare Sicogon Island in Iloilo by the Sicogon Island Development Corporation (SIDECO) and Ayala Land; there is also the ‘transformation’ of 1,125-hectares of agricultural and ancestral lands in Hacienda Dolores in Porac, Pampanga into “Alvierra: The Next Nuvali,” another real estate project by Ayala Land.

In Sicogon, an island in Carles, Iloilo comprising three barangays, more than 1,500 farmer-fishers have been subjected to various forms of intimidation by the hired private blue guards of SIDECO who forcibly evicted the residents from the island for the eco-tourism project. The island is in the area of the Visayan Sea, the richest fishing ground in Central Visayas. The local landed clan of the Sarroza, which owns SIDECO, was able to secure ‘titles’ for a portion of the 1,020 hectare island despite the land being classified as public. On the other hand, certain portions of the island—about 300 hectares—have already been marked for land distribution to the farmers, though not without much contestation. Complicating matters was how the disaster has made the process of dispossession a lot easier, as residents who were evacuated have now been barred from rebuilding the houses destroyed by the typhoon.

In Porac, Pampanga, in Central Luzon region, indigenous peoples and farmers are being threatened by the corporation Leonio Land or formerly FL Properties and Management Corporation/LLL Holdings, Inc. (FL/LLL), and more recently, by Ayala Land, Inc., which claims more or less 761 hectares of land. Ayala Land, Inc. is one of the oldest conglomerates owned by Spaniard-descent family Ayala de Zobels with interests in different key sectors of the economy such was water, telecommunication, banking, and finance. Said land was exempted from agrarian reform in 2006, despite being an agricultural area planted to rice, fruits, and root crops. For years, the residents, farmers, and indigenous peoples of Hacienda Dolores have experienced systematic harassment and violations of their rights through verbal threats, physical assaults, intimidation, criminalization, forcible eviction, destruction of crops and other properties, killings, and enclosure of the land. More than 200 farmers were refused entry into the lands they have tilled for years. Meanwhile about 1,000 residents have already been affected by the unjust and illegal demolition of their houses. Two farmer leaders were killed in the past couple of years, an act allegedly perpetrated by gunmen associated with the private security firm of the real estate developer.

A similar story is found in Bataan province. Long-time farmer-residents of the village of Sumalo in Hermosa were surprised to learn that the Litton family were the title holders of the 213-hectare land that they had been cultivating for decades. The Littons of Forbes Park high society crowd were able to get a conversion order from the Department of Agrarian Reform (DAR), which is ironic being the country’s main agency mandated to implement the agrarian reform program. This order has been used to justify the enclosure of the farmland and arbitrary demolition of houses farmers who are leading the campaign to reclaim their lands. A total of 1,500 families have been affected by the planned conversion of the land being undertaken through a corporation named Riverforest Development Corporation.

## **Resource extraction and infrastructure**

The second type of land grabbing in the Philippines is caused by mining and mega-dam projects creating large-scale hazards to farming and indigenous communities. The dangers come from corporations’ direct acquisition

of lands which are inhabited by such communities without first securing their *Free, Prior and Informed Consent* (FPIC) and from these economic projects' extensive negative effects on the overall rural environment downstream of the immediate project sites.

The passage of the Mining Act of 1995, which liberalized the mining industry, introduced aggressive minerals development across the country and loosened long-standing mining restrictions. With the law in place, 100 percent foreign ownership of mining properties of up to 81,000 hectares of land for 50 years has been allowed. Mining companies have also been given auxiliary entitlements to water, timber, and easement rights. Official government data show that mining permits have increased in the last 10 years after the law's passage. One form of permit is the Minerals Production and Sharing Agreement (MPSA), a contract between the Philippine government and a mining company allowing the latter to utilize and develop commercial mines for 25 years and with said agreement renewable for the same amount of time. Then there is the so-called Exploration Permit (EPs)<sup>3</sup> granted to a mining company for two years, renewable for another four in the case of non-metallic minerals, and six for metallic. Since the passage of the Mining Act, 411 mining and exploration permits were approved, which covered close to 873,000 hectares of lands, mostly in the uplands and indigenous peoples' ancestral domains.

Most recent notable cases of mining are those of the 9,605-hectare Tampakan Mine Project in South Cotabato province in Mindanao and the 3,085-hectare exploration by the Semirara Mining Corporation in Caluya Island, Antique, Central Philippines. In both cases, huge foreign capital financed the resource extraction activities. Similarly, the construction of a mega-dam in Jalaur, Iloilo, is allegedly funded by the South Korean Export Import Bank. Proposed by the National Irrigation Authority (NIA), the Jalaur dam, which will be built along the Jalaur River, is the solution of government to address the irrigation, drinking water, and electricity problems of downstream communities in Iloilo. But indigenous peoples, the Catholic Church, and environmental groups have dubbed the project "killer dam," as it is expected to create massive environmental and social problems. It will submerge 4,000 hectares of ancestral lands delineated by the National Commission for Indigenous Peoples (NCIP). According

to the affected IPs, the FPIC was forcefully obtained and allegedly manipulated by NCIP officials, even as the costs and effects of the dam on the indigenous peoples have not been properly explained.

### **Industrial agriculture and biofuels as 'clean energy'**

The third type of land grabbing has to do with development of biofuels. Given the decades-long stagnation of the agricultural sector in the Philippines, influential business groups, together with certain government agencies, are seeking to reverse the past gains of land reform in order to establish industrial, plantation-based agribusiness in the countryside at the expense of smallholder farming. While much of this agro-industrial thrust involves the cultivation of cash-crops such as biofuels and other export crops, recent years have also seen the rapid expansion of oil palm plantations, especially in Mindanao and Palawan.

On May 26, 2014, Environment and Natural Resources Secretary Ramon Paje Jr. proposed the earmarking of eight million hectares of land across the Philippines for oil palm plantations to be operated by both national and international agribusiness firms<sup>4</sup>. This proposal has been particularly disturbing, given that the Philippines has only 30 million hectares of total land resources.

What is equally problematic is the continued government push for what is already considered failed biofuels program, and despite calls for review by the agriculture and energy secretaries. In September 2011, the agriculture department led by Secretary Proceso Alcala initiated a critical review of past foreign land deals on the basis of the food security and rice-self sufficiency thrust of the current Aquino administration. Meanwhile, in May 2012, the Department of Energy (DOE) announced publicly that it would be revisiting the national biofuels program mandated by Republic Act (RA) 9367 or the Biofuels Act of 2006, after the initial implementation of the program proved to be unimpressive.

The lands to be developed according to the law are "idle, new, untenured and marginal"; the investments should be guided by laws for agrarian reform, forest land, and indigenous peoples' rights. Despite the estimated 2015 Philippine population of 107 million, it is assumed by such policy positions that there are still significant

stretches of lands that are unpopulated and unused by smallholders, and that the continuing problem of rural poverty and hunger is simply a result of lack of investment by the commercial sector.

In reality, however, very little rural lands in the Philippines (except perhaps for deep rainforest) remain “idle” and “unpopulated”. Careful analyses of the sites of land-grabbing have revealed that the areas being targeted by elites and investors are hardly “marginal,” but are in fact prime rural lands.

Recent case studies<sup>5</sup> of land deals and agro-investments have uncovered that lands converted to biofuels are in fact areas planted to rice, some of which have irrigation facilities, and to other major crops. Such is the case of the land managed by farmers of Tagkawayan, Quezon province in southern Luzon. The farmers are occupying timberlands planted to fruit trees and upland rice under the Community-based Forest Management Program, which sought to deepen community management of forests through practices such as agroforestry, reforestation, and natural regeneration. When the Biofuels Act of 2006 took effect, the local government of the province of Quezon in partnership with the DENR and the Philippine National Oil Company (PNOC) convinced the farmers to plant *jathropa* supposedly to produce raw materials for biodiesel production. To finance the project, the farmers through their cooperative were allowed to loan close to US\$ 115,000 (Php 5 Million) from the Land Bank of the Philippines (LBP). The government, however, was not ready to process the *jathropa* seeds into biodiesel. In 2011, the Department of Trade and Industry declared that *jathropa* was not viable as a raw material for biodiesel production. With the target market fizzling out, the farmers’ cooperative is now mired in indebtedness. The LBP insists that the loan be paid despite this failed project being conceived and proposed by government in the first place.

### Agents of ‘control grabbing’

The main actors behind the present wave of land-grabbing in the Philippines can be classified into five groups:

- national economic elites and their companies;
- rural elites and landlords;
- national and local government officials;
- high-level neoliberal economists and technocrats;

- groups offering specialized services for national and/or local elites such as private security firms; consolidators or individuals or corporations that act as middle persons who buy lands from different individuals; financiers or brokers.

National economic elites and their companies are mostly giant property developers and other land development firms such as in the case of mining. These economic elites are among the richest in the country. Of particular significance are the land firms owned by top Philippine capitalists Henry Sy (SM Development Corp.), David Consunji (DMCI/Semirara Mining Corp.), Jaime Zobel de Ayala (Ayala Land), and former Senator Manuel Villar (Vista Land and Lifescapes Inc.), among others. In the 20<sup>th</sup> century, most national elites preferred to retain large expanses of landholdings as haciendas, but today the richest landed elites in the Philippines are more oriented towards redeveloping rural lands for residential and commercial use, with anticipated large-scale returns from such mega land use changes.

Local elites and landlords—such as the Sarroza family (owners of SIDECO in Iloilo) and the Angara political clan (creators of APECO in Aurora)—often partner with national elites in order to implement most deals. If they themselves are not government officials, such rural elites typically have extensive connections with local and national government who are vested with zoning powers. In driving forward the sale or conversion of these lands, these local landlords often stand to receive significant economic rents, at the expense of smallholder residents and tenants.

Critical to the “success” of land grabs is the active support of government officials at both local and national levels, in order to implement government policies or mediate land disputes in a manner beneficial to the elites. Land grabbers thus often have a network of connections in numerous agencies, which often include key agencies such as DAR, the DENR, Land Registration Authority (LRA), and the Department of Agriculture (DA), as well as various courts and police/military forces.

Landed elites may also seek to draw from studies of or even harness the direct support of high-level economic analysts and technocrats to provide a veneer of credibility to their land projects and deals. Usually, a key objective

in harnessing the support of such policy experts is to demonstrate that their land deals have ample economic “benefits” that surpass the immediate “costs” to communities they negatively impact. One clear example of this is Ayala Land’s direct support to neoliberal economist Dr. Raul V. Fabella’s recent series of lectures entitled “*CARP: Time to Let Go*,” which sought to provide critique of the impact of CARP in order to justify the program’s abolition<sup>6</sup>.

Finally, both local and national elites, in their efforts to acquire lands, often contract the services of numerous groups such as lawyers, media spin-doctors, and armed security personnel. Without support by civil society and in the absence pro-farmer government officials, the extensive provision of these services at both local and national levels ensure that the leverage elites possess influence land disputes.

### Reclaiming and defending rural poor’s land rights

In sum, the aggressive push of domestic corporations, political and economic elites, and landlords for their profit-driven and rent-seeking agenda through eco-tourism, real estate investments, and “clean energy” investments have rendered already marginalized sectors of farmers, fishers, indigenous peoples, and other rural communities more powerless through mechanisms such as:

- forcible evictions
- killings
- criminalization/imprisonment of land right claimants
- bankruptcy of forest occupants
- continuing human rights abuse/violations
- control of land and mode of production
- land re-concentration

With traditional households continuing to be mired in poverty, and amidst increasing pressures from land developers and other elites to seize lands for commercial use, landlessness and lack of access to land resources are bound to worsen in the absence of concerted action to defend communities of rural smallholders.

Amidst this pattern of control, dispossession and human rights violations triggered by land grabbing, the government’s inaction and failure to ensure and protect human rights have contributed to the phenomenon. The government is accountable and should be made primarily

responsible for restoring farmers, fishers and indigenous peoples’ basic rights and freedoms, particularly their right to land that is not only threatened but is actually been taken away from them.

There are various campaigns to stop land grabbing and promote/protect the rights of the rural poor to land and other productive resources; these are being waged by advocacy groups such as the Save Agrarian Reform Alliance, the Task Force Anti-APECO, and Bulig Sicogon Island. While these campaigns focus on various issues, they are framed along similar rights-based demands:

- **Right to land and territories.** The main rights that are being violated are the affected communities right to land as guaranteed by the Philippine Constitution: the right to own the lands they till under the Comprehensive Agrarian Reform Program; the right to long term tenure and management of forest resources through agro-forestry as enunciated in the Community-Based Forest Management Program; and the right of indigenous peoples to their ancestral domain under the Indigenous Peoples’ Rights Act.
- **Right to sustainable use of coastal resources.** The eviction of fishers from the island of Sicogon for example, violates their right to municipal waters not only as a source of livelihood but as a resource for future generations of fishers. Coastal resources are not just for eco-tourism. These are, ultimately, for the realization of the right to sound agro-ecology, source of food, and natural resource for future generations. The recent climate-change induced disasters have been used as pretext for enclosures, relocations, and privatization of these resources.
- **Right to water.** As many land grabbing cases rest on the importance of access to water resources, the rights of communities to water, especially drinking and irrigation, are compromised.
- **Freedom of and right to information.** A key issue for people’s movements is ensuring the right to information because in the majority of land grabbing deals, local communities are kept in the dark. For example, the deal between the Philippine government and Chinese state-owned and private corporations was blocked as a result of public unrest anchored on demands for transparency, disclosure and access to information, primarily about the local consequences of such deals.

• **Pro-poor, gender-just, and smallholder investments.**

Public investments that support the progressive realization of the right to adequate food in the context of national food security are needed. This has been recognized no less than by the United Nations. Public investments should highlight the smallholders' role and ensure recognition of their crucial contributions and investments as small-scale food producers and providers in securing the right to food, building local economies, employment, and creating dynamic communities. Central to the promotion and well-being of smallholders is guaranteeing their security of tenure in the lands they make productive, through the effective implementation of government land redistribution programs.

Protecting and promoting the rights to land and other resources of farmers, rural women, indigenous peoples, fishers and the rural poor that would ensure the food security of Filipinos, is not only economically wise, it is politically and morally right. **R**

*This article first appeared in Land Research Action Network and Focus on the Global South, "Keeping Land Local: Reclaiming Governance from the Market, Land Struggles: LRAM Briefing Paper Series no. 3", October 2014, pp. 35-43.*

- 1 Land grabbing. (n.d.). In *Wikipedia*. Retrieved July 14, 2014, from [http://en.wikipedia.org/wiki/Land\\_grabbing](http://en.wikipedia.org/wiki/Land_grabbing)
- 2 Deininger, K., & Byerlee, D. (2011). *Rising global interest in farmland: can it yield sustainable and equitable benefits?* Washington, D.C.: World Bank.
- 3 In accordance to the Mining Act of 1995, EPs exclude areas in conflict, ancestral lands/domains without the free, prior and informed consent of indigenous peoples, proclaimed watersheds, adequately stocked forests, forest reserves and critical watersheds or areas classified under NIPAS.
- 4 Lagsa, B. and Antonio, R. (2014, May 26). 8M ha eyed for oil palm plantations. *Philippine Daily Inquirer*. Retrieved from <http://newsinfo.inquirer.net/605424/8m-ha-eyed-for-oil-palm-plantations>
- 5 See Carranza, D. (2011, April 14). Implications of biofuels investments on land rights and livelihoods of the rural poor: three cases of biofuels investments in Luzon. *Powerpoint Presentation during the National Conference on Lands and Agro-investment Deals*, Davao City sponsored by AFRIM, RIGHTS-Net, Visayas State University, FIAN and Focus on the Global South. Also see the studies of Dargantes, B. on Negros and AFRIM on Mindanao.
- 6 It should be noted that a rebuttal to Dr. Fabella's lectures, on methodological grounds, has been provided by Dr. Toby Melissa Monsod of the University of the Philippines School of Economics, along with Sharon Faye Piza, a consultant of the Asian Development Bank.

**Profiles of Selected Land Grab Cases**

CASE	SIZE AND LOCATION	AGENTS INVOLVED	RATIONALE	COMMUNITY IMPACTS
<b>APECO (Aurora Pacific Economic Zone and Freeport Authority)</b>	12,923-hectares / Casiguran, Aurora province	Angara political dynasty; APECO administration; investors	Creation of Freeport / Special Economic Zone	Harassment and intimidation, illegal land conversions, loss of land tenure security, environmental degradation
<b>CALUYA</b>	Up to 3,095 hectares / Caluya Island, Antique	Semirara Mining Corp.; Javier family; local government officials	Tourism development and expansion of coal mining	Eviction from homes, demolitions, environmental degradation, loss of fishing grounds, harassment and detainment of residents
<b>HACIENDA DOLORES</b>	1,125-hectares / Porac, Pampanga	Ayala land; Leonio Land; FL Properties and Management Corporation	Establishment of Alviera, a large-scale mixed-use community and business district	Eviction from homes, demolitions, harassment and intimidation, killings
<b>HAMILO COAST / PICO DE LORO</b>	Up to 8,650-hectares / Nasugbu, Batangas	SM Land Inc.; Manila Southcoast Development Corporation; Fil-Estate	Coastal tourism zone, residential community and environmental reserve	Harassment and intimidation, loss of land tenure security, illegal land conversions
<b>LUMINA HOMES</b>	12.47 hectares / Plaridel, Bulacan	Lumina Homes of Vista Land; Villar family	Establishment of residential subdivision	Illegal land conversions; flooding of farmlands
<b>SIDECO (Sicogon Island Development Corporation)</b>	809-hectares / Sicogon Island, Iloilo	Ayala land; Sarroza family; SIDECO administration	Establishment of Sicogon Island Resort Complex	Eviction from homes, harassment and intimidation, loss of land tenure security
<b>SUMALO</b>	124-hectares/ Hermosa, Bataan	Riverforest Development Corporation/Litton family	Establishment of residential area	Harassment, intimidation, loss of land tenure security, enclosures from farmlands

Source: Jerome Patrick Cruz and Mary Ann Manahan (December 2014), "CARPER Diem: A Socio-Legal Analysis of the State of Comprehensive Agrarian Reform Program in the Aquino Administration", *Ateneo Law Journal, Emerging Issues in Social Justice and the Law: Labor, Agrarian Reform and Resource Security*, Vol. 59, no. 3.

# When Disasters Clear the Land: Narratives of Post-Yolanda Land Contestations

By Mary Ann Manahan

Nineteen months after super typhoon Yolanda (Haiyan) hit the Visayas region and parts of Northern Palawan, a second tragedy now beleaguers tenants, landless, and land poor farmers. Yolanda did not only clear the land, it uncovered insecure and peculiar land tenure arrangements and various forms of marginalization. It also unfortunately created conditions for lands to become more open to conversions and other type of investments, which would either displace or dispossess tenants, land poor farmers, and fisherfolks from their lands and sources of livelihoods. Behind the recovery and rehabilitation plan are proposals to reorganize space and with it, determine who gets to return or not, who can rebuild their houses and lives, and whose interests prevail.

## Exclusionary politics and policies

Successful short-term humanitarian relief, resolving problems of internally-displaced peoples, and ensuring long-term recovery and rehabilitation rest on a number of factors, critical of which is prompt and equitable re-establishment and reconstitution of land rights and security of tenure after disasters. The government needs to play a crucial role in putting coherence in the efforts not only of governmental bodies but also of donor and humanitarian organizations to ensure that the displaced communities are not left out of the process of re-registration, re-titling, and reconstructing records of land claims and ownership. The United Nations Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the context of National Food Security offers same guidelines to ensure the protection of tenurial rights of famers, fishers, and forest people in the context of climate change, disasters, and conflicts.

Part 6, Sec. 23.1 provides that “States should ensure that the legitimate tenure rights to land, fisheries and forests of all individuals, communities or peoples likely to be affected, with an emphasis on farmers, small-scale food producers, and vulnerable and marginalized people,

are respected and protected by laws, policies, strategies and actions with the aim to prevent and respond to the effects of climate change consistent with their respective obligations, as applicable, in terms of relevant climate change framework agreements.”<sup>1</sup>

Failure to reconstitute or resolve land rights issues, including relocation of internally displaced migrants and informal settlers, distribution of agricultural lands to farmers as part of RA 6657 or CARP implementation, fisherfolk resettlement as provided for in Section 108 of the 1998 Fisheries Code, and indigenous peoples rights to ancestral domains, can result into more disastrous events. These people can be displaced or dispossessed of their sources of livelihoods and identities, threatening their survival. For example, all coastal and environmental zones have been overridden and changed after disasters in Sri Lanka, Indonesia, and Haiti, to name a few. Coastal and agrarian communities in these countries have unfortunately been displaced in favor of tourism and other business interests.

Such policy of displacement in the guise of development or protection of these vulnerable groups from climate change seems to be an underpinning logic in the Yolanda rehabilitation plan. For instance, former Sec.

Panfilo Lacson of the Office of Presidential Advisor on Recovery and Rehabilitation (OPARR) has underscored the need to “consolidate land titles to establish land ownership,”<sup>2</sup> which may entail land reclassification and property development projects. The Reconstruction Assistance for Yolanda (RAY) outlines two key interrelated policies that have huge implications for land rights.

One is the confusing policy on “no-build zone” (NBZ). On December 2013, President Benigno Aquino III announced a 40-meter-no-build-zone policy, similar to Aceh’s post-tsunami policy. The reasoning behind is to prevent further risks and dangers from natural calamities such as earthquakes and storm surges. The (closest) basis of such policy is Article 51 of the Philippine Water Code, a Marcos-era Presidential Decree signed into law in 1976, which states that “Article 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.”

However, the intent of the Water Code’s easement for public use is different from the current “no-build zone” policy, which was denounced by some government units, affected communities, NGOs, and other sectors. This policy pronouncement was later on revoked and revised by then Secretary Panfilo Lacson. This was changed to *no-dwelling zones* to consider interests of tourism-related industry; then later, the Office of the Presidential Advisor on Recovery and Rehabilitation backtracked to *safe zones, unsafe zones, and no-dwelling zones*.

The changing and unclear policy pronouncements, have a number of implications, primary of which are the potential displacement of those who reside along the coast; confusion among local government units, affected communities, and even humanitarian organizations; and more uncertainties on the issue of relocation (where, on whose lands, at which expense) or resettlement. Further, such policy is feared to facilitate forced evictions, land grabbing, and resource control by landed elites and corporations.

To date, there are media reports of about 3,000 families living in danger zones now facing forced evictions.<sup>3</sup> According to Fr. Edwin “Edu” Gariguez, national secretary

➤ continued on page 12



FILE PHOTO

A “no-build zone” policy was announced by President Benigno Aquino III in the aftermath of Yolanda/Haiyan

◀ **WHEN DISASTERS CLEAR THE LAND...from page 11**

of the National Secretariat for Social Action (NASSA) of the Catholic Bishops Conference of the Philippines, these families living in Old Road Sagkahan will be relocated to transitional abodes while waiting for the completion of permanent houses being built by the National Housing Authority and several non-government organizations. The problem, however, is the lack of provision of basic social services such as water and electricity and the distance of the relocation site from people’s livelihoods in these ‘transitional’ residences. The evacuees also fear that local government may commercially develop the vacated areas.<sup>4</sup>

While the reasons for relocating communities may appear to be sound when considering the risks of severe storms and other natural disasters as well as overcrowding in poorly serviced areas, extensive resettlement in many different contexts shows that unless serious consideration is given to the social and cultural needs of the communities as well as the regeneration of livelihoods in the new area, the negative impacts will likely be severe and fall heavily on the poor. Ruperto Aleroza, fisherfolk leader of the Pambansang Katipunan ng mga Samahan sa Kanayunan, stated at a CSO Consultation with Dr. Hilal Elver, the UN Special Rapporteur on the Right to Food on February 20, 2015 that “when Malacañang pronounced the NBZ policy later turn into no dwelling zone, technically, the

target victims of this policy regulation will be the artisanal fisherfolks. Our group stands to assert on site development but if proven to be in danger we are amenable to resettle not farther than 100 meters from the shoreline.”

When the move is accompanied by a planned shift from a seashore occupied by small fishing communities to a seashore reserved for resorts, aquaculture, housing/real estate, other industrial interests, then relocation also represents government-sponsored land grabbing.

In the ‘island-paradise’ of Sicogon, where local landlords, the Sarroza family, in tandem with Ayala Land, have allegedly kept the local residents—farmers and fishers—from rebuilding their houses. Both developers have used devastation from Yolanda to ease out the fisherfolks and farmers from their lands, a portion of which is subject to agrarian reform. Fr. Gariguez said in an interview with Focus on the Global South that “the local company hired guards to harass the local residents and also demanded that NASSA meet with them in Negros at a given time, or else they would demolish the houses of the local residents.”<sup>5</sup> Ayala Land is one of the nine corporations tapped by government for rehabilitation.

Access to and control of land resources is indeed at the front and center of the rehabilitation and recovery process. Specifically, the protracted and piecemeal implementation of CARP, which was later on amended by Republic Act 9700 or CARP Extension with Reforms, is

**Table 1: Land Distribution Balance in Yolanda-Affected Provinces (in hectares)**

PROVINCE	TOTAL LAND DISTRIBUTION BALANCE (IN HECTARES)	PERCENTAGE/SHARE IN TOTAL LAND DISTRIBUTION BALANCE (IN PERCENT)
Region 8 (whole region)	64,311.36	50.10
Iloilo	16,579.18	12.92
Antique	1,238.97	0.97
Aklan	1,819.63	1.42
Cebu	2,074.11	1.62
Negros Oriental	14,086.81	10.97
Bohol	2,584.13	2.01
Masbate	24,919.37	19.41
Biliran	8.00	0.01
Dinagat	747.65	0.58
<b>TOTAL</b>	<b>128,369.21</b>	<b>100.00</b>

Source: Department of Agrarian Reform, August 18, 2014.

exacerbating pre-existing insecure situation in Yolanda-affected areas. DAR's data initially reveal that there are close to 130,000 hectares of land that should have been acquired and distributed by government in the provinces affected by Yolanda. Half of these affected areas are in Region 8 and close to 20 percent in Masbate, one of the top provinces with large land distribution backlog.

Civil society groups, in an effort to validate these figures on land distribution balance, have uncovered more problems. Land rights advocate groups, RIGHTS-Network and KATARUNGAN, which are doing local organizing in Leyte, have found out that previously reported accomplishments of DAR Region 8, especially in Leyte, are questionable. Danilo Carranza, secretary general of RIGHTS-Network, lamented that "in the case of Yolanda farmers, DAR Region 8 reported that the agency has distributed 11,685 land titles to about 8,000 farmers but upon verification on the ground, Yolanda survivors who were the supposed beneficiaries have not received any Certificate of Land Ownership Awards (CLOA)".<sup>6</sup> These CLOAs are allegedly being withheld by DAR, which claims mandate to do such.

Local farmer leader Violeta Magadan of the Association of Farmers of District 6 in Barugo, Leyte, narrated at the hearing of the House of Representative Committee on Agrarian Reform October 29, 2014, that "they were shocked to learn that the DAR in Region 8 had put 17,000 Yolanda survivors in Alangalang, Barugo, Jaro and Ormoc in its list of CLOA recipients in the 1990s." The DAR Central Office admitted that there were delays in the releases of the land titles.

CLOAs serving as land titles and proof of ownership are required by the National Housing Authority so that applicants can be included in the list of those who can avail of government support for housing and livelihood. Under such policy, landless farmers are deprived of government support. In Ormoc, also in Leyte province, even CLOA holders who have not been installed have been considered not qualified to receive livelihood support. Rosenda Apay, a leader of KATARUNGAN in Ormoc, asks "how can we rebuild our homes when the land where we use to live on and plant our crops are not ours."<sup>7</sup>

Dr. Buenaventura Dargantes of the Institute for Social Research and Development Studies (ISRDS) at the Visayas State University, in his paper, "Impact of Typhoon Haiyan

## *The second pillar of OPARR strategy which has land rights implication focuses on encouraging corporate private sector participation in rehabilitation initiatives.*

on Land Contestation: Field Experiences in Handling Land Tenure Arrangements in Affected Coconut Plantations" said that in the provinces of Samar and Leyte, there is an "emergence of opportunities to remove tenants (in coconut areas) who lost tenure with the loss of the coconuts, and to convert lands into other uses, which could erase any semblance of agrarian relations. These situations created conditions for lands to become more amenable to investments. And oil palm corporations in the Philippines have articulated their agenda to use oil palm as a species to replace coconut."<sup>8</sup>

According to Dr. Dargantes, Yolanda destroyed about 23,701 hectares of coconut lands, damaged millions of coconut trees, and affected close to 43,000 farmers in the towns of Tabango, Tolosa and Kananga of Leyte, and in Basey, Marabut, and Sta. Rita in Samar. The agrarian relations in these coconut areas are governed by tenancy, a form of sharing arrangement for coconut production, i.e. tenants-to-the-coconut arrangement but not tied to the land. This means that other crops grown under the coconut trees



*Thousands of Yolanda/Haiyan survivors lived in a tent city for more than three months in Estancia, Iloilo*

FILE PHOTO

are not included in the sharing arrangement. Landowners, therefore, have used the absence of coconut trees as a justification to either remove tenants from the land or convert them into other uses. The tenancy arrangement between coconut farmers and landowners have also made the removal of debris to prepare the land for re-planting and prevent future infestations a daunting and impossible task, as the former could not decide without the approval of the latter. When coconut rehabilitation was made possible, these are in areas where land rights are secured and agrarian reform has been implemented.<sup>9</sup>

### **Corporate-led rehabilitation**

The second pillar of OPARR strategy, which has land rights implication, focuses on encouraging corporate private sector participation in rehabilitation initiatives. Former Sec. Lacson has stated that “When I first assumed office as PARR, I knew that current Philippine regulations and its concomitant bureaucracy would prevent the government from implementing rehabilitation projects as quickly as we wanted. Since part of OPARR’s mandate is to coordinate

with the private sector, we tapped them to assist in the rehabilitation efforts.”<sup>10</sup> As of November 2014, the OPARR reports claimed that a total of 1,289 corporate private sector/ NGO projects have been implemented on-the-ground. The pledges amounted Php 11.8 Billion.<sup>11</sup>

Indeed, giant corporations have quickly signed up as ‘development sponsors’ tasked to “shepherd or take the lead in the reconstruction and rehabilitation”.<sup>12</sup> Perhaps as an act of ‘good faith’, one mining company, Nickel Asia, even offered office space for OPARR at its headquarters in Bonifacio Global City, The Fort, Taguig. There would really be nothing wrong in giving OPARR that office unless there is conflict of interest. But on June 23, 2014, former Sec. Lacson recommended to Department of Environment and Natural Resources’ Sec. Ramon Paje the lifting of the mining moratorium against the Hinatuan Mining Corporation<sup>13</sup>, a subsidiary of Nickel Asia, in Manicani, Samar. The reason for this, according to former Sec. Lacson, is that such a move will be a “boost to government’s efforts to jumpstart the recovery in the lives of 500 families in Manicani, as well as the reconstruction efforts in Guian, Eastern Samar.”<sup>14</sup>

The development sponsors were allowed involvement in the ‘updating’ of community land use plans in their coverage areas, where they also have *certain level of autonomy* to lead the rehabilitation plan. A separate Yolanda Private Multi-Donor Fund being managed completely by the private sector has been established for these efforts. The trustees of this Fund are giant multi-media and news and communications companies ABS-CBN and GMA-7; telecommunications companies PLDT-Smart and Globe Telecom; and businessman-philanthropist Washington Sycip.

Early this year, nine companies which comprise the who’s-who list in Philippine business have pledged to ‘adopt’ two-thirds of the Yolanda-stricken local government units:

- Lopez Group of Companies
- Ayala Corporation
- Aboitiz Foundation
- PLDT-Smart
- SM Group of Companies
- Metrobank
- International Container Terminal Services Incorporated
- Jollibee-Mang Inasal
- Robinsons Land Corporation<sup>15</sup>

The open-arms and business-friendly policy of OPARR, especially for the top ranking corporations in the Philippines with many investment and commercial interests in land and real estate development in the country, has enticed more companies and their foundations to sign up to be part of the rehabilitation effort. (See table 2) To a huge extent, the OPARR strategy has led to the corporate capture of the rehabilitation and recovery agenda.

The government calls it private sector development but there have been precedents for this recovery strategy, which a Canadian environmental activist, journalist and author Naomi Klein has called “disaster capitalism.” Klein, author of *The Shock Doctrine: The Rise of Disaster Capitalism*, has talked about how post-disaster projects have been used by governments, international financial institutions like the World Bank, and corporations to find “exciting marketing opportunities” in the wake of major crises, such as natural disasters. While people were still in shock or suffering from trauma, Klein said in her 2007 book, governments created unsafe “buffer zones” and disallowed the villagers to return because it was not safe, while on the other hand allowing developers to construct beach resorts and hotels.



**Houses, trees, boats, and other structures were all washed away by Yolanda/Haiyan in Sicogon island, central Philippines**

FILE PHOTO

**Table 2: Adopt-a-Town Development Sponsors**

PROVINCE	ADOPT-A-TOWN “DEVELOPMENT SPONSOR”
Aklan	Globe Telecom
Palawan	Secours Populaire Francais
Iloilo	Ayala Land, JG Holdings Summit, Inc.
Capiz	SMART Communications, Philippine Long Distance Telephone Company (PLDT)
Samar	Sagip Kapamilya
Easter Samar	Nickel Asia Corporation
Leyte	EEl Corporation, GT Metro Foundation, Lopez Group of Companies, PLDT, Aboitiz, Injap Land Corporation, International Container Terminal Services, Metrobank
Cebu	Aboitiz
Negros Occidental	Ayala Corporation

Source: Various news sources; Official Gazette, Presidential Assistant for Rehabilitation and Recovery <http://www.gov.ph/section/briefing-room/presidential-assistant-for-rehabilitation-and-recovery/>; Adaptation Working Group of the Philippine Movement for Climate Justice

Contestations over lands are expected to intensify and may very well result into further conflicts as government-private sector reconstruction projects are eyed for real estate development that will not necessarily help or benefit the disenfranchised victims and survivors of Yolanda.

Already, rural poor land rights assertions are happening in the provinces of Leyte and Iloilo to rightfully resist, and use the law to reclaim their lands and lives. Such is the case of the self-installation initiative or land occupation of 25 hectares of land by 21 farmers belonging to Bugho Farmers Association in Ormoc, Leyte last April 30, 2015. This was a meta-legal strategy used by the farmers due to the inaction of the Department of Agrarian Reform in Region 8. Other farmers’ organizations have brought their issues to the national arena such as in the case of 100 members of the Federation of Sicogon Island Farmers and Fisherfolk Association (FESIFFA) who went to Manila and carried out an indefinite camp-out in front of the Department of Environment and Natural Resources in May 2014. The residents led by its president, Raul Ramos, conducted exhaustive dialogues with government agencies and gathered public, media, youth, and social movement support for their cause.

One can only hope that stories of resistance, action, and demands for government accountability will triumph over narratives of displacement and dispossession. **R**

*This paper contains sections of the paper, “Preventing Disaster Capitalism: Why Climate Justice, Human Rights, and People’s Participation are Key to Recovery” by Mary Ann Manahan, Clarissa V. Militante, and Joseph Purugganan, funded by and presented at the Development and Peace Conference on Yolanda, November 2014.*

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- 9 *Ibid.*, p. 7.
- 10 Philippine Information Agency. (2014, August 2). OPARR submits P170B Yolanda comprehensive master plan for the President’s approval. *Philippine Information Agency News*. Retrieved from <http://news.pia.gov.ph/archives/view/1781406884513/oparr-submits-p170b-yolanda-comprehensive-master-plan-for-the-president-s-approval>
- 11 Office of the Presidential Assistant for Rehabilitation and Recovery (OPARR). “Briefer on Yolanda rehabilitation and recovery efforts”, consolidated as of July 28, 2014.
- 12 Esmaquel II, P. (2014, January 23). 9 giant firms lead Yolanda rehab. *Rappler*. Retrieved from <http://www.rappler.com/business/economy-watch/48712-9-giant-firms-lead-yolanda-rehab>
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- 14 Leaked Letter of Sec. Panfilo Lacson to Sec. Ramon Paje on lifting the operation ban of the Hinatuan Mining Corporation.
- 15 *Ibid.*

# Local Residents Fight for Land Rights in Boracay

By Raphael Balalad

The island of Boracay is celebrated as one of the country's prime tourist destinations. In 2014 alone, the annual revenue generated by the island amounted to Php 27 billion from almost 1.4 million foreign and local tourists, according to the Department of Tourism. The island's revenues account for 2.8 percent of the total tourism direct gross value added (TDGVA)<sup>1</sup>, which amounted to Php 982.4 billion<sup>2</sup> in the same period. With this kind of money pouring in, Boracay has transformed itself from a hidden sanctuary, with the Atis as original settlers even before Spanish colonization, into a honeypot for local and foreign investors and business owners. Also milking the island for profits are the traditional landlords<sup>3</sup> who have sold or leased portions of their 'purported' properties to Manila-based land developers, such as the Ayala and Fil-Estate Groups. With the over-commercialization of the island, local residents now struggle to keep up with the tides of "progress," by opening small businesses themselves. But they face a greater ordeal: landlords and corporations continue to take what's little left of their place in the island.

Boracay inspires imagery of pristine beaches, crystalline waters, and beautiful sunsets. In reality, however, Boracay is now considered as an over-crowded and over-commercialized chunk of the Aklan Province—a sewage and solid waste nightmare during peak seasons. But for more than 10,000 locals and residents who grew up and lived there even before the brash developments have taken place, Boracay is more than a transitory home and haven of pleasure.

The locals are not the only claimants of Boracay. Traditional landlords such as Ciriaco and Lamberto Tirol, heirs of the elite Tirol Family of Capiz, claims a significant portion of the island, backed by a titled issued in 1933 during American occupation. Several unofficial sources<sup>4</sup> have also placed the Tirols as one of the earliest Visayan migrants in the island, and who allegedly transformed Boracay into an agricultural plantation during the early 1900s.

Also staking its claims in the island is the Philippine Government through Marcos-era Presidential Decree No. 705 or the Revised Forestry Code (1975) which categorized Boracay as part of a forest reserve and public domain, therefore not available for private ownership or disposition. In 1978, Proclamation No. 1801 declared the island as a tourist

zone and marine reserve under the administration of the now debunked Philippine Tourism Authority. In 2006, however, Gloria Macapagal-Arroyo issued Presidential Proclamation No. 1064 (PP1064), which reclassified Boracay as 40 percent forest reserve and 60 percent agricultural, and alienable and disposable<sup>5</sup> (A&D).

## Conflicting claims

The island of Boracay is divided into three barangays<sup>6</sup>: Manoc-manoc, Balabag, and Yapak. In 1976, the government, through the Department of Environment and Natural Resources approved the National Reservation Survey of the island. The survey identified small land owners who occupied certain parcels of land. However, Proclamation No. 1801 issued two years later raised doubts on the legitimacy of land ownership claims in the area. On the other hand, the small land owners had been issued titles, tax declarations, and had been paying reality taxes for the land since the 1940s<sup>7</sup>, under Commonwealth Act No. 141 or the Public Land Act.

The legality of land ownership in Boracay was further obscured by the enactment of PP1064 in 2006 since it

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◀ **LOCAL RESIDENTS FIGHT...from page 17**

mandated that people who owned properties in Boracay must reapply for titling and repurchase their lands. This was met with dismay by both local residents as well as Philippine and foreign business owners. Conversely, PP1064 was a game-changer and heightened investment prospects with the sudden land reclassifications to A&D. A scramble for land ownership ensued, in several cases resulting in land grabbing.

With bigger money-making opportunities, traditional landlords that migrated to the island such as the Sarabias, the Sacapaño-Gelito, the Elizaldes, and the Tirols<sup>8</sup> surfaced, racing to re-acquire ancestral lands for disposal to the highest bidder. This was to the detriment of local residents who had weaker land ownership assertions; some of them succumbed to pressures and sold lands for measly sums, while others were forcefully evicted.

**Local residents struggle**

With the threat of land grabbing becoming more apparent in the island, a number of local residents have

organized into the Boracay Home Owners and Residents Association (BHORA). They have been fighting the claims of Lamberto and Ciriaco for the ownership of a combined 300 and 60 hectares of property within Yapak and Balabag. Unwilling to yield their ownership rights to the Tirols, the residents were brought to court.

In the Kalibo Regional Trial Court (RTC), BHORA contested the legality of title held by the Tirols with the following arguments: (a) The questionable acquisition of the land title presented by Lamberto and Ciriaco Tirol covering 360 hectares or about 35 percent of the island's 1,032-hectare land area since the DENR had issued a certification that established the island of Boracay as Unclassified Public Domain even before the 1930s; (b) Tax declarations for the properties involved had been issued to the local residents by the Provincial Government as early as the 1940s; and, (c) With the enactment of the PP 1064, the DENR had undertaken a cadastral survey of the island, which determined that significant portions of the properties involved (41 percent) were actually classified as forest lands, thus negating the entirety of Lamberto and Ciriaco's claim on the 360 hectares.



*Boracay island attracts at least one million foreign and local tourists annually*

FILE PHOTO

In an unfortunate turn of events for the resident, the Kalibo RTC ruled in favor of Lamberto and Ciriaco Tirol. Eventually the same court released a Writ of Execution in October 2013 to evict and demolish the homes of more than 3,000 local residents.

BHORA thereafter filed for a Motion for Reconsideration (MR) as well Petition for Certiorari<sup>9</sup> in the Court of Appeals (CA), hoping for an injunction to the ongoing evictions. No Restraining Order from the CA arrived. The Kalibo RTC subsequently denied the MR and issued a Writ of Demolition.

The Malay Local Government (LGU) decided to cancel all business permits issued to residents in the contested area. Within Balabag, there were more than 20 small resorts, clinics, and boarding houses affected by the permit cancellation. Adding insult to injury, all roads going to Sitio Sinagpa (within Balabag) were subsequently closed down by the Tirols (allegedly supported by the local government).

### Who owns the land?

With all odds against them, the local residents under BHORA recently sought respite<sup>10</sup> from Office of the President (OP) by asking for a moratorium on all demolition and eviction activities, for the reissuance of business permits within the contested area, and reopening of roads. With hopes to reopen the case in higher courts, BHORA has also asked the OP to facilitate a reinvestigation on the legality of land titles held by parties involved and the release of relevant cadastral data held by the DENR pertaining to the delineation of forest lands and the land parcels ‘supposedly’ owned by the Tirols. A subsequent re-location survey of the contested area has been requested to prevent further hostilities between the local residents and the Tirols caused by boundary disputes.

It appears that those who have stronger capabilities to assert their property claims can own Boracay lands. Land titling has been a perennial issue in the island and as long as the government neglects the side of the residents, land grabbing by landed families will continue.

In the case of Boracay, land grabbing has an apparent linkage to the prevalence of commercialization. With private investors and national government pledging some Php 20 billion<sup>11</sup> in investments to enhance Aklan’s business potential (a pronouncement in the recent Aklan Development Forum last July 2015) as well as tax breaks for new investors, new land conflicts are expected to emerge.

Since 2007, a bill has been filed and re-filed in Congress entitled, “Establishing a Mechanism for the Sustainable Development and Use of the Island of Boracay,” which aims to resolve the persistent property disputes in the

island. For the 16th Congress, House Bill 4625, which was originally authored by Aklan Rep. Teoderico Haresco, Jr., is now awaiting plenary debates. If enacted into law, it will allow Filipino citizens and residents of the island who have continuously lived and cultivated the land for at least 30 years prior to the passage of the bill to be issued free patents. It will also exempt property claimants in Boracay from certain requisites for land ownership under the Public Land Act and other laws.

The island-residents have been engaging in both legal and meta-legal means (awareness raising, solidarity and networking, mobilizations, para-legal trainings) to defend their lands and their home. A series of inquiries and critical engagements with the DENR, the Department of Justice, and Congress are on-going.

The affected communities dream of stopping the systematic land grabbing, and in the process, establish their vested land rights in law and practice. **R**

- 1 Tourism direct gross value added measures the “value added of different industries in relation to tourism activities of both inbound and domestic visitors in the country”. It is an indicator that measures how much income tourism brings into the country and the industry’s contribution to the economy.
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- 9 This petition is a document which a losing party files with a higher court—either the Court of Appeals or Supreme Court asking the higher court to review the decision of a lower court.
- 10 Last May 2015, BHORA expressed their sentiments on the land issue through a letter sent to the Office of the President. Copy furnished are relevant government agencies, such as the Department of Environment and Natural Resources, the Department of Justice and the Department of Interior and Local Government.
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# More Investments in Land: Aquino's Policies

By Erick Javier

The current Aquino administration has undertaken several policy initiatives to improve investment in the country in the service of its economic goals. Its flagship economic program has been the private-public partnerships (PPPs) that aim to address critical infrastructure shortcomings by tapping private sector; several policy reforms have been made to facilitate PPPs that involve both domestic and foreign private sector partners.

These policy reforms include amending the implementing rules and regulations (IRR) of the Build-Operate-Transfer (BOT) Law (R.A. 6957 of 1990 as amended by R.A. 7718 of 1994); first in 2010 when the associated BOT Center was transferred from the Department of Trade and Industry (DTI) to the National Economic Development Authority

(NEDA) and renamed the Public-Private-Partnership Center and again in October 2012 when the PPPs IRR was amended resulting in changes in specific incentives for project proponents and aimed at improving transparency. Currently, additional amendments to the BOT Law are being proposed for passage by the Senate and Congress



*Farmers and activists protest the land grabbing of their agricultural lands by one of the biggest conglomerates in the country*

PHOTO BY JEAN ENRIQUEZ/CATW-AP

in the form of the PPP Act (H.B. 3951). The proposed PPP Act will repeal the Marcos-era Presidential Decree 1894 which gave the Philippine National Construction Company exclusive control over the country's toll-ways. It also intends to remove caps on government stakes in PPP projects (currently at 50 percent), increase threshold amounts for local government approval of PPP projects, allow automatic granting of projects to winning bidders, expand PPP coverage to include joint ventures and maintenance contracts in allowed PPPs, create contingency funds to cover government disbursements, and render all PPPs tax-free, both local and national. A counterpart measure in the Senate (S.B. 459) also proposes similar measures in expanding possible types of PPPs.

In support of this, the Aquino administration is pushing for amendments to R.A. 8974, which governs government's right-of-way. These amendments contained under S.B. 2145 are designed to allow faster determination and acquisition of properties' right-of-way in the service of government infrastructure and development projects by making the acquisition of right-of-way from private owners a simpler process and with due compensation to the property owner.

The Aquino administration also seeks the passage of the National Land Use Act (NLUA, presently S.B. 2092), which shall provide a centralized national framework for managing the country's finite land resources. Currently, there are multiple laws which deal with land use, such as the Comprehensive Agrarian Reform Law (CARL), the Agriculture and Fisheries Modernization Act (AFMA), the National Integrated Protected Areas System (NIPAS) Law, the Local Government Code, the Urban Development and Housing Act (UDHA), the Mining Act, the Fisheries Reform Code, and the Indigenous People's Rights Act. The NLUA shall pave the way for the formulation of a National Physical Framework Plan to be updated every 10 years and to be formulated by a National Land Use Commission, the establishment of which is also provided for in the proposed law. This national plan shall be harmonized with regional, provincial, and city/municipal land use plans. The NLUA aims to classify lands according to: 1) protected lands, which include all lands covered by NIPAS, and lands not covered by NIPAS such as old-growth forests, mangrove and fish sanctuaries, buffer areas and easements, critical habitats, biodiversity areas, among others; 2) production lands, which are agricultural lands, mineral mining lands, industrial tree/plantation

## *Currently, additional amendments to the BOT Law are being proposed for passage by the Senate and Congress in the form of the PPP Act (H.B. 3951).*

lands, industrial development and tourism development areas where productive activities could be undertaken for food security, economic growth, and development; 3) settlements for development under which fall residential concerns, access to housing, health care, sanitation, and other settlement services; and 4) infrastructure development comprising transportation, communication, water and social infrastructure (with consideration for ancestral/indigenous resource management systems in affected communities).

With regards to mining, the government has also crafted and issued E.O. 79, "Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources." It has been considered a controversial presidential policy, as it aims to harmonize local laws with the national Mining Act of 1995 to increase the revenue share of the national government and declare certain areas as no-mining zone. **R**

**Aquino Government’s Investment Policies and Initiatives**

POLICY INITIATIVE	PREVIOUS LAWS/POLICIES REFERENCED	IMPORTANT NOTES
S.B. 3092 - National Land Use Act	R.A. 7160 - Local Government Code	Expands on Section 20 of LGC allows LGUs to reclassify agricultural lands, provided the agricultural land in question is no longer viable for agricultural production or if it is determined to be more valuable for industrial, commercial or other purposes as determined by the local council
	R.A. 7279 - Urban Housing and Development Act	Counts resettlement sites and socialized housing and other areas covered by UDHA as under settlement development classification
	R.A. 7582 - National Integrated Protected Areas System Act	NLUA classifies lands covered by NIPAS as protected, in addition to other lands
	R.A. 8550 - Fisheries Code	Certain lands covered by AFMA such as mangrove and fish sanctuaries are covered under the NLUA as protected, in addition to NIPAS lands. Has additional rules on allocation of coastal lands, such as allocating identified coastal areas for fisherfolk
	R.A. 8435 - Agricultural and Fisheries Modernization Act	
	R.A. 6657 - Comprehensive Agrarian Reform Law	Prime agricultural lands to be protected from conversion, as are all irrigated and irrigable lands, lands with or potential for high-value-added crops and agricultural lands that are ecologically fragile. All lands subject to completion of CARP are to be protected as well from conversion, unless for use in priority government projects for basic services
	R.A. 9700 - Comprehensive Agrarian Reform Extension Law	
R.A. 7942 - Philippine Mining Act	NLUA aims to be consistent with the Mining act on lands to be allowed/or off-limits for mining	
E.O. 79 - Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources	R.A. 7942 - Philippine Mining Act	Aims to increase government revenues from mining, while improving environmental standards and increasing scope of protected areas from mining compared to the Mining Act
H.B. 3951 - PPP Act	R.A. 6957 as amended by R.A. 7718 - Build-Operate-Transfer Law	Intended to fast-track PPP implementation. Of note is that PPP Act if passed would repeal P.D. 1894 which gave the Philippine National Construction Company (PNCC) exclusive control of tollways. The bill also proposes expanding allowable PPPs to include joint ventures and operational maintenance contracts, exempt PPP projects from local and national taxes among others
	P.D. 1894 - Amending the Franchise of the PNCC to Construct, Maintain and Operate Toll Facilities in the North and South Luzon Expressways to include the Metro Manila Expressway to Serve as an Additional Artery in the Transportation of Trade and Commerce in the Metro Manila Area	
S.B. 2145 - Act Strengthening the Process of Acquiring the Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes	R.A. 8974 - Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes	S.B. 2145, if passed, would effectively repeal R.A. 8974

Source: Author’s compilation.

# Challenging Financial Sector Backing to Land Enclosures

By Shalmali Guttal

In 2011, Olivier de Schutter, then Special Rapporteur to the Right to Food, cautioned, “The commodification of land, which the global phenomenon of land grabbing is accelerating, entails risks that go far beyond what the current proposals for regulating it seem willing to recognize.”<sup>1</sup> The risks he alluded to stem from treating land, labor, and money as mere tradable commodities and allowing market mechanisms to be the sole arbiter of society, culture, and nature. Adequately addressing them would require subordinating markets to the interests of society and the natural environment, recognizing non-commoditized valuations of land and nature in ‘official’ governance discourse and practice, and putting in place national and international regulations that stop rather than encourage land grabbing.

Private and state enclosures of lands, forests, and water, now generally referred to as land, water, and resource grabbing, are not new phenomena. Struggles for control over the ownership, use, management, and governance of land, water, territory and their associated wealth are central motifs in colonial and other national histories. Nor has land ever been out of markets: what grows naturally on land, what is grown by humans on land, what flows on and under land, what forms landscapes and ecosystems, what is built on land, and what is extracted from under the land, have all been commodities in some market or the other over the past centuries.

What is new about the current era of enclosures is the array of means, mechanisms, and instruments by which political and economic control over land and nature are exercised, and by which land and land-based wealth are becoming commodities in new markets. Developing countries with large agrarian economies have thrown their borders open to foreign direct investment (FDI) in the agricultural and natural resource sectors, ostensibly to spur economic growth and create employment. Many of these investments are backed by complex financing arrangements and multiple sources of capital, including public, private, and multilateral financiers.

The spread of neoliberalism in much of the world since the 1980s has provided new impetus to the corporate capture of agriculture and food systems through vertically integrated value chains that included land, labor, inputs, credit, processing, distribution, and retailing. Financial deregulation has allowed commodity markets to expand rapidly and into new areas through new financial instruments, and also allowed new actors to enter the land-agricultural-food investment arenas. Investment banks have created new types of investment instruments such as commodity index funds that amalgamated agricultural commodities, lands, minerals and energy futures, and directed floods of unregulated investment capital towards land and nature. Many agricultural derivatives have transformed risk itself into a new assets class, thus increasing the volatility of commodity prices and economic uncertainty for small-scale agricultural producers who had no protection against market risks.

Over the past 10 years, sovereign wealth funds, private equity firms, insurance companies, pension and hedge funds, investment banks, and other finance corporations have become implicated in land, forest, mineral, and water deals as financial underwriters as

▶ continued on page 24

◀ **CHALLENGING FINANCIAL SECTOR...from page 23**

well as direct investors. While land itself is immovable, financialization enables the wealth that springs from it to move across the world and be traded in distant markets. Natural, ecological, social, cultural, nutritional, health, and even economic values associated with land are reduced to exchangeable financial instruments (such as derivatives) and a single landscape can be subjected to more than one financialization scheme, for example, Payment for Ecosystem Services (PES), forest carbon trading, and a fast-growing tree plantation.

**The subversion of rights, regulation, and governance**

Land, water, and resource grabbing are human rights violations and have far reaching negative impacts on environmental quality, biodiversity, society, culture, employment, livelihoods, health, and local peoples' access to basic/essential goods and services. Promises

made by investors to affected communities of providing employment, schools, health, and other social services rarely materialize; jobs are poorly paid, precarious, often with unsafe work conditions, and distress out-migration is common. Local populations are robbed of their agency to make decisions about how to use, manage, and govern their lands and territories, and of their ability to participate in political processes as migrants. Those who resist the incursions on their lands and territories face violent threats, intimidation, arbitrary arrests and incarceration, extra-judicial killings, and enforced disappearance.

States enable these enclosures by enacting policies, laws, and regulations that favor markets and by using their legal and security apparatus to suppress and punish those who resist. International financial institutions (IFIs), multilateral agencies, international policy institutions, transnational corporations, and even some civil society organisations have sought to re-frame and re-present land, water, and resource grabbing as “win-win” investments whereby investors can secure



*Land enclosure for Special Economic Zone in Cambodia*

FILE PHOTO

the assets they covet by meeting conditions outlined in voluntary codes of conduct to minimize negative impacts. IFIs—for example the World Bank, the International Finance Corporation (part of the World Bank group), and the Asian Development Bank (ADB)—provide financing, policy advice, and technical support to governments and private firms sector actors for investments in agriculture, infrastructure, energy, urban development, and extractive industry, which demand secure access by investors to land, water, and natural resources.

The World Bank has played a central role in promoting land markets in developing countries by financing land tenure administration reforms that established private property regimes, eased land transactions, and enabled wealthy and powerful individuals to use land for financial and speculative gain. Anticipating water shortages as Asian economies intensify their pursuit of economic growth, the ADB has proposed a comprehensive framework for water governance that promotes water markets, water trade, and increased private investment in water services and infrastructure.<sup>2</sup>

**The Green Economy**, elaborated by the United Nations Environment Programme (UNEP) in 2011 with the support of multilateral agencies, IFIs, states, private sector, and environmental organisations, further advances financialization by proposing a system of natural resource appropriation and commodification whereby ecosystems and biodiversity are valued in monetary terms rather than in the varieties of life they sustain. **The Green Economy** treats nature, its functions, and its capacities as “natural capital,” and aims to estimate appropriate economic values for the vital ecosystem services that forests, trees, lakes, wetlands, and river basins provide by capturing and storing carbon, creating water catchments, ensuring the stability of water cycles, soil fertility, local micro-climates for safe habitats, nurturing and regenerating biodiversity (including fisheries), etc. These values are considered crucial components of a country’s “natural capital,” and can be packaged and traded in international markets to attract investment and development finance.

The capture of land, forests, water sources and minerals are justified by states and many policy actors through narratives of global hunger and food scarcity, classifying lands as “idle, empty or under-used,” energy

needs to meet development goals, tackling climate change, and even environmental protection as described by journalist John Vidal in the “The great green land grab.”<sup>3</sup> In order to satisfy commodity, food, energy, finance, and conservation markets, the rights of local communities and populations to make decisions about the use, management, and governance of lands and ecosystems that sustain them are wrested away and replaced by regulatory regimes that enable commodification and financialization.<sup>4</sup>

Proposals to regulate land and nature-based investments promoted by the World Bank, ADB and other IFIs, G-7/8, International Land Coalition, and similar alliances do not aim to stop the commodification of land and nature. Rather, they provide conditions by which medium and large-scale investors can acquire land and associated resources with veneers of responsibility, transparency, democracy, and participation. Voluntary codes of conduct may bring about some welcome changes in the way investments proceed but the actual facts of land and resource grabs will continue.

## Rethinking governance

For those whose lives, livelihoods, cultures, societies, and identities are turned upside down by destructive investments, land and resource grabbing cannot be regulated; they must be unconditionally stopped. The discourse and practice of governance must be reoriented to prioritize the rights of local populations and communities while respecting nature and the carrying capacity of earth. **R**

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  - 3 Vidal, J. (2008, February 13). The great green land grab. *The Guardian*. Retrieved from <http://www.theguardian.com/environment/2008/feb/13/conservation>
  - 4 For an excellent synthesis of contemporary land and resource grabbing, see White, B., Borras Jr., S. M., Hall, R., Scoones, I. & Wolford, W. (2012). The new enclosures: critical perspectives on corporate land deals. *The Journal of Peasant Studies*, 39 (3-4), 619-647. DOI: 10.1080/03066150.2012.691879.

# Financialization of the Global Food System and its Implications for Local Land Investments

By Tania Salerno

In recent years, food price increases have become more erratic, further rendering the world's poor populations vulnerable to hunger and poverty. While people struggle to afford basic foodstuffs and small scale farmers fight to maintain their livelihoods, the big agricultural and financial corporations are experiencing record high profits and accumulating more power over the global agricultural system. For example, while the total number of people living in hunger globally rose to 963 million as a result of the 2008 food prices,<sup>1</sup> dominant players in agricultural trade profited at record-breaking levels. Cargill made its highest ever annual earnings of nearly US\$4 billion in 2012.<sup>2</sup> Several other companies were also able to achieve these profit levels through a financialized approach to agriculture and an expansive corporate structure with influence in agricultural production around the world.

The spheres of finance and agriculture have become increasingly intersectional, with the largest players in agriculture 'going financial' and financial players 'going agricultural' as a way to respond to the overlapping food, fuel, and financial crises. In so doing, the actors have—purposefully or not—further obscured an already complicated agricultural system by adding additional actors, relations, and transactions to the food system. Such obscurity has erected more possible barriers to mobilization of farmers' groups due to the consistent adding of 'layers of complexity' to agri-food supply and demand, thus also disguising the involvement of powerful corporate actors.<sup>3</sup>

The complication of the food system is creating what is called 'distancing' or the process by which individuals (or consumers) are further disconnected from their food source. This is happening because of the concealment of the global commodity chain, as more actors enter into agricultural production relations. This simultaneously leads to a mystification of the type of actors involved in the food system, the form their involvement takes, and

the implications of such for agricultural relations. Financial actors in particular are problematic as their identities are often completely hidden from the public along with their involvement, making it difficult to monitor investments and hold individuals and corporations accountable.

The distancing of the food system has had various forms and effects—from the complication of financial agricultural derivatives to those of agricultural relations. This article focuses on the latter to highlight how financial and corporate actors can use distance as a way to conceal involvement and stay out of the public eye.

## Financialization of agriculture

Financialization of agriculture came about through the deregulation of financial markets and the incorporation/mutation of actors involved in the global agricultural economy. This course had been underway since the 1970s when rules were relaxed allowing financial actors to sell derivatives of food and agricultural commodities. More and more regulative and legislative changes were implemented

in the 1990s, allowing the connection of finance and agricultural products to become even more complex, forcing different players to invest in agricultural commodities. Agriculture, area farmlands as the main resource, was no longer just seen as means for production, (e.g. food and other agricultural products), but as commodity in the financial market where one can invest in the same way that one invests in stocks and other financial products. This has also meant that previously regulated financial actors or traditional agricultural players are enabled to consolidate large pools of investment funds, financial technicians to develop new financial products, and new investment areas to be identified (i.e. in land, agricultural derivatives, and agro-food enterprises).<sup>4</sup>

To keep up with this process and benefit from it, traditional agricultural players—such as traders, producers, retailers, etc.—have opened up their own financial arms and invested finance capital in land and commodities.

The increasingly financial operations of traditional agricultural companies—such as Archer Daniels Midland (ADM), Bunge, Cargill, and Dreyfus—have coincided with

more involvement of financial actors in the agricultural sector for its so-called ‘stable investment opportunities’. Financial actors have started investing in land, commodities, derivatives, and companies as response to volatility in financial markets. Actors within the financial sector explain their interest in agriculture as primarily due to the ‘current prospects for income generation, capital appreciation, and uncorrelated returns with equity markets, and as a hedge against inflation’.<sup>5</sup> Financiers also tell the public that ‘food security’ is a primary driver for their interest. To paraphrase, by injecting capital into agricultural land they can help meet the new diets of the world’s growing population. As one investor has explained it, “By 2050, it is projected that the population will grow to about 9.2 billion, close to 30 percent increase from the current population of 6.5 billion. Along with the rise of the middle-class in mega-countries like China and India, food prices can only go one way—up. According to a New York Times article, scorching heat, and the worst droughts in nearly half a century will threaten to send food prices up in 2013. Prices for beef is likely to rise 4-5 percent. Keeping this in mind, there isn’t a more apt time to invest.”<sup>6</sup>



Land speculation and land use conversion for non-agricultural purposes

PHOTO ABOVE BY JIMMY DOMINGO

In short, because of a growing population, changing eating habits, climate change, etc. it is becoming lucrative to invest in agriculture, and land specifically. Therefore, it is food insecurity that is the point of financial gain for investors, not food security as they would have the public believe.

### **Land investments through financialization**

Finance controls land via purchase, lease, or contract growing schemes with farmers. The different financial actors looking to control land come from various institutions, such as private equity funds, hedge funds, fund of funds, mutual funds, listed agricultural companies, agricultural trading firms, among others. Table 1 presents the different vehicles to invest in land, some more financialized than others.

Each of these institutions has its own techniques to acquire land and benefit from the financialization of agriculture. At the same time, they share the ambition of securing and consolidating productive land at the lowest possible cost with the least amount of risk. The intention of the different types of financially connected actors in acquiring or controlling land depends on the type of actor. If it is purely financial and they are able to secure land for purchase, often the goal is to make a profit from the appreciation of the value of the land while sometimes also benefitting from the conversion of land and its use for production.

Projects involving agricultural companies with financially based strategies are developed for two primary reasons: they can benefit from the appreciation of the value of land while also controlling their own supply through direct influence over production process, via purchase or lease of land or contract agreements with farmers. By controlling their own supply, they can also do so with financialized agricultural commodities. The benefit of having control of the commodities is realized both through hedging and trading of their commodities. Therefore, one reason the trading giants have become more attracted to controlling land for production is the financial gains from having power over every aspect of the supply chain, including over price fluctuations. When a company has control over the production of a commodity, which is possible to also hedge on, they have a double benefit from price instabilities because they are aware of the status of the supply and can speculate accordingly in the market. In short, agribusiness is attracted to land as both a financial investment and as a way to source raw materials. As Fairbairn explains, “[I]and plays two different economic

*The complication of the food system is creating what is called ‘distancing’ or the process by which individuals (or consumers) are further disconnected from their food source.*

roles; it is one of the essential factors of production, but it also acts as a reserve of value that creates wealth through passive appreciation. In other words, it is a productive asset that moonlights as a financial asset<sup>7</sup>.

Often, land and agricultural investments obscure “the role that financial actors play in the food system, making it difficult to link them to the social and ecological consequences of financial investment activities on the ground”<sup>8</sup>. The involvement of private equity in land investment is a clear example of how distancing works by obscuring the roles of different actors and relations in projects.

### **Distancing in the food system**

Private equity investments involve limited partners such as pension funds or high worth individuals who wish to invest equity in an already managed fund or company. Private equity funds can engage in various financial activities

which are connected to agriculture, from engaging in the stock market to acquiring assets of a company to grow the company and provide capital so the company can expand and acquire land. The assets acquired consist of equity security and debt from companies that are normally not publically traded in stock exchange. Along with acquisition of assets, private equity firms invest through short selling, futures, options, derivatives, leveraged assets, etc. When a firm invests in companies, it acquires a certain amount of equity; by acquiring shares in a company, the firm is able to encourage the company to invest in land and to boost its production.

An example of this form of investment is Black River Asset Management, the private equity firm of Cargill. Cargill is one of the largest agricultural traders and is involved in almost every element of the food system—from production, to financing, transport, trade, and more. They have several financial vehicles, Black River being one of them. Black River was established as an asset management firm in 2003; prior to this, from 1984 to 2003, the firm had been listed as the company's Global Capital Markets Division, mainly functioning to engage in proprietary trade<sup>9</sup> for Cargill. From 2003 onwards, Black River began to manage funds for outside players along with its asset management activities for Cargill itself. Its main clients are large financial investors such as pension funds, endowments, foundations, for whom it manages over \$4.5 billion USD in assets of external clients. Black River was initially established based on Cargill's business model and to make use of the knowledge Cargill had regarding crop fluctuations.<sup>9</sup> Black River's sole purpose was to invest using the information derived from other branches regarding crop shortages and what areas needed capital investment. Today, they engage in two key mechanisms: Absolute Return Trading Strategies and Private Equity Strategies. The first strategy involves investing in actual markets while the second involves investing in companies.

In 2011, Black River established its Asian Food Fund, worth over 455 million, to target land for agricultural purposes. They now invest in land through private equity investments in national companies. This fund has enabled Black River to invest private equity in a company and to simultaneously invest in land and boost production.<sup>10</sup> Black River is investing in companies around the world which are

in turn encouraged to boost production and invest in land. One such project is underway in the Philippines where they are investing in an agricultural company and allowing them to expand their operations and landholdings. The company they have acquired stakes from has begun searching for land through a local broker which helps establish the agreements for them.

Investing in land through private equity is a functional model for a company like Cargill for various reasons. The two most relevant for the discussion is regarding the ability to circumvent investment barriers and the benefit of keeping land investments distant from Cargill's operations. This also means however that responsibility is difficult to trace along with the possible implications of their investments. It is important to note here that no tensions have developed out of this project as it stands and so far no objections have been raised. The case is important however to show how financialized investments in land—like the one involving Black River in the Philippines—creates distancing and obscurity in the investment process, which makes tracing responsibility difficult. Holding individuals responsible, if a conflict does happen, becomes blurred by the complex ownership structure. **R**

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- 10 *Ibid.*

**Table 1: Examples of Financial Forms of Land Investment**

<b>PRIVATE EQUITY FINANCE</b>	
<b>Description</b>	<b>Example</b>
<p>Private equity is an asset class consisting of equity security and debt from companies that are normally not publically traded on a stock exchange. An asset class is a group of securities considered to share similar characteristics and movements in the marketplace and are subject to similar laws and regulations. The main types of asset classes are equities (stocks), fixed-income (bonds) and money market instruments.</p> <p>When a private equity fund invests in land it is normally by acquiring equity in companies through capital raised by the collective investment scheme. When the fund invests in the company it remains locked there for 5 years. The fund manager exits the company by either selling the company’s assets or listing it publicly. Private equity firms can also invest through short selling, futures, options, derivatives, leveraged assets, etc.</p>	<p>Black River Asset Management, Singapore. A private equity firm under Cargill. They acquire equity in companies and invest in agricultural commodities on the stock market. They have an agricultural food fund whereby they invest in agricultural companies in different countries who in turn expand their production and acquire land.</p>
<b>HEDGE FUND</b>	
<b>Description</b>	<b>Example</b>
<p>In contrast to private equity firms, hedge funds normally invest in publicly traded securities and liquid assets such as stocks, bonds, currencies, or commodities, which they buy and sell without necessarily gaining control of the company. The distinction between private equity and hedge funds is becoming more blurred as private equity gets more involved in commodities and hedge funds in acquisitions of companies. The involvement of hedge funds in agriculture is through commodities, land, and resources used to acquire additional “uncorrelated” and “stronger returns”.</p>	<p>Soros Fund Management, US. A privately-held American hedge fund which was launched in 1969 by George Soros. They are involved in agricultural financing in various ways such as purchasing farmland in the US and Latin America through its affiliate Pampas Humedas LLC who has a 33% stake in one of the largest agricultural companies in Argentina, Brazil, and Uruguay, called AGRO. (Milltrust International Group 2012).</p>
<b>FUND OF FUNDS</b>	
<b>Description</b>	<b>Example</b>
<p>Fund of Funds do not invest directly in stocks, bonds or securities. Rather they are involved through a holding portfolio of other investment funds such as through a mutual fund, hedge fund, private equity, etc.</p>	<p>Duxton Asset Management, Singapore. They are a specialised asset manager focused on agricultural land and securities, viticulture, and emerging markets. It is a joint venture of Deutsche Asia Pacific and Duxton Capital. They have a recorded 100,000 hectares of farmland in 4 continents managed by 60 farmers. (Milltrust International Group 2012).</p>

<b>MUTUAL FUND</b>	
<b>Description</b>	<b>Example</b>
<p>A mutual fund is a collective investment vehicle that is regulated and sold to general public. It is financed by pooled money of many investors looking to purchase securities.</p>	<p>Hancock Agriculture Investment Group (HAIG), US. One of the largest institutional managers of agricultural real estate in US and first to offer clients international investment opportunities. Currently managing US\$1.7 B of agricultural real estate and oversees around 111,289 hectares of US farmland. Their first acquisition was in Canada in 2009 with the purchase of 445 hectares cranberry farm. (Milltrust International Group 2012).</p>
<b>LISTED AGRICULTURAL COMPANY</b>	
<b>Description</b>	<b>Example</b>
<p>A publicly listed company operating in agriculture. They are the most directly linked to agricultural land and production. Are thought to be the safest bet for investments in agricultural land since this is their traditional area of expertise. Therefore, it is not a directly financial vehicle investing in land through finance, rather it collects capital (possibly from financial vehicles and avenues) and in turn is able to acquire land and expand.</p>	<p>Brookfield Asset Management, Brazil. Own, operate, and develop agricultural properties and has a portfolio of approximately 170,000 hectares of land located in Brazil for cattle, sugarcane, soy, corn, rice, pineapple, and natural rubber production. Investors in this company's agricultural fund include pension funds, insurance companies, and endowment funds. (Milltrust International Group 2012).</p>
<b>AGRICULTURAL TRADING COMPANY</b>	
<b>Description</b>	<b>Example</b>
<p>A company -publicly listed or not- who is involved firstly in trading agricultural commodities. Often is now tied up in various agricultural activities from production of various commodities to the financing of risk.</p>	<p>Cargill, USA. Established in 1865 in grain storage and trade. Now is the largest privately-owned company involved not just in commodity trading but also in production, financial products, and more. They own and control land through a variety of schemes around the world: like their private equity projects in Asia, their palm oil plantations in Indonesia, etc.</p>

Source: Cases are derived from a publication of Milltrust Group (October 2012). Top Performing Agricultural Funds. Presented at the Agricultural Investment Summit organized by Terrapia, Singapore.

◀ INTERNATIONAL HUMAN RIGHTS...from page 36

development in international legal norms and important global standards that guide the governance of land, forests and fisheries, business and human rights, indigenous peoples' rights and investments, among others.

*Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.* The Guidelines set out principles and internationally accepted standards or practices for the responsible governance of tenure, which includes all forms of tenure, from public, private, communal, indigenous, customary, and informal. The result of a three year process of consultations from 2009-2012, its overarching goal is to support the progressive realization of the right to adequate food in the context of national food security and provide a guiding framework and reference for states to develop legislations, policies, strategies and programs, on one hand, and on the other for citizens to monitor, evaluate actions, and state policies. Civil society constructively engaged in the process of formulation of the Guidelines, it even came out with its own document. This allowed various civil society groups to continue multi-constituency dialogue and alliance building at different fora on issues of food sovereignty, agrarian and aquatic reforms, sharing of territories, and highlight the role and crucial contributions and investments of small-scale food producers and providers towards the realization of the right to food, building of local economies, and employment generation.

The Guidelines is anchored to existing obligations under international law with an explicit reference to the Universal Declaration of Human Rights. This means that the tenure of land, fisheries, and forests are not merely business matter but fundamental rights and must be recognized, respected, and guaranteed by both states and non-state actors. The Guidelines has good points but also limitations. On the upside, there is a strong emphasis on (a) gender equality and equity, i.e. gender-sensitive approach to different aspects of tenure; (b) principle of consultation and participation, especially free prior and informed consent of indigenous peoples; (c) rights and responsibilities to uphold tenure for public purpose, legal protection for all legitimate tenure rights including informal, customary and subsidiary tenure, and tenure security and protection against forced evictions,

*The Binding Treaty also pushes for stronger mechanisms for monitoring, prevention of violations, people's grievances, and restitution and protection of people's land rights.*

protect the civil-political rights of human rights defenders including access to justice, right to appeal, restitution, compensation, and reparation; (d) emphasis on collective tenure, management, and the non economic value of land; and (e) security of tenure and reconstituting land rights in the context or aftermath of disasters and climate change.

But the Guidelines are often general and ambiguous to accommodate conflicting views of governments, especially when there are laws that govern same resources. Further, it does not cover water nor mention it in the preface; it only applies to tenure—not use and management of resources even if access and control are linked to these issues; and free prior and informed consent are not extended to non-indigenous peoples or groups whose livelihoods are dependent on land, fisheries and forests. Finally, which is perhaps the most contentious, the Guidelines in principle



*Saving traditional rice seeds in Laos*

FILE PHOTO

accept large-scale transfer of tenure rights, which can pave way to land grabbing. While there are many safeguards put in place, the Guidelines do not ban land grabbing and it accepts market-based mechanisms to provide access to land, which may lead to weakening of public interests.

***Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Ruggie Principles).*** The Ruggie Principles is named after John Ruggie the the first UN Special Representative on human rights, transnational corporations, and other business enterprises. It serves as a voluntary guideline for the impacts of business on human rights and the need for appropriate regulation. It also supersedes the *Norms on Transnational Corporations and other Business Enterprises*, which was drafted by an expert subsidiary body of the United Nations Commission on Human Rights, which was imposed on companies under international law but was rejected by both companies and states.

The Ruggie Principles harmonized existing guidelines and norms on business and human rights. Like the guidelines, it was the result of 2-3 year process of consultations, research and documentation, which was finally adopted in June 2008 by the Human Rights Council. It has three pillars of Framework:

- State duty to **protect** against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication;
- Corporate responsibility to **respect** human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved;
- Greater access by victims to **effective remedy**, both judicial and non-judicial.

The main criticism of civil society groups and social movements on the Ruggie Principles is that it is deemed

as voluntary and not mandatory, which meant that governments have to rely on businesses and corporations' buy in, which oftentimes only starts at and ends with corporate social responsibility. While, there are on-going National Action Plans for Business and Human Rights, its success really depend on the involvement of business. A number of human rights groups and social movements around the world pushed for a Binding Treaty against Transnational Corporations (TNCs), which aim to regulate businesses and push for greater corporate accountability, in light of the different trends and challenges surrounding land rights and smallholder agriculture issues. The Binding Treaty also pushes for stronger mechanisms for monitoring, prevention of violations, people's grievances, and restitution and the protection of people's land rights, especially when national laws and Constitutions guarantee them.

***Maastricht Principles on Extraterritorial Obligations (ETOs) of States in the Area of Economic, Socio-Cultural Rights (ESCRs).*** This was adopted by international jurists, law and human rights experts, and UN special rapporteurs, etc. Based on legal research for more than 10 years, the *Maastricht Principles* is an attempt to make states accept that they have human rights obligations including access to land and natural resources beyond their national borders, thus, extraterritorial obligations. The realization of ETOs can create an enabling environment for the protection, promotion, and fulfillment of ESCRs and guarantee the primacy of human rights among competing sources of international law. It also provides regulation of TNCs and holds inter-governmental organizations such as the European Union and the Association of Southeast Asian Nations, among others, accountable for impacts. However, it is not legally binding.



*Plan for a water diversion and commercial irrigation project in Cambodia*

FILE PHOTO

**United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).** This was passed in 2007 and outlines the various rights and responsibilities of states and non-state actors in the promotion, fulfillment, and protection of indigenous peoples' (IPs) rights. These include:

- IPs have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law;
- IPs are free and equal to all other peoples and individuals; have the right to be free from any kind of discrimination, in the exercise of their rights, in particular, based on their indigenous origin or identity;
- IPs have the right to self-determination; to freely determine their political status; pursue their economic, social and cultural development;
- Connected to the right to self-determination is the right to autonomy or self-government in matters relating to their internal and local affairs; and
- Every IP has right to a nationality.

**Principles for Responsible Investment in Agriculture and Food Systems (Principles).**<sup>3</sup> On October 15, 2014, the 41st session of the United Nations' Committee for World Food Security (CFS) approved the *Principles for Responsible Investment in Agriculture and Food Systems (Principles)*. Concluding an intense two year process that included establishing an Open Ended Working Group (OEWG),<sup>4</sup> developing Terms of Reference, multiple drafts of the *Principles*, multi-stakeholder consultations and two rounds of formal negotiations, the adoption of the *Principles* was hailed by governments and CFS officials as a: "landmark set of principles meant to guide investment in agriculture and food systems, aimed at assuring that cross-border and corporate investment flows lead to improved food security and sustainability and respect the rights of farm and food workers."<sup>5</sup>

However, for civil society actors' engaged in the CFS process, the final document falls far short of civil society's key criteria:

- Be anchored in a rights-based framework;
- Clearly recognise small-scale producers and workers as the main investors in agriculture;

- Include a commitment to create decent work and respect workers' rights, and to overcome discrimination against women;
- Support peasant-based agro-ecological production systems and local food systems and markets, as well as the defence of peoples' access to and control over land, forest, water, seeds and fisheries;
- Prioritise effective public policies and investment that support and defend small-scale producers, workers and local food systems;
- Include a strong role for States for monitoring the Principles in an inclusive way.

Such a position of civil society was developed through extensive consultations with constituencies most directly engaged in food production and most negatively impacted by medium and large-scale investments: peasants, fisher-folk, pastoralists, landless farmers, agricultural and food workers, rural women and youth, and indigenous peoples.

Further, an issue of particular concern is that the *Principles* allow users to choose the principles that suit their interests for implementation and can thus serve to legitimize destructive and irresponsible investments. The CFS presently has no credible and reliable mechanisms for monitoring what governments and private investors do in the name of the *Principles*. It is therefore of utmost importance that civil society be vigilant about the use and abuse of the *Principles*, and demand that the CFS review the *Principles* on the basis of evidence gathered through actual practice. **R**

1 International Fund for Agricultural Development. (n.d.) Land and Rural Poverty. In *Rural and Poverty Portal*. Retrieved June 2, 2015, from <http://www.ruralpovertyportal.org/topic/statistics/tags/land>

2 de Mesa, M. (2014, June 6). Land Rights as Human Rights. *Powerpoint presentation* delivered at the People's Agrarian Reform Congress, University of the Philippines, Asian Center, Quezon City.

3 Open Ended Working Groups are groups mandated to take forward work on issues agreed to by the CFS. They are open to all UN members and CFS participants and function according to CFS rules. Retrieved June 2, 2015, from [http://www.csm4cfs.org/files/2/guidelines\\_for\\_participation\\_in\\_vg\\_oewg\\_meeting\\_en.pdf](http://www.csm4cfs.org/files/2/guidelines_for_participation_in_vg_oewg_meeting_en.pdf)

4 Food and Agriculture Organization of United Nations. (2014, October 16). Principles for responsible agriculture and food investments are approved. *Food and Agriculture Organization of United Nations News*. Retrieved from <http://www.fao.org/news/story/en/item/260518/icode/>

# International Human Rights Instruments and Legal Tools for the Global Governance of Land, Forests, Fisheries, and Natural Resources

Landlessness is a global problem. According to the International Fund for Agricultural Development (IFAD), up to one quarter of the world's 1.1 billion poor people are estimated to be landless.<sup>1</sup> Included here are 200 million people living in the rural areas. There is a global consensus that rural poverty and hunger are often characterized by lack of access to and control of land and other land-related resources. Indeed, access to land is important for development and poverty reduction. It is also often necessary to access economic, social, and cultural rights, and is linked to many civil and political rights.<sup>2</sup> However, the right to land has not been codified yet in international human rights law. Right to land or land rights, which are the right to use, control, own, benefit from the land's wealth, are usually enshrined only in national laws, Constitutions, and regulations. The Philippines has a slew of land laws and legal tools, as guaranteed by the 1987 Constitution, which govern land rights of farmers, indigenous peoples, and fisherfolk, as well as urban poor's rights to housing. Oftentimes, these laws are products of national social movements' struggles and pushed by campaigns and grassroots initiatives.

Since the last decade, the United Nations agencies, bilateral donors, international policy-research institutions, and several NGOs have been promoting a number of voluntary initiatives for the governance of land, forests, water, and natural resources-based investment. Some are rooted in international human rights framework, while others are

based on industry standards. A commonality among them is the use of the "multi-stakeholder" process/framework.

While the following international instruments are not legally binding, they, however, represent the dynamic

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