Oil Palm Expansion in South East Asia

Trends and implications for local communities and indigenous peoples

Marcus Colchester and Sophie Chao (eds.)

with Jonas Dallinger, H.E.P. Sokhannaro, Vo Thai Dan and Jo Villanueva

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RIGHTS + RESOURCES
The Samdhana Institute
An Asian Center for Social and Environmental Renewal
Sawit Watch
RECOFTC
THE CENTER FOR PEOPLE AND FORESTS
Forest Peoples Programme

This volume is the sixth in a series of reports published by the Forest Peoples Programme and SawitWatch, and other partners, about the social implications of oil palm expansion. The first, *Promised Land: palm oil and land acquisition in Indonesia – implications for local communities and indigenous peoples* (2006), documents the unfair way Indonesian laws allow lands to be expropriated from local people without regard for their rights. The second, *Ghosts on Our Own Land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil* (2006), uncovered the problems being faced by Indonesian smallholders in oil palm schemes. The third, *The Nagari Community, Business and the State* (2007), provides a detailed analysis of how Minangkabau communities in West Sumatra are dealing with State-supported oil palm estates taking over their lands. The fourth, *Land is Life: Land Rights and Palm Oil Development in Sarawak* (2007), shows how oil palm expansion in the Malaysian State of Sarawak is systematically expropriating Dayak lands without respect for their customary rights. The fifth, *HSBC and the Palm Oil Sector in South East Asia: towards accountability* (2008) exposes the difficulties communities face getting banks to hold client companies accountable when these companies violate standards that the banks supposedly uphold.

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Prologue

It is with great pleasure that SawitWatch welcomes the publication of this regional study which focuses on oil palm expansion and land tenure in several Southeast Asian palm oil producing countries (the Philippines, Thailand, Vietnam and Cambodia) and cross-compares their experiences with the facts and myths, stories and lessons learned from other palm oil producing countries, more specifically, Indonesia, Malaysia and Papua New Guinea.

Depending on the national legal frameworks and implementing regulations of the aforementioned Asian states, the expansion of the palm oil industry and the planned cultivation of new oil palm plantations have brought about unexpected consequences and will certainly transform land tenure systems and foster insecurities of subsistence livelihoods, conflicts and resentments, landlessness and evictions, re-arrangements of ownership, management, occupation, exploitation and utilisation of land, forest, water and other natural resources.

As stated in one of the country studies in this publication:

> *... when government officials carry out land allocation and land use planning in indigenous peoples' areas, the assumption that ethnic minority groups practising "slash and burn" agriculture destroy forested areas tend to predominate. To many government officials, fallows are simply "unused lands". Local people thus lose part of their farmland when it is targeted for reforestation. If fallow areas are planted with trees, farmers have no choice when the time comes to re-use the land other than to clear another area for their crops or to cut down the planted trees. Furthermore, current*

> *tenure regulations do not permit joint ownership by communities. Common land is therefore at risk of being privatised through the land allocation programme....*
>
> (Lang 2002, Xanthaki 2003 cited in Dan 2011)

It is obvious that the development imperatives of an independent state can be proven as effective when they result in an improved, acceptable and progressive realisation of civil, political, economic, social, cultural, and environmental rights of indigenous peoples and local communities, smallholders, labourers, and other vulnerable groups. It is crucial that these rights are secured in the face of increasing global palm oil demand, the rapid expansion of oil palm plantations, the currently exploitative mode of operation and production, and the irresponsible profit accumulation of the palm oil industry.

One of the country reports highlights:

> *… the imbalance of land ownership is also increasing, creating a visible gap between the landless poor and richer land owners. Land consolidation and accumulation by wealthier families and individuals has in turn led to an increase in the number of rural households without land…*
>
> (World Bank Vietnam 2000, Vietnam News 1999 cited in Dan 2011)

Taken together, the case studies show how reforms to national land tenure laws and policies, coupled with strong enforcement, are vital if the palm oil sector is not to cause harms. In the meantime, going beyond the law is a must. Therefore, purely from the point of view of international norms and best practices, the palm oil industry is morally bound to observe and comply with local and national laws, human rights and labour norms and standards, a do-no harm policy, non-discriminatory principles, transparency, good governance, accountability and responsibility.

Given the complexity of the palm oil industry's investments and operations, it is evident that it has contributed to and will continue to cause deforestation,

inevitable environmental degradation, land disputes, social conflicts, food sovereignty and livelihoods insecurity and further violations and abuses of human rights. Therefore, it is strongly recommended that the governments of palm oil producing countries immediately initiate, develop, take and implement precautionary measures to remedy existing flawed laws, worst practices, legal leniencies and discriminatory development impacts.

Last but not least, SawitWatch would like to express its appreciation to the authors and editors of the country studies, supporting individuals and participating civil society organisations, in particular, Rights and Resource Initiatives (RRI), Forest Peoples Programme (FPP), RECOFTC, Tenaganita, Sahabat Alam Malaysia (SAM), and other capacity and resource supports for their generous contributions to the publication.

Bogor, June 27, 2011

Abetnego Tarigan

Executive Director, SawitWatch

Acronyms

5MHRP	Five Million Hectare Reforestation Programme
A&D	Alienable and Disposable Land
ABERDI	A. Brown Energy Resources Development Inc.
ADB	Alienable and Disposable Land
AFRIM	Alternate Forum for Research in Mindanao
AGHIMICU	Agtulawon-Mintapod Higaonon Cumadon
	"Pure Higaonon tribe in Mintapod and Agtulawon Ancestral Domain"
AGPI	Agumil Philippines Inc.
ALF	Agricultural Loan Fund
API	Agusan Plantations, Inc.
ARB	Agrarian Reform Beneficiaries
ARC	Agrarian Reform Community
ARSP	Agrarian Reform Support Project
ASEAN	Association of Southeast Nations
BAAC	Bank of Agriculture and Cooperatives
BDF	Bio-Diesel Fuel
CADT	Certificate of Ancestral Domain Title
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title/Ancestral Domain

CARBEMPCO	Cuevas Agrarian Reform Beneficiaries Multipurpose Cooperative
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CBFMA	Community-Based Forest Management Agreement
CBFMP	Community Based Forest Management Program
CDCF	Cambodia Development Cooperation Forum
CFP	Community Forestry Program
CLF	Countryside Loan Fund
CLOA	Certificate of Land Ownership Award
CMEM	Colombio Multi-Sectoral Environmental Movement
CPO	Crude Palm Oil
CRMF	Community Resource Management Framework
CRP	Contract Reforestation Program
CSO	Civil Society Organisation
CUP	Cooperative Union of the Philippines
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DARAB	Department of Agrarian Reform Adjudicatory Board
DENR	Department of Environment and Natural Resources
DOE	Department of Energy
DTI	Department of Trade and Industry
ECAN	Environmentally Critical Areas Network
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
ELAC	Environmental Legal Assistance Centre

ELC	Economic Land Concession
FDI	Foreign Direct Investments
FFB	Fresh Fruit Bunch
FLMP	Forest Land Management Program
FMS	Forest Management Services
FPDL	Forest Protection and Development Law 2004
FPIC	Free, Prior and Informed Consent
FPIWU	Filipinas Palm Oil Workers Union
FPP	Forest Peoples Programme
FPPI	Filipinas Palm Oil Plantation, Inc.
GAP	Good Agricultural Practice
HCV	High Conservation Value
HGU	*Hak Guna Usaha:* business land use permit
HOPL	Hargy Oil Palms Limited
IFMA	Industrial Forest Management Agreement
IFSP	Integrated Forest Stewardship Program
IPRA	Indigenous Peoples Rights Act
ISFP	Integrated Social Forestry Program
JMI	Joint Monitoring Indicator
JVA	Joint Venture Agreement
KARBEMPCO	Kenram Agrarian Reform Beneficiaries Multipurpose Cooperative
KASAMAKA	Kapunungan sa Mga Mag-Uuma sa Kaanibungan "Association of Farmers in Kaanibungan"
KFI	Kasanyangan Foundation, Inc.
KIDI	Kenram Industrial & Development, Inc.

KPA	Consortium for Agrarian Reform
KUFTRIMPCO	Kabingwangan Upland Farmers Tribal Multi-Purpose Cooperative
LBP	Land Bank of the Philippines
LGU	Local Government Unit
LTP	Land Titling Program
MAFF	Ministry of Agriculture, Forestry and Fisheries
MAPARBEMPCO	Mapantig Agrarian Reform Beneficiaries Multi-Purpose Cooperative
MEEDO	Municipal Enterprise and Economic Development Office
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MNLF	Moro National Liberation Front
MoA	Memorandum of Agreement
MRICOP	Mong Reththy Investment Cambodia Oil Palm Co.
MTPDP	Medium Term Philippine Development Plan
NAFLU	National Federation Labour Union
NBB	National Biofuels Board
NBPOL	New Britain Palm Oil Limited
NCIP	National Commission on Indigenous Peoples
NCIP	National Commission on Indigenous Peoples
NCR	Native Customary Rights
NDC	National Development Corporation
NES	Nuclear Estate Scheme
NGEI	NDC-Guthrie Estates, Inc.
NGOs	Non Government Organisations

NGPI	NDC-Guthrie Plantations, Inc.
NIPAS	National Integrated Protected Area System
NPA	New Peoples' Army
NRIMP	National Road Improvement and Management Program
NSDP	National Strategic Development Plan
OAE	Office of Agricultural Economics
OER	Oil Extraction Rate
OPIC	Oil Palm Industry Cooperation
PALM	Philippine Agricultural Land Development Mill
PCA	Philippine Coconut Authority
PCSD	Palawan Council for Sustainable Development
PEO	Provincial/Urban Environmental Office
PODO	Palm Oil Development Office
POPDC	Philippine Oil Palm Development Council
PPDC	Philippine Palm Oil Development Council
PPOIC	Philippine Palm Oil Industry Council
PPVOMI	Palawan Palm and Vegetable Oil Mills Inc.
PSU	Palawan State University
PWO	Public Warehouse Organisation
QUEDANCOR	Quedan and Rural Credit Guarantee Corporation
RAN	Rainforest Action Network
RBD	Refined bleached deodorised palm oil
RECOFTC	Center for People and Forests
RFD	Royal Forestry Department
RGC	Royal Government of Cambodia
RRI	Rights and Resources Initiative

RSPO	Roundtable on Sustainable Palm Oil
SABL	Special Agricultural and Business Lease
SEP	Strategic Environmental Plan
SIA	Social Impact Assessment
SIFMA	Socialised Industrial Forest Management Agreement
SPDA	Southern Philippines Development Authority
SRT	Oil Palm Self Reliant Loan Window
SWOT	Strengths, Weaknesses, Opportunities and Threats Analysis
TGO	Thai Greenhouse Gas Management Organisation
TODO UNLAD	Total Development Options - Unified Land Bank Approach to Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
VOP	Village Oil Palm

Oil Palm Expansion in South East Asia: an overview

Marcus Colchester[1] and Sophie Chao[2]

Introduction

Palm oil is a ubiquitous commodity. It is a basic ingredient of much of the processed food we commonly eat. It is the most widely used oil in cosmetics and household cleaners. Globally, its use is increasing massively. Palm oil is also in the news: its detractors point to well researched evidence that careless development of oil palm is destroying forests, drying out peat-swamps, wiping out endangered species, polluting air and waterways, driving climate change, dispossessing indigenous peoples and immiserating the rural poor. The World Bank has been so troubled by the way the palm oil sector has been evolving that, between 2009 and 2011, it suspended all funding for palm oil projects worldwide, while it reviewed its experiences and re-thought how it should engage in the sector to ensure good outcomes.

Recognition of these problems has also come from the industry itself, which, driven by consumer concern, has admitted that production methods must change and which has set up the Roundtable on Sustainable Palm Oil (RSPO) by which companies operating through approved methods can be assessed and certified. The RSPO aims to divert the palm oil frontier away from primary forests and areas of high conservation value and it proscribes land-grabbing,

insisting that all lands must only be acquired with respect for the rights of local communities and indigenous peoples, including respect for their right to give or withhold consent to land purchases or leases.

To date, most attention has focused on the two major palm oil exporting countries, Malaysia and Indonesia, which between them supply over 80% of the global market. Papua New Guinea, the third main exporter, has also received quite a bit of attention. But what is happening elsewhere in South East Asia? Is oil palm expansion having the same impacts there? Are these countries experiencing similar land grabs and social conflicts or are indigenous peoples and small farmers benefiting there? What can we learn from these other countries? How can we help civil society in these other countries engage with the industry and limit or reduce the negative effects?

This publication is an initial output of a project being undertaken to help answer these questions. As a collaboration of the Forest Peoples Programme, SawitWatch, the Samdhana Institute and Centre for People and Forests, all of which are partners and collaborators of the Rights and Resources Initiative, the project has sought to consolidate the available information from Indonesia, Malaysia and Papua New Guinea and supplement that with new research from Thailand, Cambodia, Vietnam and the Philippines, as well as the wider literature.

Methods and limitations

This study results from the first year of this collaborative project, which aims, first, to assess how the palm oil sector is expanding in South East Asia and, second, to help civil society groups engage with the industry to restrain destructive developments and ensure outcomes favourable to people and forests, based on a respect for local people's rights, livelihoods and ways of living. During the first year, our efforts have focused on collecting information about the main trends in the palm oil sector in South East Asia, discussing problems and prospects and planning appropriate means of engagement in the future. Four national case studies were commissioned, which comprise the central chapters of this report, on Thailand, Cambodia, Vietnam and the

Philippines and two workshops were convened to discuss the preliminary findings and analyse trends and solutions. The first workshop hosted by the Centre for People and Forests in Bangkok included participants from these countries but also from Indonesia, Malaysia and Papua New Guinea, at which participants were able to highlight the trends and challenges in their countries. A second workshop was then held in Bayanga village, just south of Cagayan de Oro on the island of Mindanao in the Philippines, hosted by the Samdhana Institute, which looked in detail at the current situation in the Philippines.[3]

The resulting report thus represents a snapshot of what we have been able to discern about the palm oil sector by these means. Time and budgetary limitations did not allow detailed field studies of locales except in the Philippines. In Thailand, we were not able to identify either a body of national research or independent NGO perspectives about land tenure issues in the areas where palm oil is expanding. In Cambodia, there is a lack of official data about land allocations. In Vietnam, where oil palm has yet to be developed, the implications of expansion for communities are, obviously, not yet clear. Despite these limitations we feel confident that the considerable body of information that we have been able to assemble is already sufficiently robust so that clear trends and problems can be identified and important conclusions can already be drawn about how the sector should be steered to minimise negative impacts. Meanwhile, the project itself is continuing.

Market trends

Rising global demand for edible oils remains the main factor driving up palm oil prices on the international commodity markets and this is encouraging further investment, stimulating trades in palm oil companies on the stock exchanges and accelerating land acquisition.

Country	CPO export (metric tons)	CPO import	Total CPO production	World ranking in CPO production
Indonesia	14.8 million	21,000	19.7 million	1
Malaysia	13.84 million	1.047 million	17.4 million	2
PNG	405,000	5,000	425,000	6
Thailand	500,000	1,000	1.4 million	3
Philippines	n/a	10,000	70,000	16
Cambodia	n/a	n/a	n/a	n/a
Vietnam	n/a	480,000	n/a	n/a

Table 1: CPO exports, imports and total production in 2008[4]

Palm oil accounts for a third of the total 130 million tons per year of vegetable oil globally traded per year.[5] Total global production of palm oil is estimated at over 45 million tons, with Indonesia and Malaysia as the major world producers and exporters.[6] Major markets for the growing palm oil industry are Europe, India, Pakistan and China for edible use, with demand in the USA now rising rapidly.

Investment in oil palm expansion is also being stimulated by import substitution policies in countries currently reliant on global markets for imports of edible oils such as the Philippines, India and Vietnam and for countries hoping to reduce dependence on imported fossil fuels with biodiesel. With the global bio-fuel industry estimated to double between 2007 and 2017, as the fastest growing segment in global commercial agriculture,[7] both Indonesia and Malaysia have introduced policies to develop a bio-diesel industry both as domestic energy source as well as for export and targets producing 6 million tons of palm oil each year.[8] Cambodia's Office of the Council of Ministers has also initiated a bio-energy promotion plan which points strongly to the further expansion of oil palm plantations in the near future.

Planting trends

Country	Plantation area (hectares)	Planned expansion (hectares)	Patterns of production
Malaysia	4.6 million	60,000-100,000/ year mainly in Sabah and Sarawak	State-mediated leaseholds on State or customary lands. Large estates with most smallholders (SH) in schemes; few independents (10%)
Indonesia	9.4 million	10-20 million+	State-mediated leases for large estates on State lands. SH 40% area, half in schemes linked to estates and half independent
PNG	0.5 million	2 million – 5 million	Mainly "associated" smallholders schemes (90%), though SABLs and Nucleus Estate Model
Thailand	644,000	80,000/year	Mainly independent smallholders (70%)
Cambodia	118,000	n/a	Mainly large estates through ELC mechanism
Philippines	46,608	Potential for 304,350	Leaseback schemes and outgrower agreements between cooperatives and agribusinesses
Vietnam	650	70,000-100,000 by 2015	Experimental only

Table 2: Oil palm plantation areas and production patterns

South East Asia is experiencing an expansion and intensification in the conversion of forest and swidden land to oil palm plantations. Optimal land to production ratio is achieved through oil palm monocultures over extensive areas of land, usually accompanied by the building of processing mills and roads for crop transport purposes. There are 4.6 million ha of oil palm plantations in Malaysia and most expansion is now occurring in Sabah and

Sarawak. Land is now growing scarce: by 2002, expansion in Peninsular Malaysia was down to the last 340,000 ha of conversion forest.[9] Despite this, the Sarawak government plans to double the area under oil palm with a target of 60,000-100,000 ha per year on customary lands. The mode of expansion is in the form of large estates with most smallholders in schemes with State-mediated leaseholds on State or customary land.[10] Only 10% are independent smallholders.

Oil palm plantations are estimated at 9.4 million ha in Indonesia, where the most vigorous expansion is underway. Native land owners surrender their land to the State to be developed by private companies, usually but not always, with associated schemes for smallholders. Approximately 600,000 ha are cleared each year and expansion is relentless in Sumatra, Kalimantan, Sulawesi and West Papua and is now increasing on small islands such as Siberut, Halmahera and Yamdena.

Papua New Guinea's oil palm plantations cover around 500,000 ha and are located in West New Britain, Oro, Milne Bay and New Ireland. Recently, there has been a rapid spread of areas set aside for plantations through apparently fraudulent 'special agricultural and business leases' (SABLs) covering 5.6 million ha of customary lands without due negotiation with the traditional owners.

Cambodia's oil palm plantations, covering 118,000 ha, have expanded as large estates over substantial areas of so-called 'vacant' land in forested regions through the issuance of Economic Land Concessions (ELC) whereby large allocations of state private land are granted to private companies in the name of large scale agricultural investment. Communities with informal or customary rights in these areas have been pushed aside.

In contrast, large estates are rare in Thailand. The smallscale character of the Thai palm oil and oil palm industry allows a broader distribution of rents than might be the case in countries where a few big companies dominate the industry and individual land ownership is limited. Plantations cover 644,000 ha in total. Farmers owning less than 50 ha manage approximately 70% of the total area planted with oil palm, and the majority are independent smallholders.

Oil palm plantations in the Philippines occupy 46,608 ha, representing a 160% increase in plantation area in the span of just four years. This suggests the Philippines may soon emerge as a key player in the palm oil industry of South East Asia. Expansion is projected in Leyte and Samar while aggressive expansion is already underway in Maguindanao, North Cotabato, Davao and Misamis Oriental. Production is organised in the form of leaseback schemes between Agrarian Reform Beneficiaries (ARBs) and agribusinesses, and outgrower agreements between farmers and agribusinesses.

As oil palm has only recently been introduced in Vietnam, it remains at the experimental stages of (non-commercial) plantation and production. Plantation is in the form of small parcels amounting to 650 ha. Available land is scarce due to the existing large-scale production of other cash crops: rice, coffee, cashew and rubber. However, plans to develop bio-oils are being considered as an option by the Vietnamese government as part of the 'Development of bio-fuels for the year 2015: vision to 2025' project (2007) with a projected 70,000 – 100,000 ha of plantations to be established by 2015.

The expansion of oil palm plantations is rapidly becoming a global phenomenon. In India, plantations are projected to reach 1 million ha in the next five years, from 130,000 ha at present.[11] Plantations are expanding in Nigeria, Ghana, Côte d'Ivoire, Congo, Guinea, DRC, Cameroon and Sierra Leone along with smaller areas in Benin, Burundi, Cameroon, the Central African Republic, Equatorial Guinea, Gabon, Gambia, Guinea Bissau, Liberia, Senegal, Tanzania, Togo and Uganda.[12] In Latin America, industrial-scale cultivation of oil palm is spreading in Ecuador, Colombia, Honduras, Costa Rica, Venezuela, Brazil, Peru Guatemala, the Dominican Republic, Nicaragua and Mexico.[13]

Environmental impacts

The environmental impact of large scale oil palm plantations includes the tremendous loss of biodiversity, increase in Green House Gas (GHG) emissions, massive deforestation, soil nutrient depletion, drought, and desertification and water pollution from toxic waste. Paradoxically, palm oil is often promoted by governments of South East Asian palm oil producing countries as part

of their climate change mitigation efforts as a source of renewable energy, despite growing evidence that palm oil is far from green, particularly due to the opening up of carbon-rich forest peatlands to establish plantations.[14]

In Indonesia, the clearing of forest for oil palm plantations has caused devastating forest fires,[15] while in Thailand, it has been blamed for a horrific landslide that killed at least forty people in April 2011.[16] In Sarawak (Malaysia), PNG and Sumatra (Indonesia), oil palm plantations have contributed to severe pollution of local rivers, threatening both the livelihoods and physical well-being of local inhabitants.[17] In PNG, Cambodia and Indonesia, a worrying pattern is being witnessed whereby palm oil companies exploit their right to land for plantations to engage in illegal logging beyond their concession areas, at times encroaching onto conservation zones. In Indonesia, it is estimated that up to 12 million ha of land have been allocated to oil palm and deforested, but not planted, suggesting that many companies use palm oil schemes to obtain access to timber without the need for forest management plans.[18]

Nearly half of South East Asian oil palm plantations are created on some kind of primary or secondary forest land.[19] However, active implementation and consistent monitoring of environmental safeguards have generally failed to accompany the rapid expansion of oil palm plantations. Environmental Impact Assessments (EIAs) in Cambodia and Malaysia, for example, have been routinely neglected or superficially carried out, and their credibility further questioned by the lack of transparency of the monitoring process and outcomes.[20]

Land tenure and land security

A convergence of global crises (financial, environmental, energy, food) in recent years has contributed to a dramatic revaluation of and rush to 'grab' land, especially land located in the global South.[21] Locally, land-grabbing takes many forms and is normally associated with a lack of security faced by smallholders confronted with more powerful non-local interests employing various means to usurp rights to land previously owned or used by locals. This lack of security may be due to an absence of clear and legally enforceable

rights over landed property, or to tenancy arrangements that allow landlords to resume land, or to state claims to ownership of land under de facto occupation or use by local smallholders who face alienation in favour of large scale corporate interests.[22]

In the Philippines, leasebacks between Agrarian Reform Beneficiaries (ARBs) and agribusiness firms, and outgrower agreements between farmers and agribusiness companies have been heavily criticised as being inimical to the rights and interests of small farmers. Some of the grievances reported by collectives include the lack of financial support to the farmer-beneficiaries, the vulnerability of smallholders to leaseback schemes from which they receive low rent, and unfulfilled promises of employment and other benefits. As a result, many of the farmers who enter such schemes remain impoverished while having abdicated access to and control of their lands.

In Cambodia, contracts for ELCs ostensibly do not violate the land and use rights of peasants since ELC contracts are meant to be only granted on state private land.[23] However, the categorisation of areas as state public and private land does not reflect reality. Existing Economic Land Concessions regularly encompass households' paddies, fields, grazing land, water and forest resources.[24] Moreover, although state, public and private property are differentiated in the 2001 Land Law, villagers can legally be evicted for ELCs or private investment interests. Since there is no public information on what exactly state public land is, it is difficult for the occupier to question the state's claims that they are living on state property.[25] The ambiguous nature of state land and the convenient transferability of state public land (such as forested, fallow, or non-private lands) to state private land facilitates land grabbing in rural Cambodia.

In PNG, lands held and managed under custom are regularly quoted as covering the vast majority of the country's land mass, 97% being the usually accepted figure. However, there are ways in which these lands can and have been alienated in fact, if not in law.[26] The Land Act (1996) allows long-term leases to be issued by the government over customary lands through a lease-leaseback process defined under the Land Act (1996) for periods of up to 99 years and the recipient of these leases can be non-indigenous companies.[27]

Lack of clarity in the law about negotiation processes and the legal personality of landowner groups, coupled with the fact that many groups have little experience with the cash economy, has allowed plantation developers to manipulate landowners through bribery, through creating non-representative associations, and through making (often unfulfilled) promises of careful land management and provision of services.[28]

Between July 2003 and January 2011, almost 5 million ha of customary land (11% of PNG's total land area) were passed into the hands of national and foreign corporate entities through the 'lease-leaseback scheme' or SABL.[29] Another prevalent land tenure model in PNG is the Nucleus Estate model with a 'parent' palm oil company, predominantly foreign-owned. Under such a scheme, growers are organised into Village Oil Palm (VOP) and Leaseholders. VOPs are operated by landowners in their own customary lands. Leaseholders lease land from other landowners for the plantings. This model has been criticised as an 'out sourcing' exercise for palm oil companies to increase supply and profitability for their mills whilst sharing the costs and risks associated with this kind of industry with growers.

Finally, as a burgeoning palm oil producing country, Vietnam presents a worrying case in terms of land tenure mechanisms and the lack of land security provided to local inhabitants.[30] The complex nature of land laws is a serious obstacle to local people's ability to understand and act upon their rights as well as seek redress in instances of rights violations.[31] The system of normative legal documents for forest management, for example, is subject to frequent changes. The Land Law of 1993 has not been evenly implemented and varies largely across regions. Most problematically for indigenous peoples who have traditionally relied on and used land on a communal basis, the Civil Code 2005 does not recognise the community as subject of a civil legal relationship although legislation provides for common ownership by the community.

It is still too early to observe how palm oil plantation development for commercial purposes will affect Vietnamese local communities and indigenous peoples, but the experiences of other South East Asian countries provide only too clear an indicator of how unsuitable land tenure systems and the

lack of land security for local inhabitants can undermine their livelihoods and customary rights when companies seek to acquire extensive areas of land for crops such as oil palm.

Human rights standards and realities

The forested regions of South East Asia are home to a large number of indigenous peoples and a remarkable diversity of ethnic groups. International human rights regimes have made major advances in recent years to clarify the rights of indigenous peoples in international law. The current consensus about indigenous peoples' rights, which evolved through standard-setting work at the International Labour Organisation (ILO) and the United Nations Human Rights Commission (UNHRC) and its various sub-commissions, has also been reflected in the jurisprudence of bodies set up to review the implementation of the various human rights treaties that many States have ratified. The resulting norms have been consolidated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which was adopted by vote at the General Assembly in 2007.

Among the key rights relevant oil palm expansion are the rights of indigenous peoples to the lands, territories and natural resources that they have traditionally owned, occupied or otherwise used, and the right to give or withhold their free, prior and informed consent (FPIC) expressed through their own representative institutions to measures that may affect their rights. In addition, the Declaration, among other existing international treaties, emphasises the importance of free, prior and informed consent of indigenous peoples to activities planned on their lands:

> Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their *free and informed consent prior to* the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources. (emphasis added)

Despite this, a common trend in palm oil producing South East Asian countries is the frequent, if not naturalised, neglect or misinterpretation of local inhabitants' right to FPIC. Of particular relevance in the case of oil palm development is the violation of rights of indigenous people in relation to their rights to land and land use, particularly since many of the areas where palm plantations are established are forested areas that have been inhabited by indigenous communities for generations according to customary laws and are of central importance to their culture, sense of identity and survival as a community. Even worse, land used or targeted for oil palm expansion is commonly claimed by the State as vacant, idle or degraded land, when in fact most of these areas are existing agricultural lands and indigenous customary lands, encumbered by customary rights and central to local communities' livelihoods and socio-cultural identities.[32]

The customary land rights of indigenous peoples in Sabah and Sarawak (Malaysia) remain unrecognised by the government, compounded with a lack of transparency in processes of land concession allocation and in land and forest governance frameworks and the fact that Native Customary Rights (NCR) are interpreted by the government as weak usufructuary rights on State lands.[33] In Indonesia, customary rights to land are recognised by the Indonesian Constitution but ineffectively secured and protected by other laws and implementing regulations. The Basic Forestry Law of 1967 and the revised Forestry Law of 1999 claim State ownership over all forests in Indonesia without sufficient consideration of customary rights and local traditions.

Frequently, the rights and customary institutions of indigenous peoples are not recognised and lack legal personality. Where they do, State-recognised village-level institutions may operate in ways that favour State control and are hindered from independently representing the interests of communities.[34] In PNG, the right to FPIC has been severely undermined since spatial plans and permits for oil palm often do not take account of customary land rights. Local communities are rarely provided with enough or any information concerning prospective or established oil palm expansions to make an informed choice in the first place.

In the Malaysian State of Sarawak, plantation smallholders have no direct voice in the management of the schemes since the *Konsep Baru* prohibits direct negotiations between communities and investors and requires State agencies to mediate in matching community lands with companies. In Vietnam, it is reported that ethnic minorities have gained less security in land and forests that the national majority (*Kinh*).[35] The individualising of land tenure in the agrarian reforms has caused ethnic minorities to lose access to land in the vigorous land markets that ensued, as has been reported among the Hmong.[36] Customary land use rights have been restricted and customary benefit-sharing arrangements are not formally recognised under statutory law.

The most progressive law in South East Asia to recognise indigenous tenure is the Philippines Indigenous Peoples Rights Act of 1997 (IPRA), which allows for the titling of indigenous peoples' ancestral domains as inalienable communal properties.[37] IPRA offers indigenous peoples a way of securing ownership over their lands as divided into two categories; ancestral domains and ancestral lands. However, indigenous peoples in the Philippines are particularly vulnerable to oil palm expansion in upland so-called vacant forested areas which investors are now targeting, despite some of these areas being covered by Department of Environment and Natural Resources (DENR) tenure instruments and recognised on paper as indigenous peoples' ancestral domains.[38]

Upland communities in Thailand face similar insecurities, as most of their lands are classed as forests and are considered off-limits to community ownership.[39] Owing to the strong mobilisation of upland dwellers, there are calls for the regularisation of collective rights, and a Community Forest Bill now at least provides a limited contractual framework for participatory forest management and related rights of forestland access and use for local communities and indigenous peoples.[40] However, to date, oil palm has mainly expanded in lowland areas in the south of the country where the relative security of tenure afforded to rural peoples by successive land reforms has led to the emergence of a relatively independent small-holder based system of oil palm development more favourable to local people.

Resistance and repression

Where oil palm plantations and palm oil production are carried out without FPIC and on customary lands without concern for customary uses and forms of land tenure, resistance and opposition by local communities and indigenous people tend to arise. Such conflicts are emerging in Cambodia and the Philippines and on the rise in Indonesia and Malaysia, where local communities are adopting various approaches to voice their opposition to State-sanctioned land-grabbing. Techniques of collective opposition range from strikes, petitions to government and non-governmental agencies and blockades to physical and armed attacks.

In Indonesia, Malaysia, PNG, the Philippines and Cambodia, local communities have turned to legal action in local and national courts of appeal. In Indonesia, the Consortium for Agrarian Reform (KPA) reports plantation-related social conflicts account for over a third of land conflicts in the country. In 2010, SawitWatch recorded more than 663 communities in conflict with more than 172 companies, with 106 arrests as a result of these conflicts.[41] In the same year, the National Commission on Human Rights received reports of no less than ten cases of conflict related to palm oil in Kalimantan alone, and the actual number of cases is reportedly much higher. The national land agency has registered some 3,500 on-going land conflicts related to oil palm plantations. Several of these cases have been dealt with through police or military intimidation and sometimes fatal physical attacks and shootings.[42] Likewise, in Cambodia, over 60% of ELCs are currently under conflict, some of these having lasted over ten years. Village residents are routinely intimidated by armed security guards hired by concessionaires if they try to enter into forest and plantation areas, or protest against encroachment.[43] In several areas, the actions of armed guards have resulted in violence, injury and death of village residents.[44]

Opposition to abusive working conditions and tenurial contract violations by workers' unions has arisen in the Philippines in the form of strikes, legal appeals and court cases, some of which remain unresolved and have led to the temporary cessation of oil palm production and processing activities.

Some of these cooperatives have already turned to NGOs and other support organisations nationally and internationally for support in their case against oil palm investment companies.

Conflict does not only occur between local communities and palm oil companies or the State. They also result from growing divisions within many local communities as a result of the untransparent negotiations by community leaders with companies without involving community members, as exemplified by numerous inter and intra-clan conflicts in PNG. A major issue with more than 50% of court cases related to land. Conflicts between local communities and migrant plantation workers have also been reported in Indonesia, Malaysia, Cambodia and Thailand.

Smallholders', workers' and women's rights

The development of monopsonistic relations between smallholders and oil palm companies has led to widespread abuse and violation of smallholders' rights. Ambiguity regarding the value of their land and the terms of lease have led to numerous smallholders, and particularly indigenous peoples, selling their land for derisorily low prices and for undetermined periods of time. The conversion of former farmland to cash crop plantations forces smallholders into a cash-based economy in which their food security is diminished and their use of land restricted by the oil palm companies. When forced into dependency on the companies due to financial and technical constraints, smallholders are the first victims of fluctuating prices for crude palm oil (CPO) on international markets. Lacking the capital and liquidity to absorb production and market failures, they rapidly fall into debt.

As the case studies in this book reveal in Indonesia, Malaysia and Cambodia, subcontracted migrant workers, particularly vulnerable to work and human rights abuses, are being lured by companies with false promises of land and employment. When they do succeed in finding a job, they tend to be overworked and underpaid.[45] This is exacerbated by untransparent and delayed remuneration and the fact that workers are regularly charged extra

fees for transport and debt repayment. Hiring and firing workers remains the prerogative of the companies.

Female plantation workers are particularly affected by the increased dependence on cash resulting from the decrease in agricultural land as men tend to receive and control cash income, as has been reported in Indonesia, the Philippines and PNG.[46] Rights of women to inherit land according to customary law in West Kalimantan have been narrowed by the 'household head' system of smallholder plot registration.[47] In the Philippines, collective titling of land to cooperatives has undermined the position of women in terms of decision-making and led to their exclusion from employment opportunities.

Those women who do find work on the plantations tend to be relegated to the status of sprayers of pesticides and fertilisers and are subject to severe health hazards posed by chemicals such as paraquat.[48] With the exception of Thailand, little training on the safe use and potential risks of these chemicals is made available to them, compounded with poor medical facilities, lack of suitable protective equipment and the weak or nonexistent implementation of safety regulations.[49] Finally, the pressure on women to provide for their families despite the conversion of traditional farmlands to oil palm plantations forces them to seek alternative sources of income as migrant workers. In Cambodia, Indonesia, PNG and the Philippines, prostitution is reportedly on the rise, leading to an increased prevalence of HIV/AIDS and other STDs among female plantation workers.

Problems at the mill

The processing of oil palm fruit bunches at the mill must be completed within 48 hours to guarantee the quality of the extracted oil. Smallholders are often dependent on the companies for transport to and from the certain mills which they are bound to by their contract, and are regularly charged for use of these facilities.[50]

The case of Thailand is an exception. In most cases Thai oil palm farmers act completely independently from the oil palm crushing mills and are not

linked to mills by contracts or any other formal arrangements. In a few cases, farmer cooperatives have even managed to establish their own cooperative mill with government support. Since big plantations are rare, Thai oil mills strongly depend on purchasing FFB from independent oil palm growers, most of whom are smallholder farmers. This leaves the farmers and especially the intermediaries in a good bargaining position to achieve the highest possible price since they are free to decide where and to whom they sell their produce.

Conflict and redress

Central to any rights-based regime is the provision of means of redress to victims of abuses. This right includes an "awareness of rights by potential plaintiffs; access to legal counsel; active, unbiased policing; formal establishment of judicial, administrative, and other remedies; access to courts; an independent judiciary; just enforcement of penalties; and, not least of all, protection of plaintiffs and witnesses and of court officials, judges, and other State officials from intimidation and violence."[51] Conversely, it is generally the lack of proper means of conflict resolution that is the most obvious reason that disputes escalate into conflicts.

In some countries, indigenous peoples' rights are neither adequately guaranteed by law nor adequately protected in practice. Even when customary rights might be recognised in the Constitution, in national legislation and the UNDRIP, they may be relegated to a secondary position when overlapping with national environmental and land laws, as is generally the case for oil palm plantations. In general, the recognition of indigenous peoples' rights and/or the tenurial security of local communities remain weak. Further exacerbating this is the lack of respect for Court Rulings by companies, governments and State administrations, and the corruption that undermines the value of these legal mechanisms of redress.

In PNG, where land leasing processes have been manipulated, manufactured or falsely presented, there is no effective avenue for redress, thus allowing customary lands to be alienated for up to three generations while still classed as

land held under custom. There is real and growing concern that the protections offered by the Land Act are insufficient for customary owners with little access to the national judicial system. In Cambodia, village residents have appealed to local, provincial and national authorities for help, which unfortunately has not been forthcoming. Instead, public officials have generally shown a bias in favour of companies and have attempted to intimidate village residents to stop making complaints.[52]

In the Malaysian State of Sarawak, over 100 land disputes, many involving palm oil companies have been taken to the local courts and some of these have been adjudicated in the higher courts. In a number of such cases in the higher courts, judges have upheld native peoples' land claims as consistent with the Malaysian Constitution and common law principles. Rather that recognising this, the Land Code in Sarawak has been amended several times in an effort to further frustrate indigenous peoples' land claims.[53]

Many cases related to land conflict and oil palm plantations end up backlogged in the courts for as long as fifteen to twenty years[54] obliging communities to invest time, money and energy to press cases through the civil courts.[55] Governments too have been slow in amending the laws in favour of indigenous peoples. Political connections and corruption continue to undermine attempts by local inhabitants to effectively utilise mechanisms of redress in the face of investors and State-sponsored companies.

Challenges with certification

The Roundtable on Sustainable Palm Oil (RSPO) standards for the certification of sustainable palm oil were adopted in 2005. The standard is designed to divert palm oil expansion away from primary forests and areas of high conservation value, requires the recognition of customary rights in land, obliges growers to only acquire lands with the free, prior and informed consent of prior rights-holders and makes it mandatory that operations respect the rights of workers', migrants' and women' and pay fair prices to smallholders.[56]

Originally developed mainly to suit large palm oil estates, the standards require

detailed annual audits of mills and their supply bases as well as audits of the 'chain of custody' to ensure produce from uncertified plantings does not get accepted into the certified supply chains. However, both the Indonesian and Malaysian governments have raised concerns that the voluntary standards of the RSPO are too high and they have instead pledged to develop mandatory national standards for each country.[57] NGOs, on the other hand, have complained that RSPO members are getting certified when their independent reviews suggest that the companies do not comply with the RSPO standards.[58]

Aware that the standards and procedures of the RSPO were ill-suited to smallholders, the RSPO set up a Task Force on Smallholders which through several years of consultation has elaborated revised standards designed for both smallholders in schemes contractually linked to specific mills and for the group certification of independent smallholders. The standard for group certification have yet to be proven workable and there are a number of procedural steps that the RSPO has not yet worked out to make it possible for independent growers producing fruits to get certified for sustainable palm oil, while it is still unclear if and how the RSPO will provide means to make the onerous task of group organisation and certification affordable.[59] As the Thailand case study explores in greater detail, there are good reasons for concern that unless the barriers of cost and feasibility are somehow lowered, palm oil certification may actually end up excluding oil palm smallholders from global markets.

Conclusions and recommendations

The palm oil sector worldwide is in a phase of rapid expansion. This expansion is being strongly challenged by national and international civil society organisations that have shown that indiscriminate land acquisition and land clearing for oil palm is leading to rapid habitat loss and species extinction, alarming Greenhouse Gas Emissions, the dispossession of indigenous peoples, and the immiseration of the rural poor.

Rising global demand for edible oils and biofuels, global trade, escalating commodity prices and surging international investment are among the main drivers of this expansion. But domestic considerations are also significant.

National governments are promoting oil palm to meet rising domestic demand for edible oils, to reduce their countries' dependency on imported fossil fuels and to limit their loss of foreign exchange. Moreover, where the circumstances are favourable, small scale farmers themselves are choosing to plant oil palm as a lucrative crop.

The various countries assessed in this review have very different systems of land tenure and very diverse laws that are meant to regulate how lands are acquired by businesses. The countries also vary a great deal in the extent to which there is rule of law and people have access to justice.

The combination of similar drivers of expansion with different legal and land tenure contexts is thus generating quite different patterns in different countries and the consequences of oil palm expansion for local communities and indigenous peoples are thus also very varied. Comparison of these national experiences suggests that where, as in Thailand and Papua New Guinea, farmers' and indigenous peoples' lands are somewhat secure and where there is rule of law, oil palm tends to develop modestly as a small-holder crop with better outcomes for local people in terms of income, equity and livelihoods. In Thailand, indeed, mills have expanded faster than the crop, giving smallholders the advantage of being in a sellers' market.

However, where land rights are insecure or law enforcement weak, as in Cambodia, Sarawak and Indonesia then oil palm tends to be developed as very large company-owned estates or as small-holder schemes that provide little security for growers. Where mills are few and far between, smallholders are in a monopsonistic relationship with mills and have little leverage to bargain for better prices and secure fair treatment.

A familiar pattern in all areas where large estates are being established is that lands are being acquired with little respect for the customary rights of indigenous peoples or prior land use by other poorer sections. This is causing resentment and ensuing land conflicts, which in turn leads to the deployment of security forces and human rights abuses.

Another unfortunate pattern that is observable from the country case studies is that palm oil production seems to be encouraging the employment of cheap labour with poor protection of workers' rights. Low wages for workers on estates are common in Indonesia and Cambodia. In Malaysia, a very large proportion of the workforce are in fact migrants from Indonesia whose conditions have been the subject of bi-national investigations. There are also serious labour disputes on the estates in the Philippines. Even in Thailand, a large proportion of the labour force on smallholdings are not in fact the landowners but poor migrants, such as landless tribal peoples from the north of the country, as well as people from Burma and Cambodia.

The implications of these findings are clear. To ensure that oil palm only develops in beneficial ways, voluntary standards of organisations such as the Roundtable on Sustainable Palm Oil need to be backed up by national tenurial and governance reforms which make mandatory requirements that ensure local peoples' land rights really are respected and protected and workers' rights are secured. Without such protections, expansion is likely to benefit investors, traders and national elites at the expense of indigenous peoples, the rural poor and vulnerable ecosystems.

(Endnotes)

[1] Director, Forest Peoples Programme

[2] Assistant to the Director, Forest Peoples Programme

[3] The project did not include Burma because the political situation there prevents independent scrutiny and we also excluded Laos and southern China because preliminary information suggests that the strongly seasonal climatic regimes in these countries do not suit large-scale palm oil cultivation

[4] Butler 2010
[5] WWF 2009
[6] Ravanera & Gorra 2011
[7] UN 2009
[8] Thoenes 2006
[9] Jomo et al 2004
[10] Vermeulen & Goad 2006
[11] *Mishra & Parija 2011*
[12] Carrere 2011
[13] WRM 2006
[14] Down To Earth 2011a, Tiominar B 2011
[15] Faryadi 2009
[16] Pongphon Sarsamak 2011
[17] Tiominar 2011
[18] Borras & Franco 2011, Butler 2007
[19] WRM 2006
[20] Colchester et al 2007b
[21] World Bank 2010, Hall 2011
[22] Hirsch 2011:1-2, Borras & Franco 2011, Sikor & Lund 2009
[23] Oberndorf 2006
[24] Schneider 2011:11-12
[25] CHRAC 2009:67
[26] Filer 2011
[27] Department of Lands and Physical Planning, Papua New Guinea 2005
[28] Colchester 2004
[29] Hance 2011
[30] Nguyen et al 2008a
[31] USAID 2001
[32] Borras & Franco 2011
[33] Seng 2000, JOANGOHutan 2006
[34] Sirait 2009
[35] Colchester & Fay 2007, Corlin 2004
[36] Corlin 2004
[37] Gorre et al 1997
[38] Borras et al 2011
[39] *ibid*.:3
[40] Vejjajiva 2008, Childress 2004, USDOS 2006, USDOS 2008, Liddle 2008
[41] Komnas HAM-Sawit Watch 2010
[42] FPP 2011b

[43] O'Keefe 2009
[44] UNHCHR 2004
[45] Mongabay 2008, Naro 2011, Tiominar 2011, Guttal 2006
[46] WRM 2009
[47] White J & B 2011
[48] Smolker et al 2009
[49] WRM 2006
[50] Colchester & Jiwan 2006a
[51] Colchester 2008:24
[52] Guttal 2006
[53] IDEAL 1999, Attorney General 2007
[54] Colchester et al 2007a
[55] *ibid.*:81
[56] FPP 2008
[57] Reuters 2011, Adnan H 2011, Jakarta Post 2011, DTE 2011b
[58] The Economist 2010, Greenpeace 2008, Greenpeace 2007, Mongabay 2011
[59] Colchester 2011

1. Oil palm development in Thailand: economic, social and environmental considerations

Jonas Dallinger

Introduction

Palm oil has become the world's leading vegetable oil in terms of consumption and production with 45.3 million tons (t) produced worldwide in 2009. The biggest producer, with a 47.6% share in production in 2009, was Indonesia, followed by Malaysia (38.8%) and Thailand (2.9%).[1] Global production of palm oil and thus the plantation of oil palm have been increasing tremendously in the last decade with average annual growth rates of 9.7% between 1998 and 2008.[2] Palm oil is versatile in its uses in the food and chemical industry and increasingly as a feedstock for biofuels, which is another reason for the rising popularity of palm oil. Other factors include the increasing demand for vegetable oils in general and the comparably low prices of palm oil.

In numerous campaigns led by environmental and social non-government organisations (NGOs), the rapid expansion of oil palm plantations has been blamed for the destruction of rainforests, the hotspots of biodiversity, and the retreat of or risk of extermination faced by endangered species. In particular, the orangutan has acquired a symbolic status as a victim of oil palm expansion, and various anti palm oil campaigns directly protest against the species'

threatened extinction. Other main points of criticism made against palm oil are the violation of human rights of indigenous peoples affected either directly or indirectly by oil palm plantations, inhumane working conditions in oil palm plantations and, increasingly, the negative contribution of oil palm to climate change due to the destruction of primary forests and peatland for plantation development, both areas being known to hold especially high carbon stocks. All this has led to a bad image of palm oil, especially in Europe and the United States of America. As a result, leading palm oil processing companies and retailers are increasingly committing themselves to only buying palm oil produced in ways that comply with sustainability standards. Others have gone even further and banned palm oil from their products completely.[3]

In Thailand too, the pace of palm oil production has accelerated in recent years. However, the structure of the Thai palm oil industry reveals a different picture to that of the main palm oil producing countries, leading to the conclusion that the impacts of palm oil production, whether positive or negative, cannot be generalised and must instead be examined and assessed as locally specific outcomes.

National trends of oil palm development in Thailand

Currently, fourteen bio-diesel plants, twelve oil palm refineries and more than sixty oil palm crushing mills are in operation in Thailand. In 2010 production of crude palm oil CPO reached 1,287,509 t of which 65,942 t was exported. Exports made up 5.1% of total production in 2010. This is a usual share for the palm oil exported from Thailand as the average annual export of palm oil has remained at around 6% over the last twenty years and only peaked at around 20% of total production in a few specific years. Figure 1 shows the annual production of (CPO) in Thailand for the last twenty years as well as the amount used for the production of biodiesel. In 2010, 380,000 t of CPO, making up around 29% of the overall output, were used as feedstock for biodiesel.

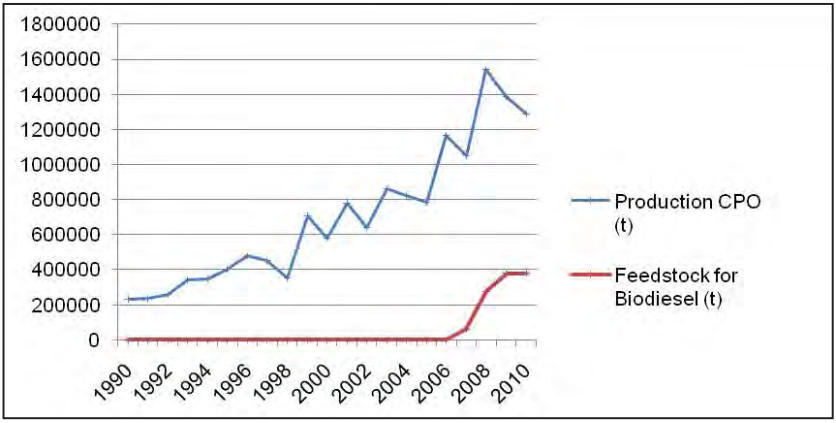

Figure 1: CPO Production in Thailand and Consumption for Biodiesel. (source: OAE 2010)

Plantation trends

The area planted with oil palm in Thailand has been increasing constantly, with an average annual growth rate of 11% from 1981 to 2000 and 9% from 2001 to 2010. This is very much in line with the average annual growth rate of 9.7% between 1998 and 2008.

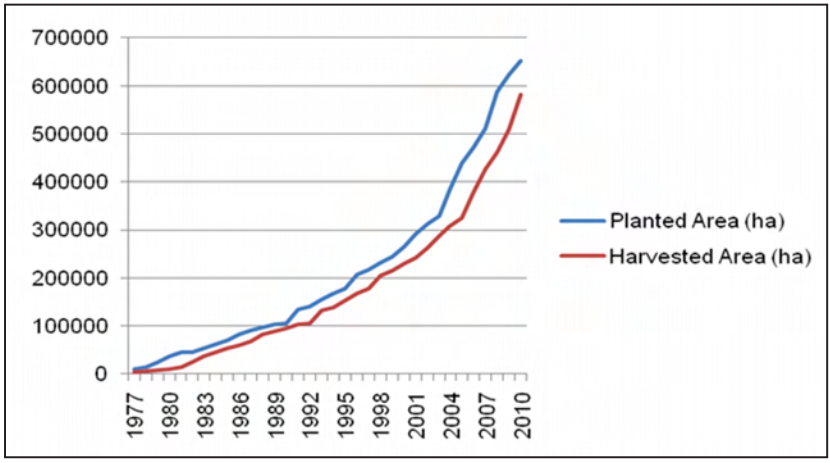

Figure 2: Development of planted and harvested area in Thailand (source: OAE 2010)

Approximately 90% of the total area planted with oil palm in Thailand is concentrated in the Southern Provinces of Thailand. The Eastern and North Eastern Provinces are prominent areas of expansion, currently mainly in Chon Buri and Trat on the East Coast. The three main fresh fruit bunch (FFB) producing provinces of Krabi, Surat Thani and Chumphorn accounted for 72.1% of the total planted area in 2008. Table 1 gives an overview of the most important provinces for oil palm plantation as well as the average annual yields per hectare.[4]

	Planted Area (ha)	Harvested Area (ha)	Yield per Ha (t)
Trad	10735	6540	20.3
Cholburi	13096	11844	19.5
Prachuabkirikhan	26912	12741	18.6
Chumporn	117179	102820	21.1
Ranong	11724	7687	18.3
Suratthani	146441	120440	20.2
Phangnga	16345	13078	17.8
Krabi	154529	129075	21.3
Trang	17444	14493	17.9
Nakhornsrithamarat	23866	14455	18.4
Satun	16726	14093	16.0
Others	25277	12438	
Total	580275	459704	

Table 1: Planted area, harvested area and FFB yield per ha in Thailand. (source: OAE 2008: 27)

In Thailand, more than 120,000 farmers are involved in oil palm cultivation, mostly on small to medium sized farms. Small farmers owning less than fifty hectares manage approximately 70% of the total area planted with oil palm and they have a similar share in total FFB production. Smallholder schemes such as the Nucleus Estate Schemes (NES) in Indonesia or FELDA in Malaysia do not exist in Thailand. In most cases farmers act completely independently from

the oil palm crushing mills and are not linked to mills by contracts or any other formal arrangements. In a few cases, farmer cooperatives have even managed to establish their own cooperative mill with government support. Figure 3 gives a rough estimate of how the share in production, area and households involved is distributed amongst different scales of plantations. It is to be noted that "number of households involved" refers to farming families and does not include farm workers working on company plantations.

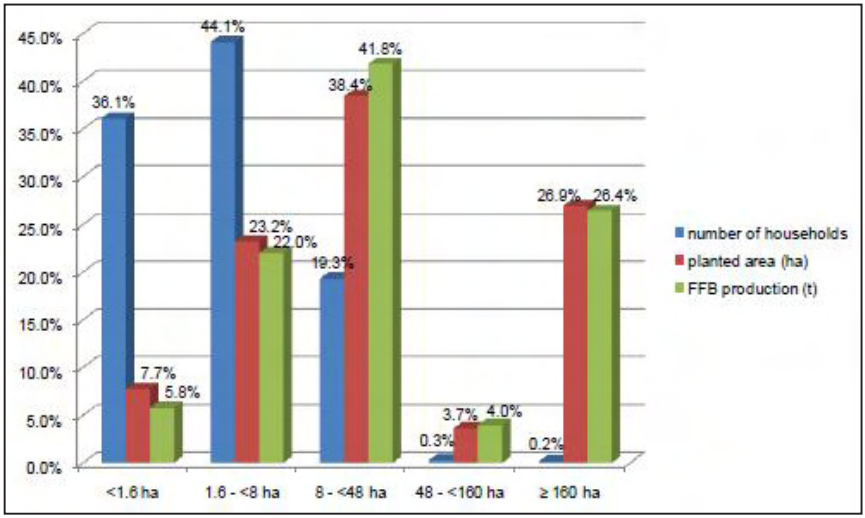

Figure 3: Estimated share of FFB production, number of households and planted area by land size in oil palm farming (unconfirmed data)

The average size of land holdings of companies planting oil palm compared to the size of land of independent farmers was 796 ha for companies and 3.89 ha for farmers (including cooperatives and personally owned estates) in 2007.[5] These statistics reveal that very large estates are rather rare in Thailand. The biggest oil palm plantation owned by a single company in Thailand consists of 7120 ha of total consolidated area.[6] In comparison to major global players in the oil palm industry who own numerous oil palm plantations in Malaysia and Indonesia of more than 500,000 ha in total area, this figure appears minimal.[7] It is difficult for companies to expand their plantation area in Thailand because only few big land plots as required for efficient large-scale plantations are

available for purchase and the land prices have skyrocketed over the past ten years.[8]

Land legislation and land tenure

Land ownership and land titles are highly complex issues in Thailand. From the 1970s onwards, the Thai government undertook numerous legislative and programmatic efforts as part of the 20-year Land Titling Program (LTP) in order to resolve issues of high levels of tenancy, landlessness and tenure insecurity. The government imposed ceilings on private landholdings and implemented land-allocation programs. The LTP also streamlined the country's land administration system, which is renowned for its efficiency and transparency.[9]

However, efforts to limit the area of private holdings and redistribute ceiling-surplus land to landless households lacked the necessary political will or funding. In the 1975–2003 period, only about 74,000 ha of private land were redistributed.[10] In addition, the programme did not address the rights of occupants of the country's forestland, a large area of which has been inhabited and cultivated by local communities for several generations.[11]

Nevertheless, the government was successful in identifying public land for distribution and regularising parcels of public lands that had been encroached on. During the same period, the Thai government allocated 3.7 million ha of public land to 1.5 million beneficiaries, who received either freehold title or use-rights recognised by formal law.[12] As such, the LTP is recognised as having positively contributed to tenure security.[13] It has also stimulated the growth of land markets.

Thailand's law defines land as either private or public. Private land is owned by individuals, groups, or legal entities. About 40% of land was held in private ownership in 1994.[14] Public land includes: land used by the state; land open to the public; land identified for allocation under land reform plans (also known as public settlement land); and forestland. All land not held in private

ownership is considered to be vested in the state.[15] Other types of tenure include occupancy and use, and leasehold.

Five major pieces of legislation form the basis of Thailand's land regulation and governance framework.

1) *Thailand's Constitution* provides that the state shall adopt land policies, including policies relating to land use, land distribution, town and country planning, and the sustainable protection of land and other natural resources. The Constitution specifically states that land distribution shall be fair and provide farmers with rights to land for farming.[16]

2) *The* (amended) *Land Code of 1954* is Thailand's primary land legislation. The Land Code identifies various tenure types, including ownership and use rights. A Land Allocation Committee is in charge of identifying land for allocation and reallocation and implementing land reallocation plans for state and private land.[17]

3) *The Agricultural Land Reform Act of 1975* aims to address the high rate of tenancy in certain regions of the country, the large number of landless households, and the encroachment of public lands for cultivation. The Act reaffirmed the state's support for the allocation of state and private land to landless and near-landless households. The Act also provided tenants with opportunities to lease or purchase the land they cultivated and allowed for squatters and others who had encroached on state land to regularise their rights.[18]

4) *The Land Development Act of 1983* established a national Land Development Committee to improve the use and productivity of the country's agricultural land. The Act authorises the committee to: engage in land-use planning; develop programs to support farmers; conduct surveys; and create plans for the improvement of soil.[19]

5) *The Land Readjustment Act of 2004* governs processes for land re-plotting and development in order to improve land utilisation. The Act established a national Land Readjustment Committee charged with developing policy and identifying areas for readjustment. The Act also set the rules for creation of Land Associations made up of landowners in readjustment areas and Provincial Committees to govern the process.[20]

Land - Title	Unrestricted Selling/buying	Land has to be put to use	Registered ownership	Ownership can be applied for	Can be inherited	Can be borrowed against	Can be mortgaged	Officially registered land markers	Can apply for whole ownership	Land-users can initiate ownership process
Wholly owned	X	X	X	X	X	X	X	X		
NoSo 3 Ko	X	X	X	X	X			X	X	
NoSo 3		X	X	X						
SoPoKo		X	X		X			X		
NoSo 2		X	X		X			X	X	X
SoKo 1		X		X				X	X	X
NoSo 5		X	X	X	X			X		

Table 2: Land title deeds in Thailand (source: GTZ 2008:9)

Table 2 shows the various types of land titles with accordingly different types of land rights in existence. Table 3 shows the distribution of land titles (in number of plots and percentage of total number of plots assessed) in a sample survey of 1,012 plots ("Chanod" in Table 3 corresponds to "wholly owned" in table 2). The difference in spelling and type of land titles assessed in the two tables is an indication of the complexity of the Thai land tenure system.

Land Title	(n=1,012 Plots)	
- Chanod	143	14.1
- Nor Sor 3 Kor	29	2.9
- Nor Sor 3	313	30.9
- Sor Por Kor	245	24.2
- Por Bor Tor 5	151	14.9
- Kor sor Nor 5/Kor Sor Nor 3	36	3.6
- Other	14	1.4
- No Title	81	8.0

Table 3: Land titles status of plots in survey (source: Thongrak et al 2011: 13)

As 8% of the plots in the study by Thongrak et al 2011 had no land title at all, further investigation would be necessary to reveal any existing land-related conflicts and local opposition.

In general, the formal legal framework is recognised as governing land rights throughout Thailand.[21] Customary law continues to govern in some areas and on some matters – especially those concerning family estates and disputes – in rural districts, particularly among indigenous tribes living mainly in the northern highlands and mountains. Often, tribes have occupied the same land for generations, and, within tribes and neighbouring tribes, customary law determines rights of access and use of the land. The land is, however, subject to the formal legal framework which governs land rights. A large portion of land occupied by indigenous communities is classified as state forestland, and while the current law does not grant the tribes automatic rights under the formal law, some politicians have called for a regularisation of collective rights, and the pending Community Forest Bill provides a contractual framework for participatory forest management and related rights of forestland access and use.[22]

Thailand's land administration system is considered a model for other South East Asian countries. The system has a required performance standard for transactions to be completed within a single day, and several are completed within two hours. On average, land registration procedures require less than a day and cost around 1% of the property's value.[23] Registered land rights are generally recognised as secure. However, the rights of households occupying land classified as forestland are considered far less secure, regardless of whether or not they possess certificates granting them rights to occupy and use the land. In either case, land rights are often temporary and occupants potentially subject to eviction.[24]

Farm management and marketing

Due to the fact that the output of CPO in Thailand is far below the annual capacity of 2.5 million tons and because ownership of big plantations is rare,

Thai oil mills strongly depend on purchasing FFB from independent oil palm growers, most of whom are smallholder farmers. This leaves the farmers and especially the intermediaries in a good bargaining position to achieve the highest possible price since they are free to decide where and to whom they sell their produce. Hence, the formation of prices occurs on the spot and prices vary from day to day or can even change within the same day. This is coupled with the fact that the FFB supply only accounts for about half of the FFB crushing capacity, leading to crushing mills at times paying even more than the market clearing price.[25] Paid prices often do not relate to FFB quality since mills cannot afford to reject or to penalise the delivery of bad quality FFB, as they rely on a regular supply.

In most cases, the delivery of FFB from the farm to the oil crushing mills is organised by intermediaries owning loading facilities, or ramps. These intermediaries collect and combine the harvests of numerous smallholders to form bigger truck loads. This in turn reduces transportation costs and allows them to enjoy preferential prices for higher volume delivery. Considerably higher prices are paid for loose fruits as their oil content is notably higher than that of full bunches. Unfortunately, this encourages intermediaries and ramp operators to detach the fruit from the bunch. Other common forms of malpractice include watering down the FFB or adding sand or soil to increase the weight of FFB. These practices lead to the further deterioration of FFB quality.

FFB prices vary over the year and strongly relate to the volatile world market prices for CPO. Figure 4 shows the monthly FFB prices in Thai Baht (THB) per kilogram over the past three years.

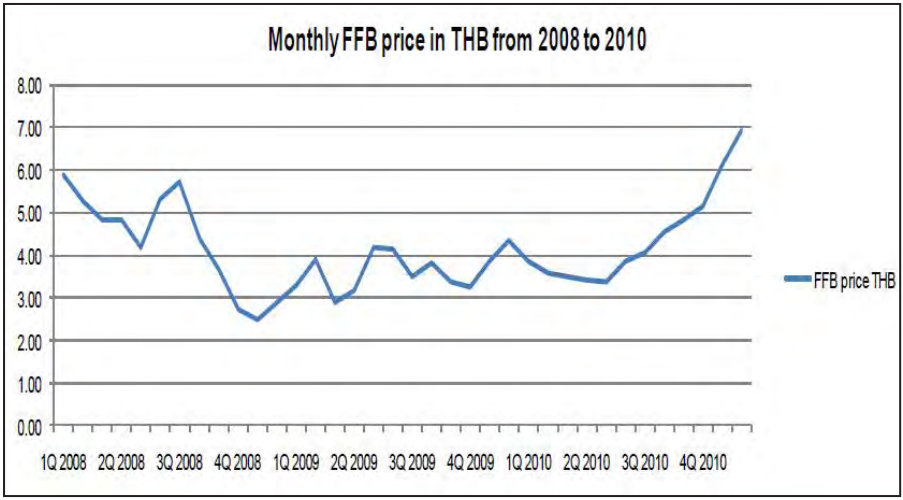

Figure 4: Monthly FFB prices 2008 - 2010 (source: unpublished data, OAE 2010)

On small farms, the FFB are normally harvested approximately every twenty days. Harvesting is often done by external harvesting teams who are paid according to the weight of the fruit harvested and who deliver the FFB to the ramps by pick-up trucks. Their wages vary depending on the harvest but are usually higher than the minimum wages for industrial labor in Thailand. The high harvesting season takes place from March to June. Agrisource 2005 states that only 10% of the Thai oil palm farmers are fully managing their farms by themselves.[26] In a field survey by Thongrak et al. 2011, 80.5% of all farmers interviewed hired additional labor. Harvesting teams are generally organised by middlemen or ramps and their services include additional farm management activities such as pruning or weeding. Contracts for labourers on smallholders' farms are quasi non-existent. In many cases, laborers are migrants from poorer parts of Thailand (often from the North Eastern Provinces) or from neighbouring countries including Myanmar and Cambodia. A field survey shows that most smallholder farmers are aware of potential farm injuries (96%, n=503) and use preventive measures (96.5%, n=483). However, information on labor rights is rare among smallholders. Minimum wages are known by only around half of the interviewed farmers.[27]

FFB yields and OER in Thailand

While FFB yields per hectare and per year have increased significantly despite fluctuations over the last twenty years (see Figure 5), the overall oil extraction rates (OER) in Thailand decreased by more than 2% from 1990-1994 to 2005-2009.

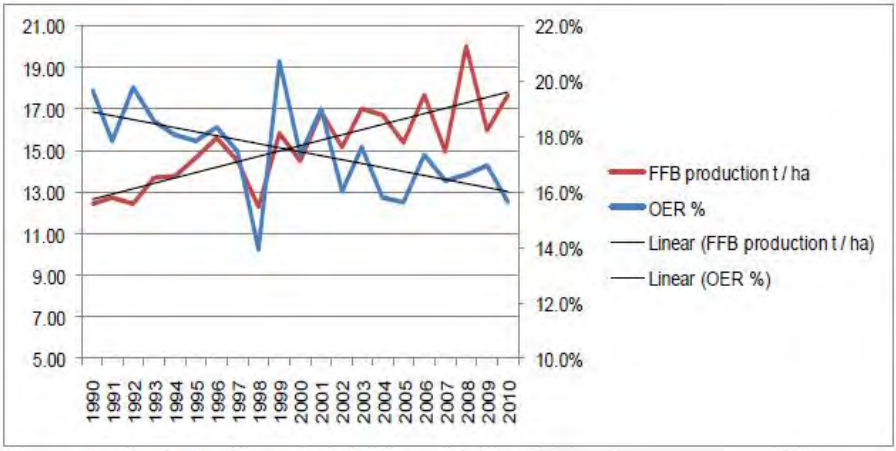

Figure 5: FFB yields and OER from 1990 to 2010,
(source: unpublished data, OAE 2010)

The Thai average annual FFB yield of 16.8 t/ha during 2005-2009 is well below what can be achieved in commercial estates in the main palm oil producing countries. Moreover, since 16.8 t/ha is the Thai industry average, this implies that average yields of smallholders are even lower.

Donough states that on single blocks in Malaysia and Indonesia, annual FFB yields of above 40 t/ha were achieved, while the overall average annual FFB yield of a major international producer was 27 t/ ha in 2006.[28] Smallholders are generally reported to achieve much lower yields. A major operation in West New Britain, Papua New Guinea (PNG) reports its average annual FFB yield in plantations to be 26-28 t/ha compared to only 18 t/ha average yield of the supplying smallholder oil palm growers. Oil Palm Industry Cooperation

(OPIC) reported that the average FFB yield of the growers in the Hoskins project (West New Britain, PNG) was 17.3 t/ha. However, some of the smallholders in the Hoskins project achieved close to 30 t/ha.[29] There are many variables which account for such different rates of production, including soils, climate, rainfall, growing stock, age of crops, fertiliser inputs, pest loads, management intensity and proximity to markets.

In Thailand, farmers who manage their farms well can achieve annual FFB yields between 20 to 30t/ha. Fairhurst estimates that yields in Krabi province could be increased by 2.5 t/ha through better farm management practices. These include: optimising the use of mineral fertilisers to maximise yield at the lowest possible cost; integrating the use of mineral fertilisers and crop residues; front stacking around contour lines; proper canopy and ground cover management. Calculated over the whole area of production in Thailand in 2009, this increase would have led to an additional FFB production of 1.276 million tons and CPO production of 217,016 tons. This figure corresponds to a loss of revenue of 4,972 million THB or 151 million USD for the Thai palm oil sector (OER of 17%, Malaysian CPO price 2009: 22910 THB/t; exchange rate 33 THB/USD). Moreover, under the improved performance (i.e. yields increased by 2.5 t/ha) the 1,387,604 tons of CPO produced in Thailand in 2009 could have been achieved by sparing 69,004 ha of land (13.5% of total harvested area in 2009).

OER in Thailand has been declining during the past twenty years. The average OER in the period from 1990 to 1994 was 18.8%, while from 2005 to 2009 the average OER was only 16.6%, representing a reduction of more than 2%.[30] If the average OER of 18.8% had been achieved in 2009, an additional 146,923 tons of CPO, equalling 10.6% of total CPO output in 2009, would have been produced. Multiplied by the average Malaysian CPO price for 2009 (22,910 THB/t), this equals the amount of 3,366 million THB (approximately 102 million USD at an exchange rate of 33 THB/USD.[31] This additional revenue could have been generated by the Thai oil palm sector had it only achieved the same OER as fifteen years ago. Assuming that this additional revenue was entirely transferred to the FFB price, the price would increase by 0.41 THB/kg, or 11.3% of the average FFB price in 2009.

Potential OER under good management practices are even higher than the 18.8% achieved during 1990 to 1994 in Thailand. Plantations in Indonesia and Malaysia achieve OER of up to 25% under optimum conditions.[32] The example of a major operator in PNG' operations in West New Britain shows that an OER of 23% can be achieved, even relying on smallholder's FFB delivery for only one third of the total amount of FFB processed (data from 2010 field trip organised by the author).

The OER in oil mill operations depends on various factors and short term improvements are not easily achieved. Restricting factors in Thailand are drought stress and a potentially high stand of palms (i.e. number of palms grown in a certain area) from relatively low quality planting material. Palms from low quality planting material (seeds) will have a lower oil content than palms grown from high yielding, certified seeds. The higher the share of palms from bad seeds in Thailand is, the lower the potential OER.

However, some Thai companies report average OER of 26% in their own plantations and a potential of up to 29% (data from 2010 field trip organised by the author). Improved smallholder practices to address Thailand's low palm OER would not only result in economic benefits for the industry and the farmers; a significant land area under oil palm cultivation could also be spared. There is a huge potential for higher efficiency in the sector by improving the farming practices on smallholder farms.

Economic situation of smallholders

Results from a sample survey indicate that most smallholder oil palm farmers have debts and take loans from the Bank of Agriculture and Cooperatives (BAAC) to finance their farm management as well as other activities or assets.[33] However, since the debt is with the BAAC it does not limit or condition the farmers regarding their farming practices or marketing decisions. Higher returns in comparison to other crops are seen as the main reason to pursue oil palm farming. Moreover, oil palm offers stable and regular incomes distributed over the year and the required farm labor is relatively low. In most cases, Thai

farmers are free to choose which crop they want to grow. An exception is land settlement schemes where farmers are given limited land titles under the precondition of planting oil palm for a certain period of time.

The continuous expansion of the area under oil palm and the change in land use by independent farmers from other agricultural crops to oil palm underlines the economic attractiveness of the oil palm. The Office of Agricultural Economics (OAE) reported that the net incomes from oil palm per ton of FFB produced were 1,067 THB in 2010 (917 THB and 2,107 THB for 2009 and 2008 respectively).[34] Variations in net profit mainly occur in relation to the FFB price and the prices of fertilisers. With average yields of 3.225t/rai/year[35] and an average farm size of 19.32 rai per oil palm farming household owning less than 300 rai (48 ha) (compare Figure 3), the calculated net income for an average median Thai smallholder for 2008 is 131,281 THB or USD 4007 per year (exchange rate 32.76 THB/USD)[36]. This calculation based on statistic data has to be considered with caution when assessing the economic situation of smallholders. In a field survey by Thongrak et al., only 22.5% of the interviewed farmers depended on oil palm farming as the sole source of income, such that most oil palm farmers are expected to have additional sources of income.[37] The same study revealed that only 24.4% of farmers in the study had a household income of less than 200,000 THB and the arithmetic mean of household income was 470,650 THB or USD 14,377 per year of which 60.2% was from oil palm farming.[38]

Policy and plans

The Thai Oil Palm and Palm Oil Industries Development Plan for 2008-2011 was developed by the Ministry of Agriculture and Cooperatives in cooperation with the Ministry of Energy. The plan envisions the sustainable development of the palm oil industry and an increase in the production of value-added products. It targets a yearly development of new plantings of 80,000 ha and a yearly replanting of 16,000 ha until 2011. The average OER is aimed to increase to 18.5% and the average FFB yield to 21 t/ha by 2011. The Thai Renewable Energy Policy is an important tool to support the market price of

raw materials in the industry by using possible surplus of FFB for biodiesel production, through the promotion of biodiesel from palm oil. The Thai market is protected from foreign competition as importing palm oil requires special approval and is restricted to the Thai Public Warehouse Organisation (PWO), a government controlled organisation. In times of low prices, the government tends to support the market price by interventions through the PWO as happened at the end of 2008 when the PWO bought significant amounts of CPO to raise the FFB price to 3.5 THB/kg.[39]

The Thai Ministry of Energy introduced its Biodiesel Development Plan with a mandatory 2% admixture (B2) of biodiesel (B100) from 2008 onwards when the policy came into place. The B100 production is based on palm products like CPO, palm stearin as well as refined bleached deodorised palm oil (RBD). 5% admixture (B5) of biodiesel has been introduced on a voluntary basis since 2008 and tax breaks as well as the exemption from payments to the oil fund for B100 indirectly subsidise B5. In 2010, mandatory B3 (3% admixture) has been introduced. The planned introduction of mandatory B5 in 2011 however has been put aside due to the severe shortage of palm oil in Thailand during the fourth quarter of 2010 and early 2011. To avoid shortage in times of low supply, the Thai government now follows a flexible approach towards biodiesel admixture, setting the admixture quota based on the supply situation in the market. This approach seems reasonable as the import of feedstock for biodiesel is not foreseeable, and the projection of Thai domestic supply cannot accommodate the additional demand created under the Biodiesel Development Plan.[40]

In accordance with Thai land use planning, expansion of oil palm cultivation is intended to take place mainly on waste land, degraded land, acid soils as well as land formerly used for rubber and paddy cultivation. The government has set up a soft loan scheme to support its policy and promotes the conversion from rubber to oil palm in the Southern Provinces.[41] Currently the government plans further regulation of the palm oil industry through the development of a regulatory framework. The impact of this government initiative cannot as of yet be foreseen but it is expected to include sustainability among the issues addressed.

Sustainability issues in the Thai palm oil sector

The iconic pictures connected to palm oil of vast monoculture plantations, large scale logging, burning peatlands and dying orangutans, are not to be found in Thailand. Thailand has been banning the logging of forests since 1989 and the remaining forests are declared as national parks or wildlife sanctuaries. The Wildlife Conservation Society describes "Thailand's protected areas network (…) [as] one of the strongest systems in South East Asia".[42] The expansion of oil palm plantations is explicitly targeted at "waste" land such as abandoned paddy fields, degraded land, abandoned fruit orchards, land with acid soils and land previously used for rubber cultivation.[43] This is supported by a sample survey investigating land use prior to oil palm farming as outlined in Table 4. Research has shown that actual expansion of oil palm plantations in the Southern provinces mainly takes place on paddy fields and rubber land, and in Chonburi Province, on land formerly used for cassava and pineapple cultivation.[44] A major recent expansion occurred on land previously used for mining in Trat Province.

Almost 30% of land in Thailand is classified as forest and has been the subject of contested rights for decades[45] as conservation groups, forest inhabitants and mining companies compete for control of forestland and resources. In anticipation of the passage of the Community Forest Act and programs granting forest-dwellers certain forms of formal long-term rights, the Forest Department has increased its efforts to bring land under protected status. The government recognises the positive role that participatory forestry rights could play in the sustainable management and preservation of forest resources.[46]

However, further legislation is stalled and the impact of community forest programs stunted by the lack of a legal framework[47]. Moreover, intrusions into forests and protected areas for agricultural production have also been reported, especially in these same Southern Provinces of Thailand. In 2008, the total intrusion in Southern and Eastern Provinces of Thailand as reported by the Royal Forestry Department (RFD) amounted to 2,786 ha.[48] That being said, the intrusions cannot be directly attributed to uncontrolled oil palm expansion, since thorough and disaggregated documentation in this respect is missing.

Establishing and protecting buffer zones between lands used for agriculture and protected areas could help to ensure their effective protection.

Negative environmental impacts claimed to result from land clearing for oil palm plantation were reported in Nakhorn Sri Thammarat province in 2010, where peat swamp fires were ignited in the Phru Kuan Kreng Wetland. Information on the actual size of the affected area varies in local media.[49] A more recent press report blames the encroachment of oil palm and rubber plantations into protected areas as one of the reasons for the severity of an off-season storm which occurred in the South of Thailand in March 2011, killing at least forty people.[50]

These are only snapshots of the negative side of the development of oil palm plantations but cases like this show that close monitoring of oil palm expansion is necessary to avoid detrimental environmental impacts and the violation of Thai regulations.

Land use prior to oil palm	**No. (n=1,012 plots)**	**%**
Rubber Plantation	269	26.6
Unused land	401	39.6
Other agricultural land	172	17.0
Oil palm plantation	15	1.5
Paddy field	134	13.2
Not available	21	2.1

Table 4: Land use prior to oil palm (source: Thongrak et al 2011: 13)

Environmental impacts of farm management practices have been investigated during a field visit to Aoluek District, Krabi Province. Results show that although farming practices vary strongly amongst different farmers, there is the potential to reduce negative environmental impacts. The main issues identified are the maintenance of riparian buffer zones, erosion prevention measures, slope soil measures and efficient use of fertilisers.[51] Further surveys and general observations show that basic erosion protection and soil fertility

measures are followed by most smallholder farmers. Chemical use is limited, and a large proportion of smallholders do not use any chemicals besides fertilisers. In case of chemical application, basic protective equipment such as masks, gloves and boots is used on most farms.[52] With regards to social impacts, a sector study by the Thailand Environment Institute (TEI) identified no reason for concern regarding Thai oil palm plantations.[53] Despite the fact that there appear to be no significant differences expected between the situation for oil palm farming and for other agricultural crops in Thailand, further investigation of this issue would be recommended.

The environmental impacts of oil palm crushing mills result mainly from solid waste and wastewater. In the Thai industry however, solid waste is often sold to other industries or used as fuel in the crushing mill processes or for generating energy to feed into the electricity grid. This common practice results in the energy self-sufficiency of most mills. In many cases, the waste water from the crushing process is used as well, namely, by setting-up biogas facilities which capture the methane gas from waste water and generate electricity. This practice is a major contribution towards reducing greenhouse gas (GHG) emissions in the production process of palm oil (almost all emissions in the general process of oil palm crushing mills result from wastewater) and qualifies for registration as a Clean Development Mechanism (CDM) project. The number of approved CDM projects in Thailand is still limited due to the high level of burdensome bureaucratic procedures involved. Nevertheless, the biogas technology is installed or in the process of being installed in many oil palm crushing mill operations, because economic benefits result not only from CDM project registration and selling carbon credits, but also from Thai policy measures which allow the sale of the generated electricity at preferential prices. As of 2008, twenty-one CDM projects in the palm oil sector were registered with the Thai Greenhouse Gas Management Organisation (TGO).[54]

Standards in oil palm farming

A Good Agricultural Practice standard (Thai GAP) for Thai oil palm plantations was developed in 2010 and implementation started on a voluntary basis. This

GAP standard is not to be confused with the Global GAP standard although it addresses similar issues. The Thai GAP for palm oil is a national initiative of the Ministry of Agriculture and Cooperatives. Compliance of farmers is controlled by the Department of Agriculture. Issues addressed include the safe use of pesticides, water and fertiliser application. During the development process of the standard, the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO) were used as a reference (see below).

Another government initiative consists of a standard for the quality of FFB, also introduced by the Ministry of Agriculture and Cooperatives. This standard addresses the issue of oil loss in the Thai industry which occurs due to the harvesting of unripe fruit and bad handling practices. Issues addressed in the FFB standard include the malpractice of adding water and sand to increase the weight of FBB, and issues relating to the ripeness and freshness of FFB.

The RSPO in Thailand

The RSPO is a multi-stakeholder initiative dedicated to promoting the sustainable production of palm oil worldwide. The RSPO has more than 500 ordinary and affiliate members from different stakeholder groups such as those involved in palm oil production, processing and financing, as well as various NGOs. During a multi-stakeholder negotiation process, the members of RSPO developed eight principles and thirty-nine criteria which define the sustainable production of palm oil. Almost ten years have passed since its establishment and the RSPO has become the global reference for sustainable palm oil production. However, the RSPO has also been criticised from various sides and accused of green-washing the oil palm industry.

At present, nineteen Thai oil palm producing or processing companies are members of the RSPO.[55] In Thailand, a working group of stakeholders from different interest groups came together in 2009 to develop a national interpretation of the RSPO Principles and Criteria which was approved by the RSPO Executive Board (EB) on July 9 2010. Despite the previous approval by the EB, final approval is still outstanding as there were some issues that were

deemed to necessitate further investigation according to the RSPO secretariat and its consultants. As outlined in this report, independent smallholder oil palm growers constitute the vast majority of growers in Thailand. To accommodate them in the RSPO, a process to develop guidance and indicators for independent smallholders in Thailand was initiated in September 2010.

Challenges of smallholder certification

When looking at the agricultural sector as a whole, the proliferation of private standards is clearly visible. In the words of Giovannucci and Purcell, *"private standards are becoming the basic de facto entry requirement for trade with many of the large scale operators and leading value chains"*.[56] The negative effects on smallholders and disadvantaged farmers have been studied for various crops.[57] Prospects for the palm oil sector show a clear commitment of major value chain actors towards certified sustainable palm oil. One example can be seen in the recent RSPO newsletter which states that "Holland commits to 100% sustainable palm oil in 2015".[58] Such new market requirements for certification of sustainable palm oil could effectively lead to "eliminating smallholders and the poor from the value chain"[59] as outlined in the broader sense for private grades and standards by Giovannucci and Purcell.

A major challenge for the Thai oil palm sector in achieving RSPO certification is the inclusion of its large number of smallholders. In contrast to big plantation companies, smallholders are *not* readily able to independently meet the management requirements of the RSPO Principles and Criteria. In addition, smallholders cannot shoulder the various costs resulting from membership,compliance and verification. Moreover, easily visible incentives for these smallholders to achieve certification are lacking. Under the current framework of the RSPO, smallholders have to form groups to stay independent from a processing company while at the same time being able to obtain RSPO certification. Groups of independent smallholder oil palm farmers have to abide by the RSPO Standard for Group Certification as well as the RSPO Principles and Criteria to get their FFB certified. However, as of March 2011, there is no marketing system in place which allows selling certified FFB to the

market for certified palm oil.[60]

To receive a price incentive for certified FFB in the future, two options are possible: selling the certified FFB to a certified oil mill which relies on FFB production of smallholders or selling certificates for sustainable FFB through the Green Palm certificate trading system.[61] However, a potential price premium for certified palm oil or FFB is often discussed but difficult to foresee. When looking at the current price for RSPO palm oil certificates, it is doubtful that there will be a promising price incentive of certification for smallholders. For example, a sustainable palm oil certificate price of USD 3.79/t CPO and USD 5.00/t palm kernel oil (PKO)[62] can be transferred into a price of FFB certificates by simply using an average OER of 20% and kernel oil extraction rate of 2.5% (share of PKO extracted per unit of FFB). Under this presumption, the certificate price would transfer to a premium for sustainably produced FFB of 0.022 THB/kg FFB (from CPO certificate) and 0.003 THB/kg FFB (from PKO certificate)[63] totalling 0.025 THB/kg FFB. It is doubtful whether this could cover the anticipated cost of certification even when supposing that the RSPO system will cover the cost of verification by certification bodies and provide support for capacity building. On the other hand, it is conceivable that CPO and PKO certificates from smallholder groups could achieve a higher price than that of big producers' certificates which are currently traded at Greenpalm.

Some possible anticipated costs for achieving group certification to RSPO requirements include the following:

- procurement of information
- forming groups
- managing groups
- necessary changes in farm management practice (possibly net benefit)
- necessary tools / facilities (e.g. safety equipment, pesticide storage)
- necessary documents regarding to RSPO and group certification requirements
- necessary trainings (on various topics)
- High Conservation Value (HCV) assessment
- HCV management

- lost production and area (related to HCV or GAP requirements)
- keeping up the group management systems (necessary meetings, documentation system etc.)
- internal assessments
- external audits (internal and external cost)
- opportunity cost

Due to a lack of experience in smallholder RSPO certification, it is difficult to estimate the certification cost and this will not be attempted in this report. Nevertheless, taking into account the current minimal price premium and slow action of the RSPO, it seems clear that innovative incentives for certification will have to be found if smallholders are not to be excluded.

This means that RSPO certification would possibly not offer incentives in the form of access to higher value markets but become an entry requirement into major value chains. To avoid smallholders being excluded, institutional structures to support smallholder oil palm farmers in meeting sustainability and certification requirements are crucial. At present, the establishment of support mechanisms for smallholders are discussed and planned within the RSPO. A clear timeline, however, does not exist. So far it remains unclear when support mechanisms for smallholders will be available and whether they can effectively create opportunities from engaging in sustainable production and certification.

Private standards like the RSPO effectively hand over the responsibility for sustainability (including environmental protection and human rights issues) to the private sector where it is passed up-stream along the value chain. This discharges governments, lead firms and the international community from their liability regarding sustainable development and puts the burden on the producers themselves as they are the ones who have to comply with the standard. In many cases, this can be an effective means to eliminate malpractice by exploitive companies in the primary steps of production. However when smallholders have to take over this responsibility and the related duties, as is the case in the Thai palm oil sector, it is questionable whether this development is in the spirit of a sustainability initiative.

Opportunities of smallholder certification

As outlined above, besides decreasing palm oil producers' vulnerability by avoiding their exclusion from international markets and the value chain of major processing companies, certification seems to offer few market benefits. Still, it has been shown that improving the agricultural and management practices bears a great potential for higher productivity and efficiency. This in turn would mean higher returns for smallholders. In addition to these economic aspects, environmental and social benefits can be expected. Examples from other standards show that the long term profitability of farmers can be increased as a result of better farm management practices which come with the implementation of standards.[64] Good practices and continuous improvement are integral elements of the RSPO Principles and Criteria. Yet clear references to yield intensification and increasing returns are hard to come across. It is also difficult to convince farmers to get involved in certification when the potential benefits could very well be achieved by sustainable practice alone and without actually getting the production certified.

Other direct benefits for smallholders that could be attained are improved safety and health conditions at the workplace, long-term improvement in soil quality, water management as well as the general physical environment through environmental protection. Implementing the RSPO Principles and Criteria could also help reduce possible tensions and ensuing conflicts in oil palm growing regions between oil palm growers and other community members.

Recommendations

Palm oil production and the area under oil palm cultivation in Thailand have been steadily increasing over the last twenty years and further increase can be expected in the future due to rising demand and the promotion of the use of palm oil for biodiesel. The case of Thailand shows that palm oil has the potential to foster economic development which benefits a broad range of people involved in the sector. The small scale character of the Thai palm oil and oil palm industry allows a broader distribution of rents than might be the case

in countries where a few big companies dominate the industry and individual land ownership is limited. Other important aspects include the overcapacity in oil palm crushing mills and the absence of a government controlled pricing mechanism. This leads to the situation where the market for FFB is a seller's market rather than a buyer's market. On the other hand, the structure of the palm oil sector in Thailand poses various challenges with regards to efficiency as well as access to certification for smallholders.

Although there is no doubt that the Thai oil palm industry has had certain negative environmental impacts, such as the encroachment of plantations into national parks to some extent and in some places, this cannot be compared with the large scale logging associated with the palm oil industry in other countries. Additionally, these problems are covered by national law and are not specific to oil palm cultivation only. One approach to address this issue would be to raise the awareness of Thai farmers and society on the importance of environmental protection and of the risks related to environmental degradation. Another helpful step could be to improve the Thai land registry system and the quality and accuracy of land maps in Thailand in combination with increasing the capacity of the institutions responsible for environmental protection. This would allow the sustainability of agricultural development to be better monitored in Thailand. Concrete figures on greenhouse gas emissions from the palm oil industry in Thailand are in the process of being calculated, but positive outcomes in this regards can be expected as the conversion to oil palm mostly takes place on agricultural land. Besides, methane gas capture is becoming common practice in the Thai oil palm crushing mills.

Little information has been assessed for this report on the issues of land tenure and people's rights to land. Further investigation on this topic is recommended, however this should not be limited to the palm oil sector as there are no signs of crop specific problems in this regard and most indigenous groups are situated outside the main oil palm growing areas.

To ensure the sustainable livelihoods of smallholder farmers from oil palm growing and at the same time reduce the pressure to expand oil palm plantations, the low efficiency of the Thai palm oil sector needs to be addressed. This

requires steps to be taken at the policy level as well as raising the awareness and enhancing the capacities of smallholders. Creating standards for farm and harvesting practices can also act as a tool to raise efficiency at the farm level. However, to make this tool effective, clear economic benefits for farmers who abide by such standards must be created. In addition, farmers need support in complying with upcoming market requirements for sustainability such as the RSPO and, potentially, other sustainability standards with regards to bioenergy production. Otherwise, as soon as those standards materialise to effectively becoming entry requirements for the main FFB market in Thailand, smallholder farmers will be at a disadvantage.

The RSPO promotes the potential of its standards to improve the management practices of smallholders and at the same time to increase productivity and to decrease the need for further area expansion. This approach could improve the livelihoods of millions of farmers around the world, according to the RSPO.[65] However, up to now it is still unclear who will take on the task of supporting farmers in getting certified. The stipulated financing mechanisms for smallholder certification are also hard to identify. Hence, it is recommended that the rights of smallholders in Thailand be treated as a priority and that existing and upcoming standard-setting mechanisms be prompted to create support mechanisms for these smallholders.

(Endnotes)

1 ISTA Mielke GmbH 2010
2 ISTA Mielke GmbH 2009:2
3 Reuters 2010
4 OAE 2009:27
5 OAE cited in TEI 2009:3-11
6 UPOIC 2011
7 Dy 2009:151
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14 USAID 2011:6
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18 KOT 1975
19 KOT 1983
20 KOT 2004
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2. Oil Palm Development in Cambodia

H.E.P. Sokhannaro

Introduction

Crude palm oil (CPO) had become a highly valued product in the international market, resulting in its gradual increase in cost over the past twenty years. Malaysia and Indonesia alone produce over 80% of internationally traded CPO. Currently, an estimated 4.5 million ha of land have been converted to oil palm plantations in Malaysia with further expansion planned in Sarawak, an eastern state of Malaysian Borneo. Over 7.5 million ha of land are under oil palm plantations in Indonesia and provincial plans project an additional 20 million ha for oil palm development.[1]

Oil palm expansion is a major driver of deforestation in the South East Asian region. Thailand and Papua New Guinea are now also experiencing a rush to expand the crop and there are initiatives to further develop the crop in Cambodia, Vietnam and the Philippines. Most of this expansion is happening in "forest" areas where people have weak or unrecognised rights over their land. This expansion has been reported to result in serious social and environmental impacts in terms of forest degradation and biodiversity loss, expropriation of community lands and violations of human and land rights and exploitation of the workforce, especially of women and migrant workers. In Cambodia, the documented impacts have drawn the attention of various stakeholders as well as the media, the international community and several human rights groups.

It is these issues that have prompted RECOFTC to collaborate with the Forest Peoples Programme (FPP) in order to implement a project as partner of the Rights and Resources Initiative (RRI). The overall objectives of the project are:

- To raise awareness about rights, tenure, processes of land expropriation, the threats imposed by palm oil and the possibilities and limitations of the RSPO.
- To expose problems faced and caused by various sectors and discuss possible solutions including through the RSPO but also, more importantly, based on framework reforms needed to regulate the sector.
- To strengthen social mobilisation in order to defend land and forests from predatory and exploitative enterprises.

The Cambodian country case study attempts to provide an overview of oil palm development that will contribute to the overall project objectives in question. The case study is based on secondary data, travel and observation in the Cambodian countryside, and personal key informant interviews with representatives from rural communities, government officials, research organisations and non-governmental organisations (NGOs).

National trends in oil palm development

Since its reintegration into the global market in 1993, Cambodia has received a significant amount of foreign direct investment (FDI) in addition to domestic investment. However, a large portion of these investments were channelled into the development of tourism, infrastructure, the tertiary sector and industry. By mid-2009, FDI committed in fixed assets to the agricultural sector accounted for only 4% or US$ 1 billion.[2]

Since 2007, however, FDI appears to have been increasingly directed towards the agriculture sector. This was particularly the case in 2009 when the total amount of approved fixed assets was of US$ 446 million, more than triple the amount committed in 2008 when FDI approval peaked.[3] Indeed, Cambodia

has the potential to expand its agricultural sector, largely due to its abundance of fertile land that the government considers suitable to grant as Economic Land Concession (ELC) at a relatively low cost. On the other hand, Cambodia also suffers from a significant gap in its post-harvest capacity to store and process crops for export. It is these opportunities in part that have attracted an increased flow of FDI into Cambodia in spite of the scarcity of capital resulting from the global financial crisis.

Large agricultural investments typically cover extensive areas of land, usually so-called "vacant" land in forested regions. The granting of lands for agricultural investment is termed "Economic Land Concession" (ELC). About 60% of Cambodia's abundant vacant land is covered by forests. Attempts to convert such areas into agricultural land are predominantly achieved in the form of Economic Land Concessions, by which large allocations of public land are granted to private companies to attract large scale agricultural investment. As announced by the Ministry of Agriculture, Forestry and Fisheries in April 2010, eighty five companies have been granted long-term concessions over a total area of 956,690 ha in sixteen different provinces.[4] This area does not as of yet include smaller concessions of less than 1,000 ha granted by provincial authorities prior to September 2008.[5]

Economic Land Concessions can only be granted on state private land for a term no longer than ninety nice years and cannot exceed 10,000 hectares.[6] Operations on ELCs must begin within a year of the allocation. Five stipulations must be followed to ensure the legality of ELCs: the area of state private land must be registered and classified; a land use plan must be adopted for the area; Environmental and Social Impact Assessments must be conducted and approved; lawful landholders must not be displaced by the ELC and; consultations about the ELC must take place with the public.[7]

The development of agro-industrial plantations through the granting of ELCs has the potential to supply large and consistent quantities of agricultural crops. As such, plantation agriculture may contribute significantly to the national

economy and act as a source of employment on a substantial scale. Land concessions have been offered for the cultivation of plantation crops such as rubber, palm oil, cashew nuts and coffee. Minor projects cultivate food crops such as sugar cane and fruit trees. Most ELCs are located in non-flooded areas and degraded forests. The trees grown there require at least three years to yield returns and necessitate substantial financial investment. Rubber and cashew are among the most successful crops planted on such ELCs.

Oil palm development policies

The recent and sudden rise in the price of international crude oil has brought about a situation where oil-importing countries attempt to decrease dependency on fossil fuels and instead achieve a partial conversion of energy sources to sustainable energy sources. In order to reduce dependency on fossil fuel imports and improve the energy security of the country, bio-energy has been promoted by the Government of Cambodia. In consequence, a bio-energy promotion plan had been initiated, of which the focal point is the Office of the Council of Ministers.

The production of bio-fuel in Cambodia is still in its infancy, but many studies confirm a significant potential for the development of bio-energy crops in this country. However, as of yet, there is no policy for the development, production or use of bio-fuels. A plan for bio-fuel production for the transportation sector is currently being drafted. Meanwhile, the government promotes its "Rural Electrification by Renewable Energy Policy" as part of its long-term policy agenda.

However, many officials highlight the government's interest in the domestic use of bio-fuel as due to various reasons, including cutting the cost of petrol fuel imports, increasing energy security, creating job opportunities and reducing pollution. The government has also announced incentives such as waiving import and export duties and offering significant tax breaks for investors in bio-fuel production.[8]

Box 1: Mong Reththy Investment Cambodia Oil Palm Co., Ltd. (MRICOP) Profile.

MRICOP is the first commercially cultivated oil palm company in Cambodia. MRICOP obtained 11,000 ha of land under economic concession for a lease period of seventy years in 1995 and already has an investment plan of US$ 36 million, including for the development of a refinery. The plantation is located 180 km from Phnom Penh and 60 km from Prah Sihanouk Province. The company imported its oil palm seeds from Costa Rica, Thailand and Malaysia.

Crude palm oil was first harvested in 2003 and processed in 2004. Crude palm oil (CPO) products are mainly exported to China, Malaysia, Sri Lanka and Singapore.

It is not clear which government institution will take specific responsibility for the development of bio-fuels. Currently, the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Industry, Mining and Energy are involved.

Up to 2010, the Royal Government of Cambodia (RGC) did not engage in any significant initiatives to develop biodiesel. However, RGC has recently launched a series of discussions to address the development of renewable sources of energy and it is foreseen that it will consider and set up a pilot project to develop biodiesel as a significant and potentially lucrative source of energy for Cambodia.

RGC has studied several renewable energy development projects both independently, in cooperation with the private sector, and with international assistance. As one of the power supply sources to rural communities, the use

of locally available renewable energy is considered ideal to support local agricultural activities. 85% of the population in most rural areas has no access to electricity and the majority are poor agriculturalists. Their available source of power is supplied by either automotive batteries or expensive small and medium diesel generators set up in provincial cities in towns.

In this regard, the government's motivation to develop agro-based recoverable energy is supported by the fact that local farmers can gain both income and financially viable power by producing agricultural crops that are convertible into fuel. Therefore, it is in the national interest to develop recoverable fuels to power small and medium diesel power generators, in order to reduce the use of oil, firewood and charcoal as energy sources, particularly in aforementioned rural areas where access to such power supplies is lacking.[9]

National production of CPO

In recent years, the business sector has become increasingly interested in the production of ethanol, primarily from cassava. Cassava was one of the most important exports in 2007. So far, there are almost no fuel production facilities operating in Cambodia. Planned large scale plantations of energy crops have only just begun to be set up, the primary crops being *Jatropha curcas* and cassava. Oil palm too has been considered as an alternative option, although government promotion has focused on large scale foreign investment in *Jatropha curcas*.

With the initiative of developing large scale plantations of agricultural crops convertible into biodiesel, Mong Reththy Group jointly with South Korean venture partner Borim Universal launched a project in 1994v to plant oil palm in 11,000 ha of proposed land in Prah Sihanoukville Province. The purpose of the plantation is not to generate biodiesel from palm oil, but rather is the first attempt to develop vegetable oil plantations in Cambodia. As noted by H.E. Chhan Saphan, a Secretary of State in the Ministry of Land Management, Urban Planning and Construction, at a Technical Working Group on Land

meeting in March 2007, Mong Reththy Investment Cambodia Oil Palm Co. (MRICOP) is one of a number of successful ELCs used for agricultural plantations, including for oil palm.

In July 2010, there was still no data available regarding national crude palm oil (CPO) production, including from the Ministry of Agriculture, Forestry and Fisheries (MAFF) website.[10] There is a remarkable paucity of data on CPO production available for public access at present.[11] So far, only one company, the afore-mentioned Mong Reththy Investment Cambodia Oil Palm Co., Ltd (MRICOP) appears active in oil palm plantation projects (see box above for company profile). Their palm oil mill came into operation for CPO production in 2003.

MRICOP's raw palm oil factory is the first factory in Cambodia to produce raw palm oil for domestic consumption and export. In 2005, the company produced 4,000 metric tons of CPO for export to China, Malaysia, Holland, Switzerland, India, Singapore and France. However, as stated in the 14th Government Private Sector Forum in November 2008, the price of palm oil decreased from $1,200 to only $ 400 per ton in 2008. Since then, the company has been able to produce twenty tons of CPO per hour, while on average the project yields twenty two tons of CPO per hectare per year. Nearly 20,000 tons of palm oil were exported to Malaysia, India, Korea and Germany in 2008[12] and since 2009, the company has shifted its focus more towards the domestic market.

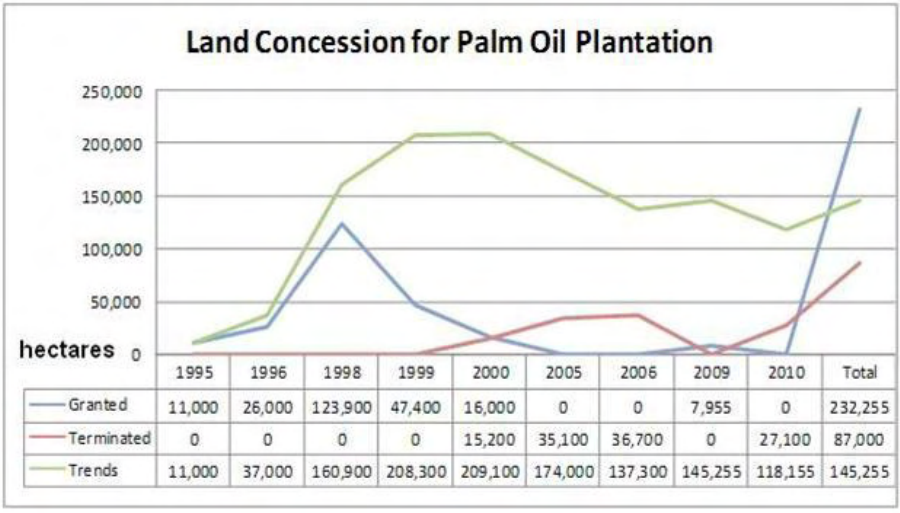
At present, MRICOP can harvest over 350 metric tons of FFB (Fresh Fruit Bunches) per day and the CPO mill can process over 250 metric tons per day.[13] The company's processing plant, currently working at 50% of its capacity, is capable of processing up to thirty tons per hour and is expected to reach sixty tons per hour by 2011.

In a meeting in June 2010 between new Malaysian ambassador to Cambodia Mohd Hussein Mohd Tahir Nasruddin and Deputy Prime Minister Sok An, the ambassador emphasised that Malaysian investors are interested in investing in rice, rubber plantations and oil palm plantations in Cambodia.[14]

Up to July 2010, an estimated 232,255 ha of economic land concessions were granted to fourteen different companies for oil palm plantation development in Cambodia. Much of the investment for oil palm plantation comes from Malaysia, Thailand and China. The majority of oil palm plantation shareholders are from China. For various reasons including not fully complying with project development plans as agreed with the government, a number of economic land concessions were terminated. By July 2010, a total of 145,255 ha[15] were covered by oil palm plantations in Cambodia. In Cambodia, oil palm plantations are rarely grown as mono-crops but rather complemented by other agro-industry crops including cassava and rubber tree.

Only Cambodian nationals can own land in Cambodia (i.e. freehold), whilst ELCs may be granted to either local or foreign companies (i.e. leasehold). The 2001 Land Law permits ELCs to be granted for up to ninety nine years but in practice the MAFF generally allows the leasehold of land for up to seventy years, renewable upon justifiable request. All concession companies are shared between Cambodian and foreign companies. China, Malaysia and Thailand form the majority of investors interested in oil palm plantations in Cambodia.

Figure 1: Gross land concession trends for oil palm plantations (1995-2010)



	1995	1996	1998	1999	2000	2005	2006	2009	2010	Total
Granted	11,000	26,000	123,900	47,400	16,000	0	0	7,955	0	232,255
Terminated	0	0	0	0	15,200	35,100	36,700	0	27,100	87,000
Trends	11,000	37,000	160,900	208,300	209,100	174,000	137,300	145,255	118,155	145,255

As indicated by an analysis of information provided by MAFF relating to oil palm plantations, nine out of the fourteen ELCs are owned by foreign investors. Seven concessions are owned by Chinese nationals, two by Malaysians and one is unknown. The analysis also shows that at least two ELCs for oil palm have been granted through Cambodian political connections. Senator Mong Reththy is director of MRICOP which has been granted a land concession of 11,000 ha in total in Prah Sihanouk province. Senator Men Sarun, director of Globaltech Sdn. Bhd., Mittapheap-Men Sarun and Rama Khmer International, has been granted 20,000 ha of land for an oil palm plantation located in Ratanakiri province.

MRICOP is the first commercial oil palm plantation project introduced in Cambodia since 1995, covering 11,000 ha in Prah Sihanouk Province, and the product of a joint venture with three other foreign partners. Mong Reththy holds 60% of the company, while the rest is shared between Borim Universal Co. Ltd (South Korea, 20%), Kim Tat Send Group Pte. Ltd. (Singapore, 10%) and Lavanaland Sdn. Bhd. (Malaysia, 10%).[16]
Green Rich Co. Ltd. has been granted 60,200 ha of land as economic concession, located in Koh Kong Province. According to the company's profile on the MAFF website, the director of the company is Chinese. As noted by Chris Lang[17], the company is owned by Freeland Universal Limited, registered in the British Virgin Islands, and its office is located in Hong Kong. In September 2004, the Cambodia Daily reported that Indonesia's Asia Pulp and Paper (APP) were behind Green Rich's operation in Cambodia.[18]

According to the homepage of MAFF, out of the fourteen ELCs for oil palm plantation (see table 1), China has direct investments in ten oil palm companies. Only two big companies are directly invested in by Malaysia; TALAM Plantation Holding and Fortuna Plantation. Out of the fourteen companies, only five are reportedly still active, while the rest are either inactive or have had their contracts terminated by MAFF.

Land acquisition

Legal framework of land acquisition

The Cambodian government has committed itself to numerous fundamental human rights treaties, including the International Convention on Economic, Social and Cultural Rights, the International Convention on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. In addition to these international treaties, Cambodia's constitution also protects Cambodian citizens' rights to land, and freedom of collective and individual expression.

Article 15 of the Land Law states that public land is land whose use is in public interest, including property of natural origin, such as forests. State private land is neither state public land nor legally privately or collectively owned under the Land Law. Under the Land Law, any person who enjoys peaceful, uncontested possession of land (except for not state public land) for at least five years prior to the law's promulgation[19] has the right to request a definitive title of ownership of this land. Those who enjoy such land possession for at least five years may obtain a definitive title of ownership. The Land Law authorises the granting of land concessions as a response to either social or economic circumstances. Land concessions must be based on a specific legal document, issued by a competent authority prior to the occupation of the land, and must also be registered with the Ministry of Land Management, Urban Planning and Construction (MLMUPC).

Economic Land Concessions can only be granted for state private land and for a maximum duration of ninety nine years. These concessions cannot lead to the establishment of ownership rights over this land. However, apart from the rights to alienate land, concessionaires are vested with all other rights associated with ownership during the term of the contract. The economic land concession must not exceed 10,000 ha and concessions granted prior to the implementation of the Land Law must be reduced to comply with this area limit, although exemption may be granted if the reduction will compromise the exploitation in progress.[20]

Article 18 of the Land Law states that land concessions that fail to comply with the above provisions are null and void, and cannot be rendered legal in any form. Article 55 declares that concessions may be revoked by the Government for non-compliance with legal requirements, and that concessionaires may appeal against this decision. Furthermore, a court may cancel the concession if a concessionaire does not comply with clauses specified in the contract. Article 62 states that the ELC must be exploited within twelve months of being granted, or will be considered cancelled.

The sub-decree on Economic Land Concessions[21] determines the criteria, procedures, mechanisms and institutional arrangements for granting ELCs. These include processes of monitoring the progress of ELC contracts, reviewing compliance with the Land Law of concessions granted prior to the effective date of the sub-decree.

Proposals for ELCs are to be evaluated based on various criteria including the promotion of the local community's living standards, the protection of the environment, the management of natural resources, the minimisation of negative social impacts and the creation of employment opportunities.

The sub-decree stipulates that the MAFF is authorised to grant and approve investment projects involving ELCs. Provincial governors are also authorised to approve land concessions of up to 1,000 ha per company. However, this authorisation was withdrawn in September 2008 and given instead to the central authority of MAFF, as in the case of land concessions of larger sizes. The MAFF also chairs an inter-ministerial committee to make decisions regarding ELC application approvals which are determined after a pre-feasibility study is conducted. ELC proposals must comply with the required environmental and social impact assessment, and must not involve the resettlement of local people.[22]

Trends in land acquisition

Economic Land Concessions (ELC) are defined as a mechanism for the government to grant private state land to a concessionaire for agricultural

exploitation. This refers to the cultivation of food crops or industrial crops, animal husbandry and aquaculture, the building of power plants, factories or other facilities to process domestic agricultural raw materials or a combination of some or all of the activities above. The purposes for which ELCs may be granted also include the generation of state revenues, an increase in rural employment and a diversification of livelihoods opportunities for local inhabitants. The Sub-decree stipulates that any ELC investment must receive the approval of the MAFF.

Unfortunately, analysis of ELC trends is hampered by the incomplete data available at present. Up to July 2010, only ELCs approved by the end of 2006 were reported and disclosed by the MAFF. In early 2010, on the MAFF website, the list was updated to include ELCs granted afterwards and those cancelled. However, nine companies are listed by name only, with no details provided, thereby limiting the amount of information available on their respective ELCs.

Cambodia appears to be emerging as a main exporter of natural resources to its neighbouring states. Interested investors come from Thailand, Vietnam, Malaysia, Singapore and China. Even with the little amount of information available, ELCs already appear to be numerous; eighty seven companies were valid as of April 2010. The MAFF website reports the cancellation of forty five ELCs. However, only twelve of those were recorded on the website. It suggests the other thirty three ELCs cancelled never appeared on the MAFF website. The total land area for the remaining eighty seven ELCs is of 1,081,245 ha (out of 18 million ha in Cambodia as a whole).

To date, fourteen companies have been granted a total of 232,255 ha for oil palm plantation (see table 1). By July 2010, only five companies occupying 98,155 ha were still in operation whereas two companies occupying 56,700 ha have not shown any significant progress in their activities. In sum, a total of 150,210 ha of ELCs were accounted for as oil palm plantations in 2010.

Table 1: Palm oil plantation companies in Cambodia

Province	Company Name	Year of Granted	Area Covers (Hectare)	Current Status
Kampot	Camland Co., Ltd	2000	16,000	Ongoing
Kampot	Shing Yu Commercial	1996	10,000	Terminated 2005
Kampot	Cambodia Tapioca Ent	1999	5,100	Terminated 2005
Kampot	China Evergreen Cambodia Agriculture Development	1998	4,000	Terminated 2005
Koh Kong	TALAM Plantation Holding SDN BHD	1998	36,700	Terminated 2006
Koh Kong	Cambodia Palm Oil	1999	15,200	Terminated 2000
Koh Kong	Chung Shing Cambodia	1996	16,000	Terminated 2005
Koh Kong	Green Rich Co. LTD	1998	60,200	Ongoing
Kampong Speu	Henan (Cambodia) Economic & Trade Development Zone	1999	4,100	Terminated 2010
Kampong Speu	The Cambodia Haining Co. Ltd	1998	23,000	Terminated 2010
Kampong Speu	Fortuna Plantation (Cambodia) Ltd	2009	7,955	Ongoing
Pursat	Ratanak Visal Development Co., Ltd	1999	3,000	Ongoing
Ratanakiri	Global Tech Sdn., Bhd, Rama Khmer International and Men Sarun Friendship	1999	20,000	No Activities
Prah Sihanouk[23]	Mong Reththy Investment Oil Palm Cambodia Co., Ltd	1995	11,000	Ongoing
Total	**14**		**232,255**	

Primary regions of oil palm plantation

Cambodia has a limited amount of land suitable for the growth of oil palm which requires a tropical forest climate with over 3,000 mm of annual rainfall. The climate renders Cambodia more suited to the plantation of *Jatropha* as raw material for bio-diesel fuel (BDF).[24]

In 1995, a 20,000 hectare concession to plant an oil palm plantation in O'Yadao district, Ratanakiri province, was granted by a joint venture company of Globaltech Sdn. Bhd. (Malaysia) and Cambodian companies Mittapheap-Men Sarun and Rama Khmer International. However, a trial plantation in 1996 turned out to be a complete failure and the land cleared by the company was simply left unused. The company then started a coffee plantation, building a dam to provide water to irrigate the plantation.[25] Cambodia's Haining company, granted 23,000 ha located in Kampong Speu province, also made no significant progress after their oil palm plantation experiment failed in the area in 1998.

At present, oil palm is mainly grown in the southern part of Cambodia, primarily in three provinces of mountainous relief along the coastal zone; Kampong Speu, Koh Kong, and Preah Sihanouk (see map below). Oil palm plantations occupying thousands of hectares in the coastal zone have had limited success. The initial plan of setting up a refinery to produce cooking oil was not realised; instead the seeds were collected and exported to Malaysia and Cambodia imported tax-exempt cooking oil. Few workers were employed because wages were low and there was a lack of infrastructure for residential settlements. This example underlines the importance of sustained commitment from investment companies and the need for high global prices to ensure the success of commercial ventures such as oil palm plantations.

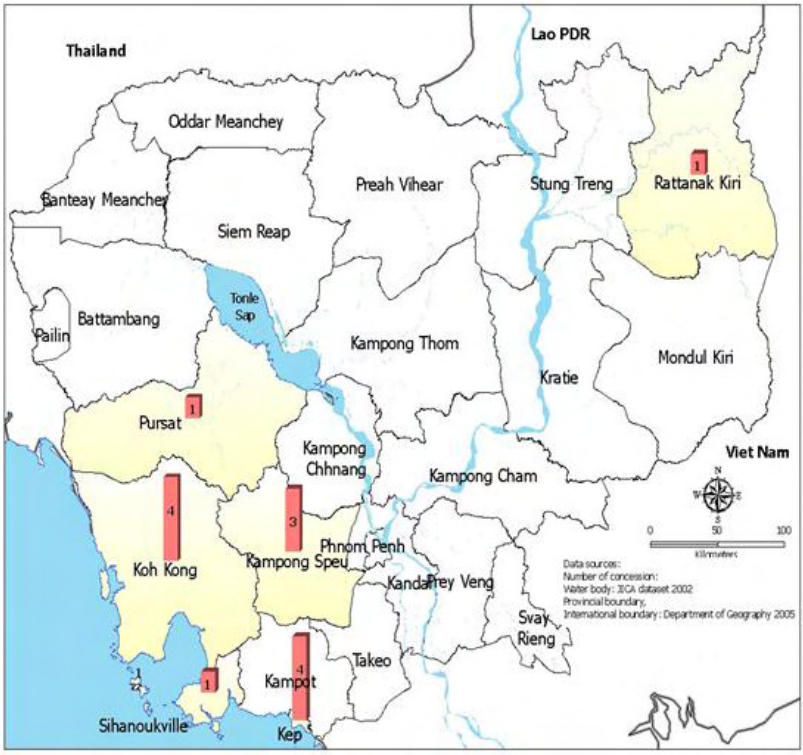


Figure 2. Location of plantation ELCs in Cambodia

Social and environmental impacts

It is frequently reported that ELCs have had a negative impact on the human rights and livelihoods of rural communities who depend on forest and natural resources for their survival. Commonly cited concerns include encroachment on agricultural and grazing land, loss of customary livelihoods, loss of access to non-timber forest products and environmental destruction.

The Law on Environmental Protection and Natural Resources Management requires environmental impact assessments to be carried out on all private and public projects and activities. According to the Sub-decree on the

Environmental Impact Assessment Process, responsible entities must carry out an Environment Management Plan for a period of six calendar months, commencing from the date of the MoE confirmation of their EIA report. Within at least two years of the promulgation of this sub-decree, responsible entities must compile their EIA report and submit it to the Provincial/Urban Environmental Office (PEO) for review and approval.[26] However, the Sub-decree is unclear in terms of exactly how EIAs are carried out, over what period of time, and according to what indicators and evaluation standards.

The United Nations Office of the High Commissioner for Human Rights (UNOHCHR) report of June 2007 raised the issue of the logging of valuable timber within the oil palm concession land of Green Rich's oil palm in Koh Kong. In early 2005, the Ministry of Environment filed a lawsuit against the company for violating the terms of its contract by logging outside the concession areas and destroying hundreds of hectares of evergreen forest in the Botum Sarkor national park in Koh Kong province for logging purposes.[27] Legal action against Green Rich was also taken due to the company failing to submit an environmental impact assessment (EIA) to the Ministry of Environment.[28] The company's actions were taken as a prime example of a concession exploiting the status of a plantation in order to log national park forested areas.

Land conflicts: human rights abuses, indigenous peoples and land-grabbing

The Royal Government of Cambodia has granted hundreds of thousands of hectares of land as ELCs for industrial tree plantations in particular. The results have had a severe impact on the forests, local people and workers employed by the plantation companies.

Few cases relate solely to oil palm plantations, as large scale land concessions for other plantations such as rubber, teak, coffee and cashew nuts present similar problems for local communities in Cambodia. The companies lease land from the government and hire rural and often migrant, workers. Local communities

are hardly ever consulted and in many cases residents are violently evicted from their land to make room for these plantations

One of the greatest concerns of international NGOs is the increase in concession demands leading to the legalisation of land-grabbing from inhabitants of the poorest rural areas. Data available on land grabs in Cambodia is limited and the range of cases vast, as many regions are experiencing a redistribution of land that disenfranchises marginalised communities.[29] Since non-speculative empirical data is limited, fieldwork to uncover real data is a necessity. A detailed analysis of the situation of the rural poor who are losing land to land grabbers is crucial to understand whether they are indeed benefiting from these forms of land redistribution.[30]

Land grabbing causes and exacerbates conflict and struggles over access and rights to natural resources between companies and local communities.[31] ELCs have had a devastating impact on indigenous and non-indigenous communities alike, but indigenous communities are particularly vulnerable, despite the protection of their rights to collective ownership of land under Cambodian law. [32]

As quoted in the Watershed publication by Chris Lang, in 2007, Yash Ghai, the UN's Special Representative of the Secretary General for Human Rights in Cambodia, wrote,

> "It is clear that ELCs have not had tangible benefits in rural areas but instead have deprived communities of vital sources of livelihoods, thus aggravating and worsening their already difficult situation. It is also clear that the granting of economic land concessions has increased the accumulation of property and wealth in the hands of those with political or economic influence."[33]

On paper, contracts for ELCs in Cambodia do not violate the land and land use rights of peasants since ELC contracts are only granted on state land. However, the categorisation of areas as state land does not reflect reality. Economic Land Concessions regularly encompass households' paddies, fields, grazing land, water and forest resources.[34] The state's definition of land as marginal, idle or

degraded has led to a "very rough, sometimes misleading, representation of actual existing rights to land"[35].

Thus, it is a false assumption that supposes that such land is available and suitable for exploitation. In reality, this land is often inhabited, densely forested or utilised as a communal resource. Consequently, imposed government land categorisations that disregard actual land use practices result in the dispossession of the rural poor. By defining land as marginal, idle or degraded, the state can benefit by leasing or contracting land to capitalist interests for agricultural development and resource exploitation. The dispossession of Cambodians from their land results from state land policies that unfairly represent land as marginal and underproductive.[36]

In addition, although state public and private property are differentiated in the 2001 Land Law, to date, the identification, mapping, and registration of state land has not occurred. The government rarely differentiates between state public and state private land when making claims that villagers are living illegally on state land. Therefore, villagers can legally be evicted for ELCs or private investment interests. Since there is no public information on what is state public land, it is difficult for the occupier to question the state's claims that they are living on state property.[37]

The 2005 Sub-decree on State Land Management states that State land must be mapped and this information must be entered into a central database that is accessible to the public. This is not being implemented systematically or transparently in Cambodia as large tracts of land are selected and classified by the government as state private land so that they can be transferred or leased to private interests.[38] Moreover, land tenure security for rural inhabitants is inadequate as land grabbers legitimise evictions by stating that they are illegally occupying state land. The information cannot be verified because registration of state land has not been implemented. This determination is made *ad hoc* and when investment interests in an area are expressed.[39]

The ambiguous nature of state land and the convenient transferability of state public land (such as forests, fallow, or non-private lands) to state private land facilitates land grabbing in rural Cambodia. The state determines who can

have access to land registration, what titles are recognised, and how forest resources can be utilised. The rural poor are left out of the picture because of the power disparities in the system of land governance.[40] The following examples illustrate the nature of oil palm development as experienced by local inhabitants and smallholders.

In 1997, MRICOP planted an area of 3,800 ha with oil palm trees. With the help of the Phnom Penh Municipality, ninety families illegally dwelling in Phnom Penh were relocated to work on the plantation area located along the National Route 4. The company promised to give them two hectares of land plots for their individual plantations. According to villagers in the area, the land used for the oil palm plantation included both forest and farmland. About 300 families located in Tanei village, which is adjacent to the plantation, reportedly lost their land to the company's plantations at that time.[41] As the result, the village moved to an area adjacent to the national route and many of them are now generating income by selling drinks and fruit from the small shops lining the road.

According to the results of Chris Lang's field investigations since 2001, some villagers feel they were tricked by the companies to give up their land as they never received any compensation from them. However, in the same report, it is also mentioned that some villagers received money for their land, but not for their trees. The problems persisted for two years without resolution, particularly regarding the two ha of land promised to the plantation workers. The company still claims that the land granted was empty land, but locals have protested, leading to numerous acts of violence. In February 2001, about 6,500 oil palm trees used by the company were burnt down, leading to an estimated damage cost of around US$ 70,000.[42] Meanwhile, most of the migrant families are unemployed. They make a living by collecting firewood in nearby forests to sell in Phnom Penh and some have already moved back to Phnom Penh in search of a better job.

A similar case also occurred in Kampot province in early June 2009, when about 300 villagers wielding axes and knives assembled to protest against Camland Company, claiming the company was clearing their land without their consent. The company possessed a seventy-year license from the government

to develop oil palm plantations but the community claimed the same area to be their ancestral land on which they have lived for generations. The local community threatened to set fire to the company's bulldozers if it failed to stop its activities. To date, over 3,000 ha of land have already been cleared and the company has retaliated by calling upon the protesting villagers to produce documents of proof for their claims.[43]

In some extreme cases, criminal charges have been filed against local communities who protest against the destructive impacts of land concessions for oil palm plantation. However, the judicial system has not yet been used to uphold local communities' rights so companies that blatantly violate the law have not been held accountable for their activities. In December 2005, three community activists were charged with incitement and destruction of property belonging to the Ratanak Visal Concession Company. The company filed a complaint after the community activists signed a petition to local authorities on behalf of affected communities when the company blocked off a stream essential for the irrigation of their rice fields.

Other concessions were granted over indigenous land for oil palm plantation in O'Yadao district in Ratanakiri. In 1996, a joint venture company, Globaltech Sdn. Bhd., Mittapheap-Men Sarun and Rama Khmer International, were granted 20,000 ha of land concession for oil palm plantation right in the middle of land inhabited by highlander communities. The local people were not consulted, 4,500 people were reportedly forcefully displaced from their land and employment opportunities were provided by the company for only 400 workers[44], some recruited to clear the land and forest. As oil palm turned out to be an unsuitable crop for that area's climatic conditions, the company started to plant coffee instead. A dam to provide water to irrigate the coffee was built as the result of a drought. The local community's submerged lands were bought by the company at a derisorily low price (US$ 52 per hectare) as they were told that, in any case, the company would take the land even if they refused to sell it.[45]

The efforts to compensate for some of the inequalities exacerbated by land grabs in Cambodia are failing because peasants have few options to successfully fight the system.[46] Since explicit and outward resistance is met with brutal force by

the military and privately contracted police in Cambodia, speaking out against government officials or people that have powerful connections to the state can place individuals, their families, and entire villages in danger of bodily harm, eviction, and arrests.[47] However, notwithstanding these risks, there are an increasing number of cases where local people are overtly challenging land grabs and the system that promotes land-grabbing as rural economic development. On the other hand, most peasants resist the takeover of their lands through covert actions of deception and non-compliance.[48] In Cambodia today, everyday resistance to land grabs for oil palm plantation development is becoming frequent, often in the form of overt, unorganised and unstructured opposition by the rural poor. The increasing tensions, especially in the battle between capital and the rural poor over land, may well result in the emergence of advocacy politics in the near future.[49]

Other issues related to estates

The use of some ELCs for agricultural production appears to have remained at the speculative level. Some companies lacked the capital to convert their ELCs into agricultural enterprises. Others came into conflict with other stakeholders over land rights, particularly with local communities, and were unable to implement their plans.

Overlapping claims to land are made both by local villagers and influential people who purchase land from these local villagers or are granted land by the government. According to the NGO Forum on Cambodia's database 2009 land dispute report, 108 cases identified related to an abuse of power by the plantation companies, the luring of local leaders' support through financial rewards and the intimidation of activists opposing plantation development.[50] The resolution of such conflicts has been particularly difficult, as reflected by the fact that numerous land conflicts have persisted for over a decade.

The legal and regulatory frameworks for granting ELCs are clearly far from strict enough. Nor are environmental impact assessments and social impact assessments being properly implemented and enforced according to the sub-decree on the Economic Land Concession. Only consultancy firms recognised

by the Ministry of Environment are allowed to conduct EIAs. However, these assessments are hardly reliable as they tend to be reduced to the aleatory ticking of boxes.[51]

A review of the MAFF website found that many palm oil concession companies carried out a slow or insignificant implementation of their initial contract or business plan. Very few projects appear to have taken a serious and committed stance towards implementing their agricultural/agro-industry development proposals, as confirmed in the meeting of the Technical Working Group on Land in March 2007.[52] This has partly resulted in illegal land-grabbing, causing conflicts that will be difficult and time-consuming to resolve.

Local villagers appear to be even worse off financially than before, although some receive temporary benefits from the ELC projects. The disadvantaged ethnic minorities living in the remote plateau areas in particular have been losing their traditional livelihood practices, and no alternatives are available to them at the moment. An illustrative example of this situation is the previously described case of Globaltech Sdn. Bhd., Mittapheap-Men Sarun and Rama Khmer International, granted a 20,000 hectare land concession for oil palm plantation in Ratanakiri.

Official information relating to working conditions on oil palm plantations are severely lacking. So far, the only information available has been collected by human rights NGOs and other independent studies. Indeed, as reported by Chris Lang, the working conditions of workers for Green Rich were absolutely appalling.[53] The company hired loggers from another north eastern part of the country. The report claims that the sub-contractors inflated food prices for workers and many workers found themselves having to rely on borrowing money and food in order to survive. A number of workers fled, swimming across the river at night and walking dozens of kilometres through mangrove forest to escape these exploitative conditions.

In some cases, workers migrated from other areas to live and work with the concession companies. An example of this is that of MRICOP in Prah Sihanouk province. In early 1999, the Phnom Penh Municipality, in collaboration with the company, relocated ninety nine families illegally squatting behind the Russian

embassy in the capital to Monorom 1, a new village adjacent to MRICOP. These people were promised work on the oil palm plantation together with a new house. The municipality built a school and a market. However, as reported by Chris Lang, only about fifty people actually got jobs with the company. By June 2001, it was reported that migrant workers could freely do whatever they pleased to earn their living, while the company itself was not even aware how many villagers were working for them.[54]

By 2001, the oil palm venture was not making any profits. Though the first fruits were being harvested, there was no factory for processing. In his report, Chris Lang stresses the fact that the company had totally failed to benefit either the local population or the people relocated from Phnom Penh. The community surrounding the plantation areas had lost their access to land and forests, and all this without compensation. Of all the migrant workers who had moved from Phnom Penh and were promised work with the company, only a handful had received jobs and none had received the land the company had promised them.

National standards and norms

Though the Royal Government of Cambodia has a policy to promote bio-energy in order to reduce Cambodia's dependency on imported oil, there is no specific agenda for palm oil development yet. As reported by a local media source, MAFF does not particularly encourage palm oil projects as they are not seen as having much positive benefit. MRICOP has also expanded their plantation project with a focus on cassava instead.

Since July 2010, there has been no information available regarding the membership of any companies in Cambodia to the Roundtable on Sustainable Palm Oil (RSPO). However, the RSPO's principles and criteria relating to indigenous peoples, local communities, workers and smallholders, community safeguard standards and norms are in theory in line with existing Cambodian legal frameworks, including statutory and international laws. Besides these, NGO position papers and statements made at the Cambodia Development

Cooperation Forum (CDCF) meeting provide another source based upon which CSOs can raise their concerns regarding the impact of government policies on communities at the local level.

The Cambodian Constitution states that all citizens have the same rights, regardless of race, colour, language or religious belief. Indigenous people are regarded as citizens of Cambodia. Cambodia is signatory to a number of international instruments that protect human rights as ratified since 1992, including the International Covenant on Economic, Social and Cultural Rights. Article 31 of the Cambodian Constitution also states that Cambodia shall recognise and respect the UN conventions relating to human rights.
In response to this, international and local NGOs have produced a number of reports related to the impacts of oil palm plantations on local peoples' livelihoods, rights, resources and choices. With reference to ELCs more broadly, the Committee on Economic, Social and Cultural Rights wrote in its 2009 Concluding Observation that it is

> "concerned about the report that the increase in economic land concessions in the last several years, even within protected zones, is the major factor for the degradation of natural resources, adversely affecting ecology and biodiversity, resulting in the displacement of indigenous people from their land without just compensation and resettlement, and the loss of livelihood for rural communities who depend on land and forest resources for their survival."[55]

In response to ELC activities, communities are calling for action to safeguard their livelihoods. They are mobilising to notify the concessionaires and authorities about the impacts of these activities through petitions and public protests. In some cases, actions to resolve these conflicts have been promised, but have not always been actualised.

Another window of opportunity for Cambodia's NGO community to engage with the Royal Government of Cambodia in order to address such issues is through the NGO position paper[56] presented at the annual Cambodia Development Cooperation Forum.[57] It provides observations and policy recommendations based on the government's performance against its Joint

Monitoring Indicators (JMIs) and National Strategic Development Plan (NSDP). Though NGO statements rarely directly mention oil palm issues, the 2010 statement asserted that "ELCs are the root cause of forestry disasters and land conflict in the country, with generally negative impacts on affected community".[58] The statement also asked the government to ensure public disclosure and regular updates of the ELC log book, particularly regarding the progress of companies' plantation-related activities.

In the same statement, NGOs working on environmental protection, conservation and climate change expressed their concern that insufficient attention was being paid to the quality of EIAs carried out for development projects. They recommended the government review ELC projects currently under implementation or in operation without EIAs and suspend these projects until their EIA report had been submitted.

Recommendations

- To disclose and make available to the public at all levels information related to ELCs, and particularly for the production of palm oil. This information should include the location of these oil palm plantations with their geographical coordinates, the area of land used, the status of progress of palm oil production, production capacity and the targeted export market.
- To ensure that all concessions comply fully with the provisions of the Land Law and Sub-decree on Economic Land Concessions.
- To ensure the effective participation of local communities through prior and public consultations.
- To ensure that environmental and social impact assessments are made prior to the granting of land concessions.
- To ensure that oil palm land concessions are not granted over forested land and that the customary use rights of local communities are protected.

(Endnotes)

1 Colchester 2010
2 Ngo & Chan 2010
3 *ibid.*
4 MAFF 2010
5 New sub-decree to eliminate the authorisation of provincial authorities to grant land to private companies.
6 2001 Land Law, Article 17, 58; Article 61; Article 59
7 Schneider A E 2011
8 Schott C 2009
9 Japan Development Institute (JDI) 2007
10 MAFF 2010
11 Telephone interview with Mr. Neou Senior, Senior Researcher of Online Database Manager of the Economic Institute of Cambodia on July 19 2010.
12 Cambodia Business Intelligence
13 Mong Reththy Group
14 DAP-News 2010
15 The total area is not only for palm oil also includes other agro-industry crops. Data on the specific land allocation for palm oil is not available.
16 Lang 2001a
17 Lang 2005
18 Quoted in Lang 2008
19 The Land Law was promulgated on August 30 2001.
20 The sub-decree on Economic Land Concession authorised the Council of Ministers to grant such an exemption, but specifies that clearing of land does not constitute exploitation in progress.
21 Sub-decree signed by the Prime Minister on December 27 2005.
22 1999 Sub-decree on Environmental Impact Assessment Process, Kingdom of Cambodia.
23 Previously known as Sihanouk Ville
24 Japan Development Institute (JDI) 2007
25 WRM 2002
26 Sub-decree on Environmental Impact Assessment Process, Kingdom of Cambodia.
27 Lang 2008
28 WRM 2005
29 Schneider 2011:11
30 *ibid.*
31 Lang 2003
32 OHCHR 2007

[33] Lang 2008
[34] Schneider 2011:11-12
[35] Scott 1998:47
[36] *ibid.*
[37] CHRAC 2009
[38] Grimsditch & Henderson 2009:6
[39] *Ibid.*
[40] Schneider 2011:14
[41] Lang 2001b
[42] *ibid.*
[43] Cambodia News Online 2009
[44] WRM 2002
[45] *ibid.*
[46] O'Keefe 2009:6
[47] CHRAC 2009
[48] Schneider 2011:15
[49] *ibid.*:8
[50] NGO Forum on Cambodia 2010
[51] Ngo S & Chan S 2010
[52] H.E. Chhan Saphan, a secretary of state in the Ministry of Land Management, Urban Planning and Construction, at a meeting of Technical Working Group on Land in March, 2007 that Mong Reththy Investment Cambodia Palm Oil (MRICOP) is only one economic land concession that have been successful.
[53] WRM 2005
[54] Lang 2001
[55] Indigenous People NGO Network 2010
[56] This publication is a compilation of information from local and international NGOs working in a wide variety sectors in Cambodia. Learn more at <ngoforum.org.kh>
[57] CDCF is the high level forum between the Royal Government of Cambodia and its Development Partners for discussing Cambodia's development progress and aid mobilisation.
[58] NGO Forum on Cambodia 2010

3. Oil Palm Development in Vietnam

Vo Thai Dan[1]

Introduction

Vietnam lies near the Equator and is divided into highlands in the north and coastal lowlands in the south. Tropical forests cover 42% of the total surface area (325,360 sq km). Weather conditions range from tropical in the south and monsoonal in the north with a hot rainy season and a warm dry season. Located in the Indomalaya ecozone, Vietnam is home to a unique range of flora and fauna. The population of Vietnam is approximately 85 million of which 60% work in the agricultural sector. 25 million ha of Vietnam is used for agricultural purposes, 3.4 million ha for non-agricultural uses, and 4.7 million ha consist of unused land. The climate, temperature and humidity levels of Vietnam make it appropriate for the plantation of tropical plants such as oil palm.

At present, oil palm cultivation at Vietnam remains at the experimental stage such that few negative social and environmental impacts resulting from the development of palm oil production have been documented. Based on the very limited amount of literature available, this report attempts to predict the future potential for development of oil palm cultivation for commercial ends in Vietnam and its eventual impact on local communities and the environment.

Palm oil and the RSPO

According to the Center for People and Forests (RECOFTC), oil palm expansion is a major driver of deforestation in the South East Asian region. Over five million ha are already under oil palm in Malaysia with further expansion planned in Sarawak. More than seven million ha of land are under oil palm in Indonesia and provincial plans have slated an additional twenty million ha for oil palm development. Thailand and Papua New Guinea are now also experiencing a rush to expand the crop, and there are initiatives to develop oil palm plantations in Cambodia, Vietnam and the Philippines.
Most of this expansion is happening in "forest" areas where people have weak or unrecognised rights to land and natural resources. This expansion is already having serious social and environmental impacts in terms of forest and biodiversity loss, expropriation of community lands and violations of rights and the exploitation of the workforce, especially of women and migrants. To date, sustained civil society engagement with the industry and national dialogues over palm oil have in large part occurred in Indonesia and to a lesser extent in Malaysia.

Recognising the need for standard-setting and accountability in the production of sustainable palm oil, the Roundtable on Sustainable Palm Oil (RSPO) was established in 2004 by the World Wildlife Fund (WWF) and businesses involved in the production, processing and retailing of palm oil. The RSPO is a multi-stakeholder body which on the one hand seeks to improve company practices, but on the other hand seeks to legitimise continued expansion.[2] The RSPO has adopted eight principles, thirty nine criteria and more than 120 indicators for socially and environmentally sustainable palm oil as well as certification systems and indicators for schemed and independent smallholders.

The RSPO affirms the rights of indigenous peoples to their customary lands, requires just land acquisition and the redress of conflicts, and insists that no lands can be taken from indigenous peoples and local communities without their free, prior and informed consent (FPIC), expressed through their own freely chosen representatives. Although civil society engagement in this process has secured some important gains for local communities and indigenous people,

there remain a number of concerns that RSPO processes require further re-examination and improvement for its objectives to be achieved.[3]

This country case study on palm oil in Vietnam contributes to some of the following objectives of the RSPO:

- Raising awareness about rights, tenure, processes of land expropriation, and the possible future socio-economic and environmental consequences of oil palm development
- Exposing problems from various sectors and possible solutions including through RSPO but also, more importantly, through the framework reforms needed to regulate the sector
- Strengthening social mobilisation to defend lands and forests from predatory enterprises

Palm oil in state policies and the market

The history of palm oil in Vietnam: government policies and targets

Oil palm (*Elaeis guineesis*) was first introduced to Vietnam by the French in 1878 and used primarily as a decorative plant. Although there now exist several policies regarding the introduction and development of oil palm in the cropping system as a potential and valuable commercial industrial plant, oil palm cultivation at Vietnam remains at the experimental stage.

Palm oil has appeared intermittently in governmental policies over the past five decades, beginning in 1962, when President Ho Chi Minh instructed the Ministry of Agriculture (now known as the Ministry of Agriculture and Rural Development) to research and develop oil palm. In 1967, Vietnam imported Dura oil palms from China to plant in three experimental farms in Thanh Hoa, Hung Yen and Nghe An provinces. By March 1971, oil palm had been planted for research purposes in Huong Son district, Ha Tinh province.

Source: Nguyen, Nguyen & Tran 2008

Box 1 : Major Milestones in Policy and Legal Framework

Aug. 1991	:	Law on forest protection and development passed by the 8th National Assembly, marking an effort to involve local people and different economic sectors in forest protection and development
Jul. 1993	:	Land law passed by the 9th National Assembly, stipulating the rights of the title holder to lease, exchange, inherit, mortgage, and transfer land use title.
Jan. 1994	:	Government decree 02/CP on allocation of forest land to local organizations, households and individuals.
Jan. 1995	:	Government decree 01/CP on allocation of land through contracts for agriculture, forestry and aquaculture purposes.
Jan. 1999	:	Government decree 163/1999/ND-CP on land allocation and lease for forestry purposes
Nov. 2003	:	Land Law passed by the 11th National Assembly, recognizing the legal status of community in land tenure.
Dec. 2004	:	Law on Forest protection and development passed by 11th National Assembly, recognizing common property as a legal forest management arrangement.

From November 17th to 19th 1980, the Ministry of Agriculture organised a conference focusing on oil palm in Ha Tinh province and concluded that oil palm could be cultivated from Ha Tinh to the southern areas of Vietnam. In 1981, the result of the conference was reported to the Prime Minister who later agreed to initiate oil palm cultivation on a large scale. Later in 1986, the government assigned the project of a "Study on the adaptability of oil palm grown in the south of Vietnam" to the Vietnam Vegetable Oil Research Institute in order to establish a scientific basis for the planning and development of oil palm in Vietnam.

As mentioned previously, no commercial CPO is currently being produced in Vietnam. Annually, Vietnam imports a large amount of vegetable oil of a value of over 700 million USD of which palm oil imported from Indonesia and Malaysia accounts for 77.88%. Oil palm production remains in the trial period and has not yet been expanded commercially for several reasons. Firstly,

detailed and practical research and trials are necessary before oil palm can be cultivated as a viable commercial crop. Secondly, there are already several high value industrial crops occupying extensive areas of land in Vietnam, such as copra, soybean, peanut and sesame. It remains to be established to what extent land suitable for growing oil palm may conflict with these other high value crops. Finally, and related to the previous point, there remains relatively little unused land available for oil palm cultivation as a result of the mass production of other high value crops.

Despite these limitations, cultivating oil palm to develop bio-oils is being considered as an option by the Vietnamese government. On November 20th 2007, the Prime Minister approved a project named "The development of bio-fuels for the year 2015, vision to 2025". The project suggests that the production of ethanol and vegetable oils (from diverse types of oily materials, and not only palm oil) has to reach 1.8 million tons in order to meet 5% of the petrol needs of the country.

The government also gives rights to the Ministry of Agriculture and Rural Development to combine with the Ministry of Industry and Trade, the Ministry of Planning and the Investment Portal to plan and develop the areas for Vietnamese bio-fuel industry in the future. The government is investing 259.2 billion VND (28.8 billion USD per year) for the nine-year project that will run from 2007 to 2015.

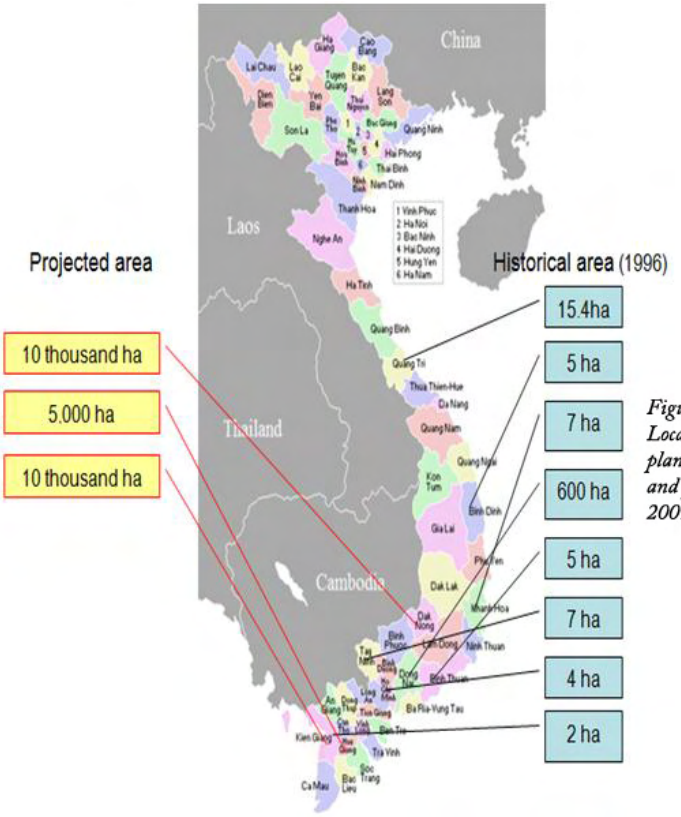


Figure 1.
Location of oil palm plantation areas in 1996 and projected areas for 2009 and 2010

Current and prospective oil palm plantations

Although no commercial production of palm oil can be documented yet in Vietnam, some of the landmarks in oil palm cultivation in recent years can be identified. In 1978, oil palm was thinly grown as a model crop in Nghe An, Quang Tri, Binh Dinh, Khanh Hòa, and Dong Nai provinces. In 1980, oil palm continued to be imported and planted for experimentation in some southern provinces of Vietnam. By 1996, the area of cultivated oil palm was 650 hectares including 600 ha in Xuan Loc (Đong Nai), 5 ha in Ham Tan

(Thuan Hai), 7 ha in Suoi Trau (Khanh Hoa), 5 ha in Phu Cat (Binh Dinh), 4 ha in Ho Chi Minh City, 7 ha in Tay Ninh, and 2 ha in Kien Giang. In 2001, oil palm was grown over an area of 56.7 ha in Dong Ha (Quang Tri). However, this area was reduced to 15.4 ha in 2007. As a result, Vietnam now has more than 650 ha of oil palm plantations. While this area appears insignificant at present, it may act as a foundation for the further expansion of oil palm in the near future.

More recently in 2009, the people's committee of Dak Nong planned to develop oil palm over an area of 10,000 ha in Dak G'Long district. The CT Group from Malaysia handles this project. In the first period, the CT group will plant 2,000 - 4,000 ha of oil palm if conditions are favourable for the project. From 2010 to 2015, the Department of Agriculture and Rural Development of Hau Giang projects to build a high-tech agricultural area of 5,000 ha, all of which will be used to grow oil palm in order to produce edible oils and bio-oils. The investors plan to expand palm oil production in Bac Lieu, Kien Giang by increasing the plantation area by up to 10,000 ha.

Vegetable oil crops

In Vietnam, vegetable oil is mainly produced from copra, soy bean, peanut and sesame. Domestic agricultural production does not supply enough for local vegetable oil consumption and as a result, oily materials (including crude palm oil) used by almost all vegetable oil companies have to be imported.

In 2008, Vietnam had thirty five companies processing vegetable oil in thirteen provinces with a potential capacity of 1,129,000 tons of refined oil per year (the real capacity was 51.3% of the total) and 2,969,000 tons of oily materials (the real capacity was 35.3%), equal to 85,000 tons of crude vegetable oil. Among them, the Vocarimex Company and its sub-companies and joint ventures produced 78.74% of total refined oil and 23.24% of total crude vegetable oil.

Figure 2. Oil crop production in Vietnam in 2008 (source: FAO 2010)

	Area harvested (ha)	Yield (kg/ ha)	Production (tons)	Seed (tons)
Castor oil seed	7,000	714	5,000	105
Coconut	138,300	7,852	1,086,000	
Cottonseed			4,595	920
Groundnut with shell	256,000	2,085	533,800	15,360
Seed cotton	5,200	1,327	6,900	
Sesame seed	45,000	489	22,000	450
Soybeans	191,500	1,403	268,600	6,702

The competitive ability of Vietnam's vegetable oil is lower than that of other South East Asian countries because Vietnam has to import 90% of its oily materials, of which palm oil is primarily imported from Malaysia and Indonesia. Almost all the oil companies in Vietnam import refined oil to produce end-products.

Import and export markets

From 2000 to 2008, the rate of oil import in Vietnam increased by an average of 12.6% per year, but the rate of oil export decreased gradually. Therefore, the trade gap in Vietnamese oil industry was extremely high. In 2008, the export turn-over of the oil industry reached $700 million. Based on forecasts for vegetable oil, Vietnam will have to import crude oil for a value of more than $1 billion by 2025 if it does not develop its own oil-producing plantations. By 2020, it is estimated that Vietnam will produce 1,420,000-1,730,000 tons of refined oil, 280,000-430,000 thousand tons of crude oil (mainly produced from different imported oily materials, including crude palm oil) and will export 60,000 tons of oil. By 2025, Vietnam will be able to produce 1,680,000-2,130,000 tons of refined oil and 320,000-520,000 tons of crude oil and will export 80,000 tons of oil. However, it must be kept in mind that disaggregated data on these predictions is both difficult to obtain and to verify.

The main oil company in Vietnam is National Company for Vegetable oils, Aromas and Cosmetic of Vietnam (Vocarimex). Its joint ventures include: Golden Hope Nha Be Edible Oils., Ltd, Cai Lan Oils & Fats Industries Co., Ltd, and LG VINA Cosmetics. This group of companies holds 95% of the market shares in edible oils and 20% of perfume shares in the domestic market. They currently have a mill capacity to process 828,000 tons of edible oils mainly from imported oily materials, including crude palm oil from Indonesia and Malaysia. It is expected that by 2015 the capacity of these companies will increase to 1.5 million tons of oil. However, disaggregated data regarding how much palm oil is being processed is not available.

The role of the State

The 1980 Constitution of Vietnam vested all rights in land to the state. This principle was part of the 1988 Land Law, but was rephrased as "people's ownership" and "state management" in the 1992 Constitution and 1993 Land Law. Since the central and local governments exercise the right of land ownership on behalf of the people, they also have rights to possess, use and dispose of land. While retaining ultimate control over legislation and policy, the central state has devolved land management to People's Committees. Local authorities are also responsible for promulgating zoning and land use regulations, registration and resolving certain types of land use disputes.

Overall, the State still dominates the management of forest resources. Local people need to apply to a State body to obtain a land title, the State decides on the use of forest resources already allocated to local people, the best quality forests are reportedly owned by state actors and state-elected village leadership plays a dominant role in land-related negotiations. As a result, past and present (forest) land allocation policies have not been able to provide necessary power over forest use and management to local people.[4]

Vietnam's land policy reforms

In December 1986 at the Sixth National Congress, the government of Vietnam introduced a wide ranging number of reforms known as "*doi moi*" ("renewal" or "innovation"). Designed in response to some of the failures of central planning, the *doi moi* reforms were intended to gradually liberalise the Vietnamese economy. Linked to these reforms was the 1993 Land Law (and revisions of 1998) which followed the 1988 "Resolution 10", formalising the farm household as the primary unit of agricultural production and providing for the allocation of land use rights to such households. These land use rights gave households decision-making rights related to the purchase and use of inputs, the sale of outputs, and, to a certain degree, the use of land.

The 1998 amendments to the Land Law divided land into six categories: forest land, agricultural land, rural residential land, urban land, special land and unused land. Forest land was further classified as forested land and non-forested land planned for reforestation. The 1998 Land Law distinguishes "plantation forest" and "natural forest". It allows organisations, but not individuals, to use the value of timber growing on allocated forest land for mortgage purposes. Organisations can also use the land as capital contribution for forestry joint venture projects.[5] In November 2001, the government made another revision to the Land Law, allowing foreign banks to take land use rights as collateral for loans and help set up a land market.[6]

Law on Land (1993)

The Law on Land (1993) is based on six main principles governing land:

(1) land belongs to the entire people;

(2) land is uniformly administered by the state;

(3) which promotes effective and economical usage. Further,

(4) the state protects agricultural land;

(5) encourages investment in land; and

(6) stipulates the value of land.

The 1993 Land Law allows provincial authorities to decide on land use and to allocate or confiscate land in accordance. Such powers, along with provincial government and forest enterprises' need to generate their own funding, have caused an increase in commercial crops, including industrial tree crops, but often at the expense of subsistence economies of local rural communities. For example, in Song Be province, one of the most popular provinces for foreign investors, investment in plantation projects has occupied large tracts of land, undermined farmers' land rights and effectively turned farmers into permanent tenants rather than actual landowners.[7]

Trends in commercial agricultural production…

As mentioned above, land tenure reforms have led to a significant increase in industrial crop area from 1,135,300 ha in 1993 to 2,632,500 ha in 2007. However, commercial agricultural production of cash crops (such as paddy rice, coffee, rubber, cashew nut and pepper) has been carried out at the expense of subsistence agricultural production. Resulting from this has been the diversification and intensification of land use, a switch from traditional to high value cash crops with the adoption of new technologies and the intensified use of fertilisers, pesticides, high yield varieties and deep ploughing with tractors. This is becoming an increasingly common practice among farmers as well as indigenous people who traditionally practiced rotational farming for subsistence purposes.[8] Much of the development of intensive agriculture and agricultural growth has been driven by land policy reforms, pricing reforms, market liberalisation, integration within the global economy and external market forces. Since 2001, investments in renewable energy sources, including oil palm, have been growing rapidly.

…and the issue of landlessness

Successive land reform policies since 1988 have tended to reduce land fragmentation, and allow larger land holding sizes, longer land use rights, and more flexibility in land use. The effects of policies can be seen in the form of larger farms, and increased pressure for change in land use from subsistence to major food and industrial cash crops, such as maize, soybean, cassava, sweet potato and peanut.

However, the imbalance of land ownership is also increasing, creating a visible gap between the landless poor and wealthy land owners.[9] Land consolidation and accumulation by wealthier families and individuals has in turn led to an increase in the number of rural households without land. There is evidence that the percentage of landless farmers, particularly in the Mekong delta, is increasing in Vietnam. Surveys by the Government Statistical Office in 1994 and 1998 indicate that the number of landless households had increased from 12,250 farmer households or 0.7% of the Mekong total population, to more than 1,000,000 farmer households or 6% of the region's population. [10]

Forest classification

Vietnam's 2004 Law on Forest Protection and Development (FPDL) defines forest as "an ecological system comprising populations of forest fauna and flora, forest microorganisms, forest land and other biotic factors, of which trees, bamboo or typical flora are the main components with a canopy cover of at least 10%". In 2005 Vietnam had a total forest area of 12.6 million ha, including 10.3 million ha of natural forest and 2.3 million ha of plantations. This is equivalent to a national forest cover of 38.2% (31.1% natural forest and 7.1% plantations).

Forests in Vietnam are classified as production forests (36.3% of the total forested area), protection forests (48.1%) and special use forests (15.6%). Production forests are used mainly for the production of timber and non-timber products, though they also contribute to soil and water protection, the main function of protection forests. Special-use forests are dedicated to nature conservation, research, tourism and cultural and historical protection.[11]

Forest tenure

Vietnam has seen radical changes in its forest tenure legal framework over the past two decades with forest areas officially under the management of local people having expanded to nearly 3.5 million ha (27% of national forest area).[12] Both the Land Law 1993 and the Forest Protection and Development Law 1991 took forest management out of solely state hands. Revisions to both documents in 2003-4 enabled the legal recognition of communities in managing land and forest resources. Overall, the legal framework related to forest tenure has shown a trend towards the recognition and inclusion of various stakeholders in the management and use of forest resources. The first plantation programme in Vietnam dates back to 1956. In the last decade, government support to plantation development has intensified, both through Programme 327 and, since 1998, through the Five Million Hectare Reforestation Programme (5MHRP).

From an economic perspective, Vietnam has made notable progress in combating poverty in the past decades and economic growth has been strong. However, no disaggregated data exists about the relative situation of people in forests. Case studies show that household forestry has brought significant gains to those establishing planted forests. However, household management of natural forests has brought uncertain returns. When such forests are remote and hard to reach and control, they are problematically treated as open access resources by surrounding groups.

Ethnic minorities in Vietnam

It is widely reported that ethnic minorities in Vietnam have gained less security in land and forests than the national majority (*Kinh*). Officials too admit a growing wealth disparity between *Kinh* and ethnic minorities.[13] State policies are still aimed at putting an end to swidden farming and bringing these ethnic minorities out of their 'backward' state. Traditional forest-related knowledge and customary systems of land use are not promoted. Although rights recognition in forests and land allocations have been to individuals, ethnic minorities have tended to be excluded from their share of entitlements, in particular, ethnic minority women, some of whom have reported feeling disenfranchised by the land allocation process.

The individualisation of land tenure in the agrarian reforms has caused ethnic minorities to lose access to land in the land markets that ensued, as has been reported among the Hmong, Vietnam's largest ethnic minority. This is both because poor people have sold land to get out of short-term financial difficulties and because the new system requires that the individual farmer or property-owner has a sound knowledge of management and, preferably, good 'connections'. Inevitably, many ethnic minority people are destined to lose out in this competition over scarce resources.[14]

Policies encouraging capital investment and allowing joint ventures and corporations to control lands and forests, and engage in commercial plantations in areas inhabited by ethnic minorities for generations, are now expanding. It is crucial that key stakeholders and decision-makers be made aware of the customary practices of ethnic groups in planning, managing and commercialising forest resources. Further progress in this respect will depend on developing and disseminating more culturally sensitive approaches to ethnic minorities, promoting respect for customary rights, strengthening community institutions, enhancing local officials' understanding of tenure and management rights, ensuring equitable benefit-sharing mechanisms and developing more comprehensive assistance packages and clearer access to markets to these ethnic minorities.

Land and ideology

In Vietnam, the debate over the desirable extent of land reforms is inextricably linked to both the state's ideological stance and poverty alleviation attempts. People's ownership and state management of land are central principles of Communist doctrine that underlie legal definitions of land ownership and use. Doctrinal issues are most visible in the regulation of rural and other income-producing land. As a result, land policy in Vietnam is a politically sensitive and highly complicated issue. Moreover, the land law regime in Vietnam is exceedingly complex.[15] This has been reported as a serious obstacle to local people's ability to understand and act upon their rights as well as seek redress in instances of rights violations.

Continued state land management is rooted in concerns over land productivity, national food security and Socialist ideology. The axiom that the state has a duty to "manage" (*quan ly*) land underlies all land laws and policies. Socialist doctrine treats land, along with other income producing resources, as "special means of production" (*tu lieu san xuat dac biet*) that must be managed by the state to ensure maximum productivity. Land use should be complete (*day du*), in other words, all land should be used; and land use must be reasonable (*hop ly)*, in other words, the land should be farmed efficiently with appropriate crops and rotations and attention paid to sustaining the fertility levels of the land. In practice, this is determined by restrictions on land use that are specified on the certificate of land use rights.

Long after central planning was dismantled in the commodity market, the Marxist-Leninist belief in the benefits of state-directed allocation remains embodied in "state land management" (*quan ly nha nuoc ve dat dai*). There are conflicting views regarding to what extent the use of land should be the province of the individual or controlled by the State. However, the centrality of state land management to government policies remains paramount.

Community use rights

Vietnam's Constitution mandates that land belongs to all the people with the state acting as their representative. However, the following legal issues related to community use rights must be noted:

The Civil Code 2005 does not recognise the community as subject of a civil legal relationship although legislation provides for common ownership by the community. This is particularly problematic in the light of customary notions of land as collectively owned and managed, as described above.

The Land Law and the Forest Protection and Development Law give the community the same rights and responsibilities as other land users (i.e. it can exploit and enjoy of the benefits of the resource in question), but it cannot exchange, transfer, lease or donate its land use rights. In addition, it cannot mortgage, provide guarantees or use the land under its management as a contribution to joint investment. Nor can the community divide its forests among its members.

As stated in the 2008 IUCN report on Statutory and Customary Forest Rights in Vietnam, the practice of land and forest allocation to village communities raises numerous questions including: (i) whether the community includes all households and individuals living in the village, or only a group of households and individuals; (ii) whether a village community can be allocated other forest areas beside the one satisfying the allocation conditions; (iii) what mechanism of conflict resolution is available in case of conflicts over land and forest use between the community and other actors; and d) what mechanism is available to ensure fair sharing of benefits within the community.[16] Such questions reflect the ambiguity and ensuing interpretative problems of Vietnam's legal provisions which in turn raise barriers to equitable and sustainable forest and plantation management in Vietnam.

Problems with land tenure and security

One of the difficulties with the existing land tenure system is that despite constitutional and legal authority to transfer land use rights, vague administrative procedures coupled with the doctrine of "state land management" impose an "administrative consent on transfer".[17] Previous land reform projects have concluded that unless the concessionary approach to land management changes, bureaucrats would continue to violate or neglect statutory rights to land. Overall, land rights in practice remain insecure as local authorities have retained control over land through their control of titling, land use restrictions and land appropriation for infrastructure projects. Moreover, little is known about the extent to which such tenure reform has worked in practice and how it has affected local people's livelihoods and wellbeing.[18] The Land Law of 1993 has not been evenly implemented and varies largely across regions. Problems in the implementation of the Land Law include ambiguous and inconsistent land legislation, inconsistent local decisions and guidelines, complicated implementation procedures, a top-down approach, and shortcomings in governance.[19] One consequence of this has been that local people appear to have a very limited understanding and awareness of their land and resource rights. Compounded to this is the serious lack of information available related to conflict or dispute resolution and mechanisms of redress for local people whose rights to land and resources may be violated.[20] Uneven land holding has also emerged as a problematic aspect of Vietnam's land tenure. Some households have illegally seized forests close to their residence for cultivation purposes, since the potential supply of new land for cultivation in the village has grown scarce and local demand for agricultural land has grown significantly due to population growth and commercial farm expansion. Landlessness has been one negative outcome of the formal and informal buying of land by wealthier households.

Forestry-related problems

Despite a relative devolution of forest management to local people and the integration of poverty alleviation measures into forestry activities, a number of local communities still face obstacles in terms of their understanding of and ability to implement their rights to land and resources. Areas of concern include:

Inconsistencies between different legal documents: Some provisions in different legal documents are contradictory. For example, local communities are legally recognised as owners of forest under the *Forest* Protection and Development Law but not under the 2005 Civil Code.

Ambiguity and changes in state forestry legislation: The system of normative legal documents for forest management is complex and subject to frequent changes. Some provisions are still general and lack implementing guidelines. Others, including those on forest valuation, the value of forest use rights, and the value of planted production forests, are too complex to allow widespread understanding and compliance.[21] Confusion means that local authorities are unable to implement some state policies, particularly policies regarding changing forest uses, benefit-sharing with households and individuals, and regeneration and forest planting.

An unclear legal framework: Many legal documents are subject to varying interpretations, largely because of their complicated language. Decision 178/2001/QD-TT, for example, is meant to regulate the entitlements and obligations of forest owners, but many people report finding the formula for calculating benefits for specific owners too complicated to understand.[22]

The Five Million Hectare Reforestation Programme (5MHRP)

Aims:

- Efficiently protect the existing 9.3 million ha of forest;
- Create two million hectares of special use and protection forests, as watershed protection and to protect against wind, sand and waves. One million hectares of the total area is to be established through natural regeneration and one million through plantations;
- Create three million hectares of production forest, of which two million hectares is to be plantations to provide raw material for paper, pit-props for mines, timber, and one million hectares of long-term industrial crops and fruit trees;
- 50 million trees per year to be planted around houses, offices, schools and along roads and dykes to provide fuel wood and material for domestic furniture;
- Speed up forest plantation, re-green bare land, protect existing forests as well as new forests, and increase the forest cover to more than 40% of the country;
- Create employment, increase rural incomes, develop production and ensure national defence and security;
- Create raw material areas and develop industries to process forest products and;
- Create new forests through a number of local projects designed in close cooperation with the local people since people are the driving force for the establishment, protection, and regeneration of forests and are entitled to enjoy benefits from forest-related activities.[23]

Problems with the 5MHRP

The 5MHRP includes highly ambitious proposals for increasing the area of commercial plantations. Yet, more than two years into the programme, there has been apparently no study of what these plantations are for. An additional cause of concern is that Vietnam's policy makers, and their international advisors and funders, appear to show little interest in studying the impacts of commercial plantations on local people, their livelihoods and their environment.[24]

The 5MHRP is not only aimed at increasing the area of industrial tree plantations. It also states that "land allocation must be conducted openly and democratically".[25] However, the projects under the programme must ultimately be approved by the Ministry of Agriculture and Rural Development (MARD). This means that the projects must fit in with the bureaucratic requirements of Hanoi-based officials. There is thus a danger that local people's knowledge and skills will be excluded from the design of such projects.

In particular, when government officials carry out land allocation and land use planning in indigenous peoples' areas, the assumption that ethnic minority groups practising "slash and burn" agriculture destroy forested areas tend to predominate.[26] To many government officials, fallows are simply "unused lands". Local people thus lose part of their farmland when it is targeted for reforestation. If fallow areas are planted with trees, farmers have no choice when the time comes to re-use the land other than to clear another area for their crops or to cut down the planted trees. Furthermore, current tenure regulations do not permit joint ownership by communities. Common land is therefore at risk of being privatised through the land allocation programme.[27]

Customary land use

Local authorities in Vietnam regularly find themselves grappling with the complex issues involved in reconciliating the 1993 Land Law with customary land-use patterns and rights. The scope for disputes is large since customary owners may vigorously contest the allocation of individual rights due to its divergence from customary common land use and ownership. In areas populated by ethnic minorities, the trend has been one of increased control by the State over land through administrative controls. As a result, the role of community management has been seriously undermined. While this trend may enhance the role of the State, contributing to the society order and security, it may also create new loopholes, posing a threat as a new source of inequity, particularly for rural ethnic minorities. Since statutory law does not recognise traditional rules, local people who follow customary law are in fact violating the law and this practice is considered illegal.

Among such groups, public ownership is the most frequent customary approach to land and resources. Public land is understood as the common land of a village, or of some villages, or land of a certain family. In customary public land ownership, the community has total rights to land management such as determining dwelling areas, cultivation areas, areas for cemeteries, etc. and is entitled to punish violators of the above regulations. Individuals have the rights to use the land only, the rights to inheritance, to exploitation of natural products but have no rights to transfer or sell the land to people outside the community. [28]

Conflict between current government policies and traditional conceptions of land tenure and use rights is considered to be one of the major causes of disputes in Vietnam's upland regions over the past decade.[29] Conflict usually occurs where traditional forest land is allocated under statutory laws to outsiders or even to community households. The new formal land tenure regime of the State, known as "public ownership of land", has led to traditional community land ownership and use rights being transferred to households and

economic organisations. Customary land use rights have been restricted. Moreover, customary benefit-sharing arrangements are not formally recognised under statutory law. Customary laws control benefit-sharing within the community, whereas statutory law prescribes benefit-sharing methods which are complex and left largely unexplained to local inhabitants.

Moreover, land and forest administrators at different levels are sometimes unaware of the role and significance of customary systems for controlling land and resources, and their lack of knowledge limits the extent to which the positive features of customary norms and rules can be incorporated into formal land management practices. Although some forest policy makers and administrators do recognise the existence of customary law, many view it as an obstacle rather than an aid to implementing statutory law on forest management and development.

In addition, although village forest protection regulations tend to be developed in consultation with villages, villagers often regard them as another form of externally imposed statutory law, possibly inconsistent with customary rules. Most village communities have not received legal recognition of their customary forest land rights, and often see forest protection under village regulations as a means for "others" to gain financial benefit.[30] In addition, village regulations are decided by a state-nominated village head rather than customary village leaders, causing frictions in terms of who gives consent, on whose behalf, and in whose interests.

Poverty alleviation?

The economic changes launched by the *Doi Moi* reforms pulled many Vietnamese out of poverty. Land reforms that grant land use rights to individual households and encourage the equitable distribution and efficient use of land are considered to be "indispensable for rural development, for the mobilisation of human resources, and for increased production for the alleviation of poverty".[31] However, the incidence of poverty is still very high in mountain areas, particular among ethnic minorities. The number of people living in absolute poverty remains high and this poverty is inextricably linked to the fact that some households still have poor access to land or have access only to poor-quality land.[32]

Forest tenure reform will have to address the issue of poverty alleviation through the allocation of quality forests, the establishment of forest-benefit distribution mechanisms in favour of the poor, increased transparency in planning and decision-making processes, and respect for and inclusion of customary practices. The involvement of poor villagers in forest-based commercial activities as partners in planting, maintaining or protecting forests, or as contributors of forest land, must also be encouraged.

Future steps

A meaningful devolution of forest management to local people as well as the free, prior and informed consent of local inhabitants when land and resource decisions are taken that affect them directly or indirectly are also essential. At present, the regulations governing forest use are still restrictive and the ownership of forest resources by local people remains nominal. To make forest devolution more meaningful, not only should rights to the forest be devolved but also the authority to decide on forest resource management, taking into account existing traditional governance structures. Timely support should be provided to build the capacity of local people to exercise their rights and responsibilities. Moreover, existing mechanisms, policies, tenure systems and means of redress must be clarified and understood by the affected parties. A comprehensive land tenure reform would involve not only normative and procedural changes, but also institutional reconfiguration. A shift from a concessionary to a rights-based tenure system would centralise state administrative powers and simultaneously devolve more decision-making power to non-state players.[33]

Land acquisition and use

Although research on the suitability of oil palm to Vietnamese soil and weather conditions is currently at a preliminary research stage, it is generally thought that oil palm could grow well in the central area and the south of Vietnam, from Ha Tinh province southwards (Figure 3).

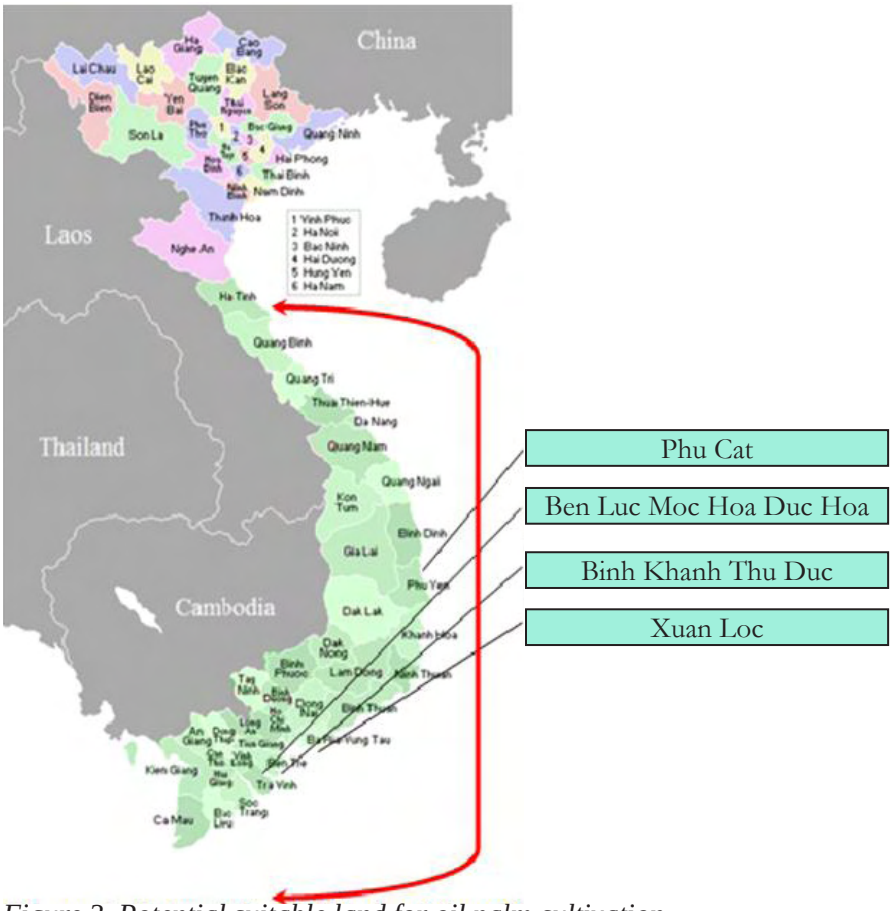


Figure 3. Potential suitable land for oil palm cultivation

According to Tang Thi Tram et al. (1996), who have analysed some of the characteristics of weather and soil conditions for oil palm cultivation, oil palm would grow well in the thionic fluvisols of Vietnam and oil yield here would be one of the highest in current experimental areas. More research on new planting techniques and new varieties to achieve a higher yield of palm oil are necessary. Should oil palm be commercially cultivated in Vietnam, this would most likely happen in former forested areas or where other industrial crops were formerly grown. This has already been the case with rubber, where the government encouraged replacing degraded forested areas and former cashew nut plantations with rubber trees.

Processes of land acquisition

According to Vietnamese law, land is national property. Vietnamese citizens only possess land use rights. The government has the right to revoke land from persons or/and organisations and assign it to new users if the project has been approved. After the new project has been approved (by the central or local government depending on the scale of the project) the investors must negotiate with and compensate local inhabitants who live in the area to be allocated to the project if they are required to relocate. If an agreement cannot be reached, the investors have to adjust their project (if the project is simply a commercial one) or the local persons have to be moved coercively (if the project is a welfare one). This means that if the investors want to acquire land for commercial oil palm cultivation, they must have an approved project and then negotiate successfully with the local inhabitants of the project's allocated area.

Legal framework of land acquisition

All activities in Vietnam related to land ownership and land use are subject to the Land Law of 2003. Regulations for domestic and international organisations or individuals who rent land in Vietnam are presented in Vietnam's Land Law in Article 24-L/CTN.

The government allows domestic and international organisations, and Vietnamese citizens who live in Vietnam or in other countries to rent land. The rights and duties of land renters are:

- Letting out land to an organisation or an individual has to be based on economic-technological foundations which were approved by the government in the foreign investment law in Vietnam.
- Domestic and international organisations and Vietnamese citizens who invest and rent land in Vietnam have to follow this law and other regulations of Vietnamese law.
- The duration of land use by organisations or individuals is stipulated in the foreign investment law in Vietnam.
- Foreigners who break the Vietnamese land law will be punished by Vietnamese law, while taking into account international treaties that the Vietnamese government must follow.

Protection of farmers and indigenous peoples' rights

The government provides grants to farmers to reduce poverty and has programs to encourage agricultural production. According to the "Development project for Vietnamese vegetable oil industry through 2020, vision for 2025" oil companies will make patterns of oil palm production for farmers to interchange experiences in local areas, especially for minority groups. Legally speaking, the land use rights of farmers and indigenous peoples are assured. Before the project is implemented, the investors must negotiate with and compensate local farmers and indigenous peoples who are affected by the project appropriately.

Land grabbing and land conflicts

The land law strictly forbids land grabbing, changing the right of land use illegally and using land for other purposes than those claimed. People who grab land, destroy soil, transfer the right of land use illegally or break the land law will be dealt with according to Vietnamese laws. People who use their

position in the political system to their advantage and against the land law will also be dealt with according to these laws and will have to compensate for their actions.

Land rights of smallholders

The government protects the legal rights and benefits of land users. Families or people to whom the government gives land have the right to use the land and may transfer, lease, inherit and mortgage the right of land use. The above rights only apply when the land is used according to stated purposes and in line with the Land Law and other laws. The Vietnam Farmers' Union has as its purpose to protect the rights of Vietnamese farmers, including to protect them against abuses of their right of land use. The civil tribunal adjudicates civil land use conflicts.

The land users have duties to protect, improve and use the land effectively. They must have legal documents for their land, and pay land transfer taxes and other payments stipulated by the law. The government encourages land users to invest labour and materials in order to increase the value of their land, apply intensive cultivation to increase crop yield, reclaim land, encroach on coastal land, cover bald land and dunes near the sea in order to carry out agricultural production, forestry and fishery, protect, improve and increase soil fertility, and use the land effectively.

Projected impacts of palm oil

The environment

We cannot as of yet examine the environmental impact of oil palm plantations in Vietnam. However, agricultural scientists assume that oil palm has a great potential to develop in Vietnam. Besides contributing to the vegetable oil industry, oil palm plantations also reportedly have positive effects in preventing damage caused by strong winds. According to the Ministry of Environment

and Resources, Quang Tri province had planned to cultivate oil palm along its coast to reduce damage by tropical storms. However, nowadays, concerns have been voiced about the environmental sustainability of palm oil production, particularly the threat that oil palm expansion poses to tropical forests as a unique source of biodiversity.

Rural workers and farmers

The population of Vietnam in 2009 was of around 86 million of whom 44 million were of working age. Agricultural workers represented 60% of the total population (26.3 million people) over an agricultural area of 21,454.7 ha. However, some agricultural sectors, such as latex tapping and seasonal harvests of tea, coffee and cashew nut have recently suffered from a lack of labour. According to Dr. Dang Kim Son, Head of the Institute of Policy and Strategy for Agriculture and Rural Development, Vietnam now has millions of unemployed workers in the agricultural sector.

The large scale commercial cultivation of oil palm could allow for the generation of further employment opportunities, provided it takes into account the nature and conditions of Vietnam's unskilled labour force. Expanding agricultural productions such as oil palm may also attract migrant workers back to their hometowns to find work, thereby alleviating the pressure on many cities in Vietnam resulting from mass migration from rural to urban areas.

According to the financial policy of the government to support agriculture and rural development, farmers may receive bank loans of a maximum of fifty million VND without any mortgage to support their agricultural production (including oil palm production, if any) from June 1st 2010. This is evidence that the Vietnamese government strives to provide farmers with the best financial conditions and incentives possible to produce agricultural products. However, as oil palm has not yet been planted over large areas, no research is available to evaluate the wider effects of oil palm production on rural economies. It is to be expected that some of the positive effects will include providing more work opportunities for local people and improving basic infrastructures in rural areas.

Finally, in terms of food security, as the current area of oil palm is only of about 600 ha mainly planted in farms or in research centres, oil palm has not had any impact on plantations of other cash and subsistence crops such as rice. Food security therefore appears stable and is expected to remain so due to the fact that oil palm is not projected to be grown in competition with or in replacement of existing food crops.

Looking forward

Although Vietnam has not yet developed any national standards to improve or regulate its palm oil production, in the report "Vegetable Oil Sector of Vietnam – a Vision to the First 25 Years of the 21st Century", Phan Lieu claims Vietnam has to expand the area of oil palm cultivation by 70,000 to 100,000 ha in order to secure and achieve its domestic production target of oily materials by 2015. He also concludes that the potential of oil palm is several times higher than that of other oil plants (four to five times higher compared to groundnut, for example). Therefore, he recommends that oil palm become a major source of oil for Vietnam in the future. The likelihood of oil palm being grown commercially Vietnam is also increasing due to Vietnam's great need for edible oils and current large scale import of palm oil from Indonesia and Malaysia. The Vietnamese government has already demonstrated an interest in developing its bio-energy industry through the plantation of oil palm, as reflected in several policies.

Oil palm has a great potential to develop over large areas in Vietnam which still has sufficient stretches of fallow and unused land throughout the country for plantations to be established. The weather conditions are also advantageous for oil palm growth, and the abundance of cheap labour in rural areas may boost the development of palm oil production. However, in order to develop oil palm commercially in Vietnam, there remain numerous social, environmental and economic concerns that must be taken into consideration in a careful and systemic manner.

As a newly introduced crop, palm oil will require further research and experimentation before achieving its status as a commercial crop in Vietnam. Furthermore, Vietnam should engage in a dialogue with other South East Asian CPO producing countries in order to learn from their experiences and avoid replicating mistakes made at the detriment of the environment and local socioeconomic conditions.

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4. Oil palm expansion in the Philippines Analysis of land rights, environment and food security issues

Jo Villanueva

Introduction

In recent years, the unprecedented and rapid expansion of oil palm plantations in Southeast Asia, particularly in Malaysia and Indonesia, has spurred considerable concern in the light of its adverse impact on the environment,

biodiversity, global warming, the displacement of local (and indigenous) communities, the erosion of traditional livelihoods, and the undermining of indigenous peoples and workers' rights. In Indonesia, oil palm expansion has contributed to deforestation, peat degradation, loss of biodiversity, ravaging forest fires and a wide range of unresolved social conflicts. In Sarawak, Malaysia, the impact of oil palm includes loss and destruction of forest resources, unequal profit-sharing, water pollution and soil nutrient depletion. In the midst of the increasing profitability of palm oil in the world market, the versatility of its by-products and its potential as a source of biomass in the food and manufacturing industry, a raging debate has ensued between and amongst civil society and industry members over whether palm oil is a necessary evil or whether the costs of this industry on lives, land and environment far outweigh its worth.

Although considered a fledgling industry in the Philippine agribusiness sector and while its size is certainly small compared to the millions of hectares of oil palm plantations in Malaysia and Indonesia, the Philippines has been cultivating and processing palm oil for the past three decades. In recent years, the rising demand for Crude Palm Oil (CPO) and the high commercial value of the product has driven the growth of the local palm oil industry. At present, production capacity of CPO is largely geared to the needs of the domestic market, but the pressing demand from both the domestic and international markets is driving the industry to aggressively push for the expansion of oil palm plantations. Existing concentrations of oil palm plantations in the Philippines are found in various parts of Mindanao, the provinces of Bohol in the Visayas and Palawan in Luzon.

Within the context of competing (and often conflicting) land and resource uses and tenurial mechanisms, the increasing destruction of the ecosystem, the pervasive violation of community and indigenous peoples' rights by resource extractive industries, and the proliferation of plantations for agriculture and bio-fuel production, this study endeavours to examine the current state of the palm oil industry in the Philippines and to bring to light some of the experiences of local communities, land owners, smallholders and workers in different oil palm areas.

In the Philippines, the limited information available and the lack of a consolidated picture of the current state of the palm oil industry and emerging concerns of local communities, smallholders and workers over the past years, have limited and prevented civil society engagement in addressing critical issues related to oil palm. Recognising the vibrant civil society engagement and community resistance to the challenges and threats of palm oil expansion in Malaysia and Indonesia, this study aims to contribute in building a comprehensive picture of oil palm expansion in Southeast Asia. It is hoped that this study will bring about greater awareness of the opportunities and threats posed by palm oil expansion, help inform the actions of different stakeholders, and spur concerted responses or initiatives amongst various sectors both within and outside the industry.

Scope and methodology

This study was achieved through a combination of primary and secondary data. The data-gathering methodology includes key informant interviews and focused-group discussions with officers of the palm oil industry and companies, government officials, local cooperatives, smallholders/out-growers, local communities in oil palm sites and NGOs. Case studies were carried out in Palawan, Agusan del Sur, Bukidnon and Sultan Kudarat. Field visits were also conducted in several oil palm plantations in Mindanao and in Palawan.

Considering the scale of oil palm expansion that has occurred over the past years and the geographic scope of its present operations, it has not been possible to engage in an in-depth examination of all the issues this expansion presents. This study mainly provides a general overview of the palm oil industry in the Philippines and specifically looks at the situation of local communities, local cooperatives and workers in key palm oil areas.

Organisation of the report

Section 1 consists of a brief introduction to the study, while section 2 provides an overview of the palm oil industry in the Philippines and trends in CPO production and growth. Section 3 discusses the trends and legal framework

in land acquisition and section 4 presents five case studies on the specific situations and experiences of local communities, workers and cooperatives in different oil palm plantation areas. Section 5 weaves a summary of the issues, challenges and lessons learned from the experiences discussed in these case studies. Section 6 draws conclusions and presents a set of recommendations for the development of oil palm in the Philippines.

Research team

The Philippine Country Study is part of a regional research initiative on oil palm spearheaded by the Forest Peoples Programme (FPP) and supported by the Rights and Resources Initiative (RRI). FPP, an NGO based in the United Kingdom, bridges the gap between policy makers and forest peoples. It advocates for an alternative vision of how forests should be managed and controlled based on respect for the rights of the peoples who know them best. FPP works with forest peoples in South America, Central Africa, South and Southeast Asia to help them secure their rights, build up their own organisations and negotiate with governments and companies as to how economic development and conservation is best achieved on their lands.

Research on the Philippines was coordinated by the Samdhana Institute which works to enhance and enrich understanding of innovative approaches to sustainable resource management and through this, broaden the livelihood options of local communities. The Samdhana Institute collaborated with the Alternate Forum for Research in Mindanao (AFRIM) and the Environmental Legal Assistance Centre (ELAC) for the case studies in Bukidnon, Sultan Kudarat and Palawan. Other collaborators in the study include: the Columbio Multi-Sectoral Environmental Movement (CMEM) that contributed the development of a primer on oil palm, Rene Espinosa of Bohol and Kasanyangan Foundation, Inc. (KFI).

National trends in palm oil development

Brief history

The palm oil industry in the Philippines traces its early beginnings to the 1950s with the 200 hectare plantation established by Menzi Agricultural Corporation in Basilan, Zamboanga. The company stopped operating the oil palm plantation when the land was turned over to farm workers organised under the United Workers Agrarian Reform Beneficiaries Multi-Purpose Cooperative, as part of the Comprehensive Agrarian Reform Program.[1] In 1967, Kenram Industries, Inc. converted their ramie (*Boehmeria nivea*) plantation to oil palm and established a 1,100 ha nucleus farm as well as a twenty ton capacity crude palm oil mill. These lands were redistributed to agrarian reform beneficiaries organised into cooperatives in 2002.[2]

In 1980, the National Development Corporation (NDC), a government-owned corporation, in partnership with Guthrie Corporation, a British-owned corporation that was then sold to the Malaysian government, developed a 4,000 ha oil palm plantation in Agusan del Sur. This joint partnership ushered in the creation of the NDC-Guthrie Plantations, Inc. (NGPI). In 1983, NDC entered into another partnership with a Malaysian company, Kumpulan Guthries Sendiran Berhad, which gave birth to NDC-Guthrie Estate, Inc. (NGEI). NGEI then developed another 4,000 ha of oil palm plantations in contiguous areas covering the municipalities of Rosario and Bunawan, Agusan del Sur. The company also established a forty ton crude palm oil mill to process the FFBs from the two plantations.[3]

Following the legislation of the Comprehensive Agrarian Reform Law (CARL) by President Corazon Aquino in 1988, the lands covered by the oil palm plantations of NGEI and NGPI were redistributed to 1,368 workers through the awarding of Certificates of Land Ownership Award (CLOA). In 1991, the 40% share of Guthrie was bought by Filipinas Palm Oil Plantations, Inc. (FPPI), a Filipino-Indian-Malaysian consortium. Then in 1994, they bought out the 60% share of NDC, thus acquiring full ownership and control of the palm oil mill and associated plantations.

In 1993, a joint-venture partnership of Singaporean, Filipino and Malaysian investors paved the way for the creation of Agusan Plantations, Inc. (API). API developed a 1,800 ha oil palm plantation in Trento, Agusan del Sur. A thirty ton crude palm oil mill was built in 1998. While API covered a smaller area relative to FPPI, it trail-blazed an "out-growership" scheme and has aggressively pursued expansion of its palm oil investments in Maguindanao, Bohol and in Palawan. To date, the company owns and operates three palm oil mills in Mindanao and in the Visayas. Its "out-growers" are widely spread throughout various parts of Mindanao such as in the Surigao provinces, Compostela Valley, Davao del Norte, North Cotabato, Sultan Kudarat and Misamis Oriental, among others.

In 2003, A. Brown Company, Inc. started investing in oil palm. The company is 100% Filipino-owned, mainly based in Cagayan de Oro City and is involved in real estate, energy/power source generation, trading, mining and quarrying, among other activities. A. Brown set up two subsidiary companies for its oil palm investment; the Nakeen Development Corporation (Nakeen) and A. Brown Energy Resources Development, Inc. (ABERDI). Nakeen manages the 1,200 ha oil palm plantation in Impasugong, Bukidnon, while ABERDI runs the ten ton crude palm oil mill in the same area. At present, these four companies – FPPI, API, Kenram and ABERDI- are the main players in the continuing expansion of oil palm in the Philippines.

Government policies and targets

Over the years, different Presidents of the Republic (from the time of Ferdinand Marcos to Gloria Macapagal-Arroyo) have helped promote the "growth" of the palm oil industry. Promotional taglines for the industry include palm oil as the "sunrise industry" and the oil palm tree as the "tree of peace." The potential of palm oil in the world market has been recognised by the Department of Agriculture, which has claimed that the "global demand for palm oil is estimated at 20 million tons per year and it is predicted to double by 2020." Arguably though, this "growth", at least in the Philippines, has yet to be achieved. Investors and business supporters of the industry still await the tangible translation of government support such as in the form of palm oil-friendly policies, infrastructural support, budget for research and

financing, among others. Former DAR Secretary Lorenzo also observed that "the Philippines have failed to appreciate the potentials of palm oil and government support is half-hearted and on-and-off."[4]

The Philippine Coconut Authority

The Philippine Coconut Authority (PCA) is the government body that is mandated to "oversee the development of the coconut and other palm oil industry in all its aspects and ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth."[5] Presidential Decree 1468's mission is to "promote the development of a globally competitive coconut and other palm oil industry that would contribute to food security, improved income and enhanced participation of stakeholders. Included in its key functions are the following:

- Formulate and promote a strategic and comprehensive development program for the coconut and the palm oil industry in all its aspects;
- Implement and sustain nationwide coconut planting and replanting, fertilisation and rehabilitation, and other farm productivity programs;
- Conduct research and extension works on farm productivity and process development for product quality and diversification;
- Establish quality standards for coconut and palm products and by-products; and
- Develop and expand the domestic and foreign markets;
- Enhance the capacities and ensure the socio-economic welfare of coconut and oil palm farmers and farm workers.

A draft document entitled the "Policy Framework for the Development of Palm Oil Industry"[6] elaborates on the mandate of the Governing Board of the PCA, and includes the following points:

1) The palm oil industry shall complement the coconut industry. Ultimately, the palm oil industry will go beyond self-sufficiency and aim for the emerging regional markets in the Asia-Pacific;
2) The development of palm oil industry shall be pursued through the

initiative of the private sector. The government shall provide the incentives and necessary regulatory measures that will promote, hasten and protect the industry;

3) Priority in oil palm cultivation shall be given to idle, unproductive and underdeveloped areas;

4) Planting of oil palm shall be encouraged only in areas where oil mill facilities are available or assured. Investments in oil mills shall be facilitated where there is anticipated large scale planting;

5) Oil palm cultivation shall be promoted through organised growers who have marketing tie-ups with oil millers;

6) All oil palm nursery operators shall be required to register with and be accredited by the Philippine Coconut Authority to assure growers of quality planting materials;

7) Local research and documentation (R & D) efforts shall be supported and coordinated by the government.

To date, this policy framework remains a set of recommendations since the PCA Governing Board has not yet passed a resolution to approve it. According to the Director of PCA Region 10, this policy framework has also not been supported by implementing guidelines and therefore is not an official policy document of the PCA. Moreover, the PCA's mandate appears rather general and regarding palm oil development (vis à vis the coconut industry, which is their primary mandate) and faces some serious internal challenges as a perennially cash-strapped government body. However, the PCA has extended support to the palm oil industry through the following actions:[7]

- Facilitating the approval of the PCA Governing Board for the creation of the Philippine Oil Palm Development Council (POPDC) in July 2003. The POPDC is a venue for various sectors and stakeholders to be equitably represented on matters pertaining to the palm oil industry. Specific tasks of the Council include: 1) coordinating the planning and implementation of policies and programs to ensure the viability of the oil palm industry, including research and development, 2) extending technical assistance in farm production and processing, and 3) promoting trade and market development;

- Setting up the Palm Oil Development Office (PODO) located at the Coconut Extension Training Centre in Davao City last October 2002. The PODO's task is to build a database for the industry and lead in the formulation of primers, manuals and other information for the industry;
- Collaborating with the Philippine Palm Oil Industry Council (PPOIC) which is composed of representatives of small growers cooperatives and palm oil processors, by crafting a six-year Philippine Palm Oil Industry Development Plan (2004-2010) that charts the direction and thrusts of the industry for six years.

Despite these achievements, the PCA believes that it is only through the leadership of the private sector that the palm oil industry can be catapulted to sustained growth. Thus for the past years, the aggressive promotion and expansion of the industry has largely been propelled by investors (owners and heads of palm oil mills/processors and oil palm growers/planters) and with support from other government bodies such as the Department of Trade and Industry (DTI), the Department of Agrarian Reform (DAR), the Department of Agriculture (DA) and also Local Government Units in the provinces of Sultan Kudarat, North Cotabato, Maguindanao, Agusan, Bukidnon, Bohol and Palawan, among others.

The Bio-fuels Act

In 2006, the Philippine government passed into law Republic Act 9367, also known as the Bio-fuels Act of 2006.[8] The Department of Energy (DOE) is the leading government agency responsible for implementing this policy. A National Bio-fuels Board (NBB) composed of various national government agencies/bodies has been created as its principal arm to oversee the government's alternative fuels program and to ensure the supply and quality of bio-fuels. Based on AFRIM's research on agro-fuels, the Medium Term Philippine Development Plan (MTPDP) for 2004 to 2010 identified two million ha of land for agri-business purposes. At least 429,000 ha of these lands are earmarked for bio-fuel cultivation. Some of the crops identified as sources of feedstock for bio-diesel are oil palm, coconut and *jatropha*, whilst sugarcane and cassava are the primary sources of bio-ethanol.

The projected development of bio-diesel crops has not gone completely uncontested at the local level. AFRIM has documented some of the problems faced by indigenous peoples from the *jatropha* plantation in Brgy. Lumbia, Cagayan de Oro. In a nearby village, local residents of Brgy. Bayanga in Cagayan de Oro succeeded in their campaign to stop the construction of a bio-ethanol plant in their *barangay* (village or district) and the opening up of a cassava plantation. However, from the findings of this research, the oil palm currently produced in the Philippines for the domestic market has not yet been used for biodiesel but mainly for local food and manufacturing industries. Thus, the additional demand for oil palm as a bio-fuel remains an untapped market opportunity for the palm oil industry.

Philippine Oil Palm Development Plan

Through the leadership of the Philippine Palm Oil Development Council, a Philippine Oil Palm Development Plan for 2004-2010 was crafted in 2003.[9] This plan aimed to provide guidance on the direction of the industry. Below are some of the main points of this document:

Vision : Oil palm as a strategic crop for food security, poverty alleviation and employment generation, complementing coconut.

Mission : To develop the palm oil processing industry through gainful production, processing and marketing of oil palm production and by-products to ensure food security, increasing income and promoting rural employment and sustainable development whilst taking into consideration the total preservation of the ecosystem.

Goals and objectives

General : To attain sufficiency in palm oil domestic requirements, thus conserving dollar resources.

Specific :
- To generate employment and enhance livelihood activities in the countryside so that by 2010 a total of about 39,000 farmer-co-operators will have benefited from industry development

- To use underproductive idle areas for a sustainable environmental program so that by 2010 a total of about 104,000 ha will have been planted with oil palm
- To make the industry a vehicle for unity among people

From the SWOT (strength, weaknesses, opportunities and threats) analysis carried out, the Development Plan also looked into the opportunities offered by palm oil, which include the increasing demand for palm oil by the fast food and canning industries, growing interest of the private sector in developing the palm oil and coconut industry, and using coconut oil for the production of higher value products such as oleo chemicals. Some of the current advantages identified by the industry include the 304,000 ha of idle and underdeveloped lands, favourable climatic and agronomic conditions, the existence of palm oil mills in Mindanao (five mills located in the provinces of Agusan del Sur, Sultan Kudarat, Bukidnon and Maguindanao) and in the Visayas (one mill in the Bohol province), growing technical expertise of the private sector, the availability of cheap labour, the availability of government agricultural extension personnel who can be easily trained in oil palm technology and the presence of research centres and academic institutions capable of conducting research on oil palm.[10]

On the other hand, some of the weaknesses identified include the lack of local planting materials and importation of seeds, fragmented landholdings that are difficult to consolidate into plantations, the lack of capital of growers, limited financing windows for growers, inadequate road networks in rural areas and the increasing costs of agricultural inputs. Further threats identified include the smuggling of palm oil from other countries by processors due to low and declining local production and the unstable peace and order conditions that may limit development in suitable areas and discourage local and foreign investments.[11]

Proposed policies and actions

In order to overcome some of the perceived constraints to the growth of the industry, the PPODC has suggested the following policies and actions:[12]

1) The palm oil industry shall complement the coconut industry. Ultimately, the palm oil industry will go beyond self-sufficiency and aim for the emerging regional markets in the Asia-Pacific;
2) The palm oil industry shall be developed with the initiative of the private sector. The government shall provide the incentives and necessary regulatory measures that will promote, hasten and protect the industry;
3) Priority in oil palm development shall be given to idle, unproductive and underdeveloped areas;
4) Planting of oil palms shall be encouraged only in areas where an oil mill is available or assured. Investments in oil mills shall be facilitated where there is anticipated large scale plantings;
5) Oil palm development shall be promoted through organised growers who have marketing tie-up with oil millers;
6) An oil palm nursery operators shall be required to register and be accredited by the PCA to assure growers of quality planting materials;
7) Initial focus of development will be in trouble-free areas with stakeholders willing to husband their lands and devote their hearts to the development of the industry. The work for peace in Mindanao shall continue.

Programs to achieve this include planting, replanting, on-farm livelihood, oil mill establishment, research development and institutional development as well as training of oil palm farmers and technical personnel. The estimated financial requirement for implementing the development plan (2004-2010) is of PhP 12.512 billion (291,859,116.21 USD).

Palm oil industry structure and linkages

The Philippine Palm Oil Industry distinguishes three interdependent industry chains that support its operations: upstream, focal and downstream industry. The "upstream industry" consists of oil palm plantations or those involved in the production of Fresh Fruit Bunches (FFB). The Focal Industry carries out the processing and refining of Crude Palm Oil (CPO) from the FFB after harvesting, handling and transport of the FFB to palm oil mills. The "downstream industry" is the secondary and tertiary processing of palm oil products for

the manufacture and production of food, pharmaceutics, oleo-chemicals and other industrial and household products. CPO refineries produce cooking oils, margarine and other industrial raw materials for tertiary processing. Tertiary processing produces cooking oils, margarine, soaps, cosmetics, bio-diesel, bio-fuel and lubricants among other derivatives from CPO.

National production of CPO

Over the past years, and with the significant shortfall in supply for domestic demand for palm oil in the Philippines, there has been an upsurge of investment in the establishment of oil palm plantations and interest in establishing more palm oil mills. Local production can only supply 25% of what is needed by local industries; the remaining 75% is imported. Key industry players, particularly officers of the Philippine Palm Oil Industry Development council, are enthusiastic about the bright prospect of increasing palm oil production amidst the soaring prices of this commodity on the world market, not to mention the great demand from the domestic market and the prospect of eventually exporting palm oil globally.

Table 1. CPO production

Product	Average Annual Production (MT)	Average Annual Usage (MT)	Shortfall (%)
Palm Oil	54,333	94,400	42.5
Palm Kernel	6,544	7,277	10.0

Based on 2009 industry data of CPO production and consumption, the shortfall in domestic consumption has an estimated worth of importation of palm oil of around PhP 840.03M (USD 14.83 M). With an annual increase of consumption at a conservative level at 5% and with a plantation gestation period of four years before harvest, the present trend of expansion of oil palm plantation is highly unlikely to catch up with the growing domestic demand.

Table 2. Projected Philippine consumption of palm oil and palm kernel oil 2006-2010

Year	Volume of Palm Oil*	Volume of Palm Kernel Oil**
2006	118,091	8,106
2007	123.499	8,282
2008	129,155	8,463
2009	135,071	8,647
2010	141,257	8,836
* Based on 4.52% average annual consumption growth rate with base average volume of 94,400 MT		
** Based on 2.15% average annual consumption growth rate with base average volume of 7,277 MT		

Gross areas of oil palm plantation

From the 2009 data provided by the Philippine Palm Oil Development Council (PPODC), a total of 46,608 ha have already been planted with oil palm. This is considered a promising prospect since it reflects a 160% increase achieved in a span of only four years. In March 2005, only around 29,003 ha of oil palm plantation existed. The table below shows the expansion trend and the various locations of these plantations:

Table 3. Estimated growth of oil palm area in 2003, 2005 and 2009 (ha)[13]

Regions	2003	2005	2009
IVB –Palawan			3,592
VII-Central Visayas	3,994.15	5,300	6,506
IX-Western Mindanao			62
X-Northern Mindanao	190	413.30	1,128
XI-Southern Mindanao	217.38	244.38	1,217
XII –Central Mindanao	6,766.81	6,905.81	13,961
XIII-CARAGA	13,461.72	15,404.29	17,252

ARMM		735.89	2,890
Total	**25,226.95**	**29,003.67**	**46,608**

In Mindanao alone, the Southern Philippines Development Authority (SPDA) has identified 304,350 ha for oil palm plantation.[14] However, existing oil palm plantations covering 46,608 ha only represent about 15% of the total 304,350 potential area for oil palm development.

Table 4. Potential areas for oil palm planting in Mindanao

Region/Province	Hectares
Region IX (Western Mindanao)	
Zamboanga del Norte	7,530
Zamboanga del Sur	31,430
Region X (Northern Mindanao)	
Bukidnon	65,090
Misamis Oriental	10,370
Misamis Occidental	1,440
Region XI (Southern Mindanano)	
Davao del Norte	2,070
Davao Oriental	6,220
South Cotabato	17,000
Region XII (Central Mindanao)	
Cotabato	1,180
Lanao del Norte	830
Sultan Kudarat	5,630
Region XIII (CARAGA)	
Agusan del Norte	10,370
Agusan del Sur	7,490
Surigao del Norte	31,360
Surigao del Sur	93,790
ARMM/Lanao del Sur	3,280
Maguindanao	9,270
TOTAL	**304,350**

Palm oil mills

At present, there are six palm oil mills operating in the Philippines. These are the following:

1. Filipinas Palm Oil Plantation Inc. (FPPI), located in San Francisco Agusan del Sur and which started operating in 1981. This mill is owned by Filipino (60%) and Indonesian (40%) investors and has a capacity of forty tons/hour of FFB;
2. Agusan Plantations Inc. (AGUMIL Phil.), located in Manat, Puerto, Agusan de Sur and which started operating in 1983. This mill is owned by Singaporean (60%) and Filipino (40%) investors and has a capacity of twenty tons/hour of FFB.
3. Kenram Industrial & Development, Inc. (KIDI), located in Isulan, Sultan Kudarat and considered the oldest among the palm oil mills, having started operating in 1967. The company is 100% Filipino owned and has a milling capacity of twenty tons/hour of FFB.

Milling capacity has significantly increased as a result of the expansion of oil palm plantations resulting from the increased number of "out-growers". In 2004, the total milling capacity of the industry was of only about eighty tons/hour and was provided by the abovementioned palm oil mills. However, additional mills have been set up with an 87% increase in milling capacity. With an additional seventy tons/hour, the total milling capacity of existing mills at present is of 150 tons/hour. This growth in milling capacity has been achieved by the following companies:

4. Buluan Palm Oil Mill, a subsidiary company of the AGUMIL Phil., located in Buluan, Sultan Kudarat and which started operating in 2008 with a capacity of forty tons/hour.
5. Philippine Agricultural Land Development Mill, (PALM), Inc., another subsidiary of AGUMIL Phil. located in Bohol, in Visayas, and which started operating in 2005 with a capacity of twenty tons/hour.
6. A. Brown Energy Resource Development Inc. (ABERDI), a Filipino corporation located in Impasugong, Bukidnon that started operating in 2007 with a present milling capacity of ten tons/hour. The company

is looking into expanding its milling capacity by setting up another twenty ton/hour mill in the upcoming years.

Current estimates of the overall existing oil palm plantation area in the Philippines are of around 50,000 ha. However, it is reported that there is an excess in milling capacity as 20% of these plantations are already senile. Some are already thirty years old or more, with declining yields as in the case of Agusan del Sur and Sultan Kudarat. About 30% of the oil palm plantations are still young, ranging from two to six years old. Thus, FFB yield is largely minimal.

Under the Palm Oil Development Plan, a more ambitious target of seventeen palm oil mills to be in place by the end of 2010 was revealed. However, considering that the industry has not achieved its target for the expansion of oil palm plantations, it does not seem to make financial sense to increase the number of mills currently operating.

Table 5. Estimated target number of palm oil mills to be established 2004-2010[15]

Region	Number of Palm Oil Mills								% of Total
	2004	2005	2006	2007	2008	2009	2010	Total	
IV				1			1	2	12
VI			1		1		1	3	18
VII			1		1		1	3	18
IX			1		1		1	3	18
X				1		1		2	12
XI							1	1	8
XII							1	1	8
XIII									
ARMM				1		1		2	12
Grand Total			3	3	3	2	6	17	100

Oil palm nurseries

One of the problems faced by the palm oil industry in the Philippines has been its failure to invest in research and seedling germination since the establishment of its oil palm plantations. All seedlings are imported from Malaysia, Papua New Guinea, Costa Rica and recently, Thailand. Nursery establishment has become a profitable business in itself as the demand for oil palm planting material has grown over the past years. Selling prices offered by oil palm nurseries range from PhP 200 to 280 per seedling. Thus, for one ha with 136 plants, the cost of planting materials ranges from PhP 27,200 to PhP 38,080. As a result, the cost of planting materials alone means smallholders who do not have financial capital are dependent on the oil palm companies for financial assistance.

There are currently five government-accredited oil palm nurseries in Mindanao. These are owned by palm oil mill operators such as AGUMILL, FPPI, ABERDI/Nakeen, and KIDI. The Kenram Agrarian Reform Beneficiaries Multi-purpose Cooperative (KARBEMPCO) also owns a nursery, which is located inside their plantation in Sultan Kudarat. Another nursery is run by a private company known as B.H. & Associates in M'lang, Cotabato.

Oil palm nursery in Kenram, Isulan, Kudarat.

Key companies and conglomerates

Palm oil production in the Philippines is mainly geared towards the domestic market. According to an industry report, current production of CPO is not adequate to address domestic demand. Recently, it has been reported that FPPI and KIDI have started exporting their CPO to Japan and other countries due to higher prices on the international market. As of the time of writing, there is no available data on the volume of exported palm oil.

A list of local Crude Palm Oil and Palm Kernel Oil Refineries is published in an industry primer by the Philippine Palm Oil Development Office. Most of these are a mix of Philippine-based transnational and domestic companies that are mostly engaged in the food industry. This list features the following companies:

1. Asian Plantations Philippines, Inc.
2. Ricor Mills Corporation
3. Universal Robina Corporations
4. RFM Corporation
5. Mina Oil Mill Corporation
6. Oleo Fats Inc.
7. Royal Oil Products
8. Barons Marketing
9. Pacific Oil Products

A list of food and industrial manufacturing companies in the Philippines that use oil palm products includes the following:

1. Ansi Corporation
2. Universal Robina Corporation
3. Windsor Corporation
4. Serges Products
5. Meadow Brand
6. Dayton Corporation
12. Malabon Soap
13. Nestle Philippines
14. Tricon Link Industrial Corporation
15. United Chemical
16. Mina Oil
17. Oleo Fats, Inc.

7. G.A. Import Sales
8. Royal Oil
9. Tantuco Enterprises
10. JNJ Oils Industries
11. United Coconut
18. Sandoz Nutrion
19. Nutrifats & Oils
20. GLY Marketing
21. Trade Manila
22. Handyware Philippines

Investment trends and financing schemes

Compared to other countries such as Malaysia and Indonesia, the Philippines offers little competition due to the limited amount of land open for oil palm expansion and the serious constraints faced in terms of financing. Over the past two decades, the development of the palm oil industry has been propelled largely by a combination of domestic and foreign investments. Financing assistance is extended by palm oil companies for the promotion of oil palm development by small landholders.

In the Philippines, financing schemes for large commercial farms (which include agribusiness, plantation farms producing exportable crops such as bananas and pineapples) are available from private commercial banks. For pineapple and banana plantations, large commercial firms usually enter into contract-growing schemes with farmers to grow these crops. However, private banks have not provided financing for other high value and long-gestating crops such as oil palm and rubber since they are more comfortable financing high value crops over short-term periods. As a result, while it is easier to access financing for traditional annual crops such as rice and corn, it is difficult to obtain loan assistance for long-gestating crops such as oil palm, rubber and other such crops.

Llanto has elaborated extensively on the dearth of long-term financing available for long-term gestating crops. One impediment cited by the Land Bank of the Philippines is the fragmentation of agricultural lands brought about by agrarian reform. The agrarian reform program has diminished the collateral value of lands traditionally used as collateral to bank loans. Provisions in the Comprehensive Agrarian Reform Program (CARP) which have acted as barriers to private investments in agriculture and rural areas include (a)

ownership ceiling (b) transferability of the lands and the holding period (c) uncertainties created by the slow implementation of agrarian reform.[16]

However, as Llanto further explains, this barrier to private financing has already been surmounted by big agribusinesses in Mindanao. By consolidating lands distributed under the agrarian reform program through various acquisition schemes such as contract growing and leaseback arrangements with Agrarian Reform Beneficiaries (ARBs), agribusiness firms have successfully produced the target export crops. In some of the contract growing scheme arrangements, raw materials and other inputs are also provided by the company to small farmers.

As a long-gestation crop that requires long-term financing, oil palm fruiting starts only in the third year and project pay-out can only start after this period. From the industry's point of view, what is needed is the availability of long-term financing at reasonable rates. At present, there are only two main financing windows for oil palm production: the Land Bank of the Philippines (LBP) and the Quedan and Rural Credit Guarantee Corporation (QUEDANCOR).

Land Bank of the Philippines (LBP)

The main financing window for oil palm projects at present is the LBP. Recognising the potential of this industry, LBP has embarked on programs supporting various undertakings related to palm oil. These programs are the Total Development Options-Unified Land Bank Approach to Development (TODO UNLAD) and the Agricultural Loan Fund and Countryside Loan Fund (ALF/CLF).

The TODO UNLAD program strives to effectively link up all players of the countryside socio-economic systems, including the poor farmer-producers of commercial and industrial establishments, local government units, rural banks and non-agricultural cooperatives. Once producers are linked to processors and the market, the program helps to increase agricultural productivity, improve infrastructure and pave the way for rural industrialisation.

The Countryside Loan Fund (CLF) is a wholesale credit facility from the World Bank, available through participating financial institutions for loans to eligible private investment enterprises. The Agricultural Loan Fund, on the other hand, is a credit facility available to farmer cooperatives engaged in agricultural and agri-business projects. Both programs finance projects for agriculture and food-agro processing industries, including palm oil production and processing.

More recently, LBP launched a new financing scheme for oil palm growers organised into cooperatives last year, which is said to be more accessible and attractive to cooperatives. The new financing scheme has the following features:

- A maximum loan of PhP 110,000/ha that will cover the cost of inputs and labour for the first three years of plantation establishment is provided. In return, the landowner/cooperative shall provide an equity of about PhP 20,000/ha. The PhP 110,000 is considered a long term loan whereby the payment of principal and interest shall start on the fifth year after planting.
- The input and labour requirements up to the fourth year (around PhP 30,000) shall be released by the LBP as a short term loan and shall be paid within the year from the sales of the harvest of that year.
- The Bank requires that the cooperative that applies for the loan has a marketing agreement for their FFBs with a particular palm oil mill.

Quedan and Rural Credit Guarantee Corporation (QUEDANCOR)

QUEDANCOR's mandate is to accelerate the flow of investments and credit resources into the countryside so as to trigger the vigorous growth and development of rural productivity, employment and enterprises to generate increased livelihood and income opportunities. In terms of the financing of oil palm plantation development, QUEDANCOR has launched what it considered an innovative financing scheme called the Oil Palm Self Reliant Loan (SRT) Window, designed for small oil palm farmers to access formal credit. Below are the objectives of the SRT:

1) To provide livelihood opportunities to oil palm farmers to improve their productivity by providing credit assistance;
2) To encourage the adoption of better technology and strengthen the market linkage between oil palm farmers, buyer-firms and processors;
3) To help augment the income of oil palm farmers.

Its features include the following:

a. It is a collateral-free loan.
b. Farmers will be grouped into groups of three to fifteen members. The elected Team Leader shall collect and remit the loan to QUEDANCOR.
c. The Team Leader shall be entitled to an incentive equivalent to 25% of the regular interest that will be deducted from the group's last amortisation. No service fee shall be deducted from the loan of the Team Leader.
d. Farmers must attend value orientation training and/or seminars.
e. QUEDANCOR shall open a current account for the Team Leader with an interest fee and maintaining balance and shall provide the minimum balance required by banks to open a checking account.

Eligibility requirement are as follows:

1. Residence in the community/*barangay* or within the project location for at least one year;
2. Eighteen to sixty five years old;
3. QUEDANCOR accreditation;
4. Experience/knowledge of or willingness to undergo training on the project;
5. Participation in value orientation training/seminar conducted by QUEDANCOR.

Projects eligible under this program include oil palm plantations approved by the Department of Agriculture and/or QUEDANCOR. For both the financing modes of LBP and QUEDANCOR, the banks further require a tripartite agreement between the lending institution, the mill company and the

borrower, whether this is the cooperative or individual small landholders. The basic conditions and responsibilities as enumerated in the tripartite agreement are as follows:

1. Lending Institution
   - Shall provide the loans to qualified applicants
   - Shall provide technical assistance to improve financial management of cooperatives

2. Palm Oil Mill
   - Shall provide the quality planting materials at reasonable cost
   - Shall provide technical support in plantation propagation
   - Shall buy all of the FFBs produced by the borrower at prevailing market price
   - Shall deduct the pre-agreed loan amortisation amount from the sale of the FFB delivered by the borrower, and shall turn over the said loan amortisation to the lending institution

3. Borrower (Cooperative/Land Holder)
   - Shall diligently take care of plantation propagation and maintenance
   - Shall follow the technical advice of the agricultural technician provided by the mill
   - Shall sell their FFB only to the mill with whom the marketing agreement is signed

Joint DA-DAR-DENR Convergence Initiative

On June 18, 2007, a joint Memorandum Circular by the Department of Agriculture (DA), the Department of Agrarian Reform (DAR) and the Department of Environment and Natural Resources (DENR) outlined the "General Rules and Policies Governing Agribusiness/Upland Agro-forestry Investments/Agreements under the Convergence Framework". This circular was aimed at guiding planners, field implementers, farmers, investors and other stakeholders involved in agri-business investment ventures.

As highlighted in the Agribusiness Chapter of the Medium-Term Philippines Development Plan (MTPDP) 2004-2010, around two million ha of agribusiness lands are to be developed within six years through the complementary rural development efforts of the three national agencies. Adhering to its commitment to this convergence initiative, the DAR has identified 1.24 million ha of potential lands for agribusiness development, the DENR has identified 1.9333 million ha under the Community-Based Forest Management (CBFM) program and the DA has targeted 1.3 million ha of coconut lands for intercropping and around 0.07 million ha of private and Local Government Unit (LGU) owned lands.

Under this convergence initiative, the DA-DAR-DENR will facilitate investment ventures in agribusiness and agro-forestry. Some important policy pronouncements in this initiative include: food security and sufficiency as the utmost priority that should not be undermined in the production of raw materials or feedstock for bio-fuels; only ecologically sound farming technology methods, implements and inputs shall be adopted; priority areas are the lands distributed under CARP and CBFM; the welfare of the settlers/occupants shall always be protected and ensured in terms of livelihood opportunities; sharing of risks, costs and benefits between and among the farmers and investors shall always be to the best advantage of all parties to the contract; investors should provide corporate social services within the area of investment.

Legal framework and land acquisition trends

Legal and policy framework on land and natural resources

Philippine laws on land divide land into two types: public and private lands. Private lands are titled lands that belong to individuals or corporations and are used for residential, industrial/commercial and agricultural purposes. Public lands, on the other hand, are lands that belong to the State. They are further classified into the following subdivisions: forest lands, mineral lands, agricultural lands and natural parks. Apart from agricultural lands, all other lands are under the exclusive control and jurisdiction of the State. All

exploration, development, utilisation of natural resources is under the full control and supervision of the State.[17] However, State laws and policies have evolved over the years to accommodate social legislation that vests ownership and/or tenurial security to landless farmers, indigenous peoples and other long-term migrants.

Tenure instruments in forest lands

Forced to address the persistent problems of tenurial security for indigenous peoples and other migrant occupants in the uplands, the State has evolved its programs from a preoccupation with the exploitation of forests for commercial purposes towards more socially oriented concerns. Instead of relocating or driving people away from forestlands, stewardship rights were granted to "qualified" forest occupants, which later served as the precursor to "people-oriented or social forestry and community-based forestry programs."

Available tenurial options in the uplands during the 1980s and 1990s include the Integrated Social Forestry Program (ISFP), the Contract Reforestation Programs (CR), the Forest Land Management Program (FLMP) and the Community Forestry Programs (CFP). All forestry contracts or agreements are for twenty-five years, renewable for another twenty-five years. The development and management of a particular forest area is subject to the terms and conditions set forth by the Department of Environment and Natural Resources (DENR).

In 1995, President Fidel Ramos issued an Executive Order adopting community-based forest management as the national strategy to achieve sustainable forestry and social justice.[18] Subsequently, the DENR issued the Implementing Rules and Regulations of a new program called the Community Based Forest Management (CBFM).[19] The CBFM become a central reforestation strategy program and at the same time a social justice measure for marginalised communities whose subsistence and livelihood are dependent on forest resources, thus effectively replacing the old forest stewardship instruments issued by DENR.

Under the CBFM program, communities granted CBFMA agreements (CBFMAs)

are assured of long-term tenure[20] but are in turn responsible for performing a variety of environmental services such as replanting degraded areas, patrolling against poaching and observing sustainable resource use.[21] While CBFM is also considered a poverty alleviation strategy, its implementation has been limited by numerous challenges. The primary obstacles faced include the lack of financial and technical support to community holders to undertake their Community Resource Management Framework (CRMF) and the fact that their activities are excessively regulated by the DENR.[22]

Indigenous peoples' land rights

Indigenous peoples in the Philippines account for roughly fourteen to fifteen million people out of an overall population of ninety million. They constitute a diverse group of over thirty five major ethno-linguistic groups, each with its own sub-tribes, widely scattered throughout the three main islands of the country: Luzon, Visayas and Mindanao. Generally, most indigenous peoples exhibit a very strong attachment to their land and the resources within it. Customs and traditions are often built around how they own and protect their lands and the resources integral to their survival. As a group, they have been historically marginalised from the mainstream population and have suffered from numerous human rights abuses, a lack security of tenure, poverty and government neglect in terms of provision of basic services such as health care and education. Most indigenous communities are found in remote villages and are under constant threat from State-backed forestry and mining projects, government declared conservation areas and commercial agricultural plantations.

Earlier tenure instruments developed by the DENR under its forestry program failed to resolve many land conflicts in indigenous peoples' areas. Aside from providing very limited security to indigenous peoples, these programs had no power to grant complete ownership of land as lands remain State property, thus undermining the rights of indigenous groups to self-governance and control of their territories.

A significant result of the advocacy for State recognition of indigenous peoples' rights was the passage into law by the Republic of Act No. 7381 or the

Indigenous Peoples Rights Act (IPRA), signed by President Fidel V. Ramos in 1997. The IPRA is considered a major breakthrough in the Philippine legal system as it finally recognised the rights of indigenous peoples that had been historically denied from them for more than 300 years.

The IPRA implements provisions in the Philippine Constitution that provide for the recognition and promotion of rights of indigenous cultural communities within the framework of national unity and development. Among the significant rights covered by the law are: indigenous property rights; civil and political rights of all members of indigenous peoples; and social and cultural rights of all indigenous members.[23] Significantly, the IPRA also includes a provision on women's participation that strategically pinpoints a gap in most government policies that limit, if not altogether exclude, the gender dimension.

IPRA led to the creation of the National Commission on Indigenous Peoples (NCIP), which has the mandate to implement the law as well as the final authority in the issuance of ancestral domain and land titles, thereby offering indigenous peoples a way of securing ownership over their lands. IPRA distinguishes two types of indigenous peoples' territories: ancestral domains and ancestral lands. Ancestral domains are defined as "areas generally belonging to indigenous cultural communities/indigenous peoples comprising lands, inland waters, coastal areas, and natural resources, held under a claim of ownership, occupied or possessed by IPs (indigenous people), by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare." Under IPRA, ancestral domains include not only the land but its resources as well. As in the process for applying for a CADC, indigenous communities are required to submit proof of their claim over a particular area. The NCIP confers a Certificate of Ancestral Domain Title (CADT) for approved applications.

Ancestral lands, on the other hand, are "land occupied, possessed and utilised by individuals, families and clans who are members of indigenous communities

since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously to the present, except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other dealings entered into with government projects and other voluntary dealings entered into with government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots." The NCIP provides a Certificate of Ancestral Land Title (CALT) for approved applications for ancestral lands.

A significant safeguard provided by IPRA is that of Free, Prior and Informed Consent (FPIC). IPRA defines FPIC as the "consensus of all members of the indigenous cultural communities/indigenous peoples to be determined in accordance with their respective customary laws and practices free from any external manipulation, interference, coercion and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community."[24] Under Section 59 of IPRA, "all department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement without prior certification from NCIP that the area does not overlap with any ancestral domain." In 2006, the NCIP published FPIC guidelines that described the detailed processes that proponents or project applicants would have to undertake in order to gain access to ancestral domains or ancestral lands.[25]

However, to date, various issues and complaints have been documented and lodged against the FPIC process as implemented by the NCIP, citing among other problems allegations of manipulation, bribery and serious violations of the rights of indigenous peoples to pave way for economic activities such as large scale logging, mining, multipurpose dams, agribusiness plantations and other development projects.[26]

Agrarian Reform Program

The Comprehensive Agrarian Reform Law (CARL), approved on June 10 1988, sought to promote social justice by providing farmers and farm workers

with the opportunity to enhance their dignity and improve the quality of their lives through the increased productivity of agricultural lands. Both public and private agricultural lands were under the coverage of CARL for redistribution. Farmer-beneficiaries were thus given land by the government as evidenced by a Certificate of Land Ownership Award (CLOA). Potential agrarian reform beneficiaries (ARBs) were required to form cooperatives or associations, whose collective efforts were deemed to make the land productive. While it has been considered a landmark policy in the struggle for land and social justice by landless farmers, the implementation of this law was been met with fierce resistance on the part of landlords and in some cases, bloody confrontations have ensued between farmers/farm-workers and landlords.[27]

Land acquisition and oil palm expansion trends

Historically, oil palm plantations were concentrated in large estates such as those previously held by NDC-Guthrie (e.g. NGEI and NGPI) and Agumill in Agusan del Sur and Kenram in Sultan Kudarat. In view of the CARP, these large-estates were abolished and ownership conferred to farmer-workers organised into cooperatives. Consolidating large-estates for oil palm plantations has been difficult due to the constraints posed by Philippine laws on land ownership and natural resources. Usual targets are those holding CLOAs, private land titles, forest stewardship agreements (e.g. ISFP, CBFMAs) and CADT holders.

Different landholding schemes have evolved over the past years. Below are the different schemes devised by oil palm companies in relation to landowners:

1. Filipinas Palm Oil Plantations, Inc. (FPPIC)

Scheme	Features
Lease	- flat rate or a gradual increase up to a certain specified period (25 years and subject to renewal if agreed by land owners); - company manages the plantation/nucleus estate (both technical and financial);

	- landowners/CLOA-holders/cooperative members are hired as labourers/workers - this is the type of agreement entered into by NGEI and NGPI
Out-growership	- smallholders are self-financed, buy seedlings from mill and finance land development - smallholders may also receive financial assistance (purchase of seedlings) and technical assistance from the company - smallholders deliver FFB to the mill

2. Kenram Industrial & Development, Inc. (KIDI)

Scheme	Features
Out-growership	- Mill owner supplies hybrid seedlings and technology - Farmer spends for plantation development - All production delivered to the mill at current mill prices - Cost of seedlings or inputs deducted over a specified period, with or without interest Options: 1. Plant now, pay later - healthy/ready to plant seedlings at cost, with no interest charges - fertilisers at cost, no interest charges for the first 4 years of development - free agronomical services Production and Purchase Agreement (PAPA) ▪ growers sell the FFB exclusively to the company valid for 20 years and renewable upon mutual agreement of both parties

	▪ FFB should conform with the standards of quality set in the agreement ▪ growers repay the costs of seedlings and fertilisers without interest by deducting 30% on the FFB deliveries starting from the first FFB delivery until full payment ▪ after four years of development support and upon agreement between the grower and KIDI, the company supplies the growers with farm inputs without interest and payable within 30 days. Any unpaid amount after 30 years earns interest at 12% per year until fully paid. 2. 100% self-financing by growers ▪ growers pay seedlings in cash and spend on labour and materials ▪ KIDI provides free agronomical advisory services during the first 4 years of crop development

3. AGUMILL Philippines, Inc. (API)

Scheme	Features
Out-growership	Options: 1. 100% self-financing ▪ includes oil palm seedlings ▪ expenses on labour and material inputs 2. Seedling loan ▪ labour and material inputs are self-financed Tripartite agreement - planting materials and technical assistance Land Bank provides the financing in the form of a development loan

Lease -1,200 ha	▪ yearly rental of land over a period of twenty five years ▪ facilitation of financing loan from First Consolidated Bank (FBC) and Land Bank of the Philippines (LBP) ▪ oil palm seedlings ▪ labour ▪ material inputs Under the bank finance scheme, the landowners enter into a contract with the company and are provided with ready to plant seedlings at a cost and technical services throughout the contract period of twenty-five years. In return, the landowners/growers are obliged to sell all their FFBs to the company based on the standards of crop quality stipulated in their agreement.

4. ABERDI, Inc.

Scheme	Features
Out-growership	▪ mostly self-financed consisting of smallholders and also members of the Local Government Units
Lease	▪ CBFM area

Expansion of oil palm in forest lands

In view of the planned expansion but limited areas that are open for oil palm expansion in the Philippine lowlands, oil palm investors have been looking into its growth in the upland areas. Problematically, some of the areas where oil palm plantations have expanded, as well as potential areas for future development, are located in forest lands covered by DENR tenure instruments as well as in indigenous peoples' ancestral domains.

As a result of the oil palm industry's lobbying to the DENR to "consider African oil palm as an additional crop for forestry plantation development", Secretary Elisea Gozun issued Memorandum Circular No. 2004-12 in August 2004 which outlines "Revised Guidelines Governing the Identification of Forest Areas for the Establishment of African Oil Palm Plantation."[28] Under this guideline, oil palm development was opened up in forest areas with "existing tenurial instruments such as, but not limited to, IFMA, SIFMA, CBFMA and other forest land uses agreements." However, it also provided for "appropriate and proper safeguards" in view of the "exigent technical and ecological requirements of the subject species." Below are the safeguards deemed by the DENR to protect the remaining forest lands[29]:

1. The establishment of African oil palm may be allowed in open/bushland areas of forest lands with a slope of no more than 50% (approximately 26 degrees) and that are not part of designated protected areas, including its buffer zones. In no case shall African oil palm plantation be allowed within Protected Areas covered by Republic Act No. 7586 or the National Integrated Protected Area System (NIPAS);

2. Areas proposed for African oil palm plantation establishment have to be jointly certified by the Provincial Office of the Philippine Coconut Authority, Department of Agriculture (PCA-DA) and Provincial Office of the DENR as suitable and available, respectively, for palm oil development;

3. African oil palm plantation to be established within areas covered by existing tenurial instruments, such as IFMA and SIFMA, shall be confined to only 10% of these areas in accordance with the comprehensive development and management plan and upon approval of the DENR Secretary;

4. For CBFM areas, planting of African oil palm shall be allowed subject to the approved and/or amended Community Resource Management Framework/Annual Work Plan (CRMF/AWP), as the case may be, and following criteria No. 1 and certification in criteria No. 2 as described above;

5. For other existing forestry tenurial instruments, existing policies and guidelines governing such tenurial instruments shall be strictly followed in awarding areas for the establishment of African oil palm plantation;

6. In no case shall conversion of existing natural forest and forest plantation (within production and protection forest) be allowed for the establishment of African oil palm plantation; and

7. Establishment of any African oil palm plantation in forestlands shall be subject to an Environmental Impact Assessment (EIA) process.

These policy guidelines thus inform the assistance provided by the DENR to People's Organisations that are holders of CBFMAs in facilitating investments by the private sector, other government entities and individuals for the utilisation and development of portions of the entire CBFM area. Interestingly, a Memorandum Circular No. 98 issued by the DENR on June 24 1998 was already in place, which laid down "Guidelines on Contracting Inside Community-Based Forest Management (CBFM) Areas." This is seen as part of the DENR's effort "to hasten and systematise contracting inside CBFM areas" in order "to encourage investments by the private sector in the CBFM Program." Under this guideline, two types of contracts may be entered into in CBFM areas:

1. Service Contracts, which include extraction of forest products such as felling and bucking; road construction; major and minor log transport; processing or sawmilling activities; reforestation and timber stand improvement; marketing of forest products and professional service or technical assistance.

2. Development Contracts, which include timber and non-timber development; agro-forestry development; agricultural development; livestock production and ecotourism.

Contracts pertaining to oil palm development fall under category 2 or the so-called Development Contracts. The DENR, however, strongly emphasised that "all contracts shall at all times be consistent with the PO's CBFM Agreement and approved CRMF." The period covered by Development Contracts shall be

for the period agreed upon by the parties but in no case must it exceed the term of the CBFMA or its extension, if any.[30]

Oil palm expansion in ARBs and private lands

Oil palm expansion is mostly concentrated in privately owned and titled smallholders' land and also among Agrarian Reform beneficiaries who are issued CLOAs. CLOA holders' lands were turned over to oil palm corporations through a leaseback arrangement. Flores-Obanil and Manahan defined the leaseback arrangement as a "major mechanism for agrarian reform in the plantation sector in which a cooperative or worker-beneficiaries or individual farmers turn over the control of their land through a lease contract to a multinational or agribusiness corporation or former landowners in exchange for lease rental and possible employment in the farm as farm-workers."[31] In the early stages of the palm oil industry, the leaseback arrangement has been the dominant mode of land acquisition for oil palm plantation.

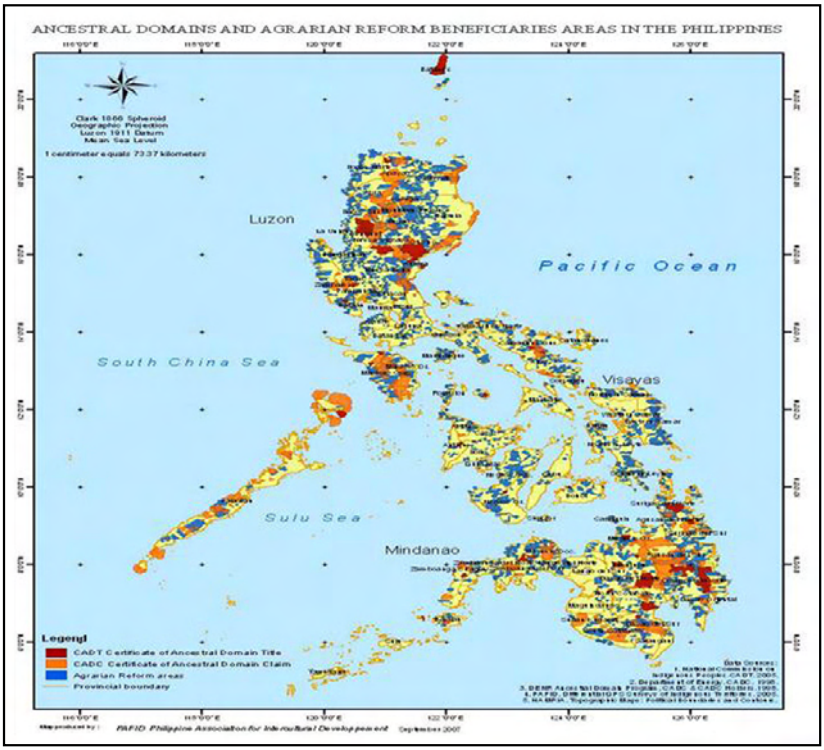
In 1998, the DAR, through Secretary Horacio Morales, promoted several schemes such as leaseback, joint ventures and contract growing as official strategies for the implementation of agrarian reform. This strategy had been heavily criticised as inimical to the rights and interests of small farmers such as the "leasebacks" and contract growing agreements of farmers to multinational agribusiness companies such as Dole and Del Monte.[32] Some of the problems of the agrarian reform program include the lack of financial support to the farmer-beneficiaries, vulnerability of CLOA/ARB holders to leaseback schemes from which they receive low rent, unfulfilled promises of employment and other benefits, and so on. Thus, many of the farmers who entered into such schemes remain impoverished while having abdicated their access to and control of their lands.

Expansion of oil palm in Ancestral Domain areas

Some of the existing oil palm plantations located in or overlapping with ancestral domain territories are to be found in Bukidnon, Sultan Kudarat, Augusan, Cotabato and Palawan. Specific issues regarding FPIC and other violations of indigenous peoples' rights will be discussed in the five case

studies included in this research. While vast tracts of lands are urgently needed for oil palm expansion, some members of the Palm Oil Development Councils are not particularly keen to develop ancestral domain areas as they consider the requirement processes tedious and complicated. However, on the ground, "facilitators" or brokers either employed by oil palm companies or working independently are aggressively scouting for viable lands for oil palm in ancestral domain areas, many of which being extensive grasslands, are deemed suited for oil palm development.

Map of ARBs and CADTs



Experiences and issues in palm oil plantation aras

CASE STUDY 1. The case of oil palm plantation beneficiaries in Sultan Kudarat, Mindanao

The Kenram Agrarian Reform Beneficiaries Multipurpose Cooperative (KARBEMPCO) in Isulan, Sultan Kudarat, is a cooperative and one of the two beneficiaries of the 1,600 ha oil palm plantations formerly owned by Kenram Philippines, Inc. (KPI) and the First Southern Land Development Corporation, Inc. in Isulan, Sultan Kudarat.[33] It received a collective Certificate of Land Ownership Award (CLOA) in 2002. Although there is little room for small players in a market-led industry such as that of oil palm, there are still opportunities left untapped by the ARBs to maximise their endowments. KARBEMPCO's experience shows that even as market-oriented land transfer schemes restrict the opportunities for reforms offered under CARP, the gains earned by the ARBs' collective action should not be overlooked.

Oil palm nursery set up by Kenram in Sultan Kudarat

Oil palm development in Sultan Kudarat

Sultan Kudarat plays a key role in the Philippines' oil palm industry. In 1966, KPI set up the country's second oil palm plantation in the province. The corporation developed a nucleus estate of around 1,600 ha with a twenty ton milling facility established at the heart of the plantation. It expanded the plantation through an out-growership scheme with some landed families in the municipalities of Tacurong, Isulan, Esperanza and President Quirino. The out-grower scheme was designed to expand the plantation, with KPI providing loans for planting materials and farm inputs in exchange for the sole right to buy the Fresh Fruit Bunches (FFBs) produced by the growers.

No major expansion occurred in Sultan Kudarat until the year 1999 when Agusan Milling Corporation (Agumil), in partnership with the Central Cotabato Peace and Development Council, established their first nursery to expand their plantation in Sultan Kudarat, Maguindanao and Cotabato provinces. This was followed by the nursery establishment of Kenram Industrial Development Incorporated (KIDI), Kenram Agrarian Reform Beneficiary Multi Purpose Cooperative (KARBEMPCO) and KPI. Oil palm plantations in Sultan Kudarat now cover an aggregate area of approximately 11,000 ha and are expected to expand as interest in oil palm production grows.

Area of coverage

In 1999, planted areas of oil palm in Sultan Kudarat only covered 4,800 ha. This area has now grown to around 11,000 ha, including the Kenram plantation. The nurseries are continuously producing planting materials and expansion plantation activities are ongoing.

Municipality	KIDI[a] (including co-ops)	KPI	Agumil
Tacurong		43.37	397.83
Isulan		30.73	118.10
Esperanza		18.83	61.81

Bagumbayan		49.43	399.59
Palimbang		4.29	
Columbio		38.95	922.81
President Quirino		39.79	501.49
Lutayan			107.94
Lambayong		3.13	34.47
Senator Ninoy			77.09
Total	6,994.00	228.52	2,621.13

Total oil palm expansion area in Sultan Kudarat as of May 2010
(breakdown of hectarage not available)

Milling

Sultan Kurarat hosts the second milling facility set up in the country with a capacity of twenty tons per hour. The first milling facility was established in Basilan and catered to the 280 ha plantation. Agumil and Filipinas Palm Oil set up the third and fourth milling facilities respectively in Agusan province. Recently, two additional mills were established in Mindanao, one in Maguindanao province owned by Agumil and another in Bukidnon by Aberdi. These mills process the FFB into crude palm oil and palm kernel oil for food and industrial use. All milling facilities are owned by the investors, who are the former landowners in the case of Sultan Kudarat. Two milling facilities are within reach of KARBEMPCO, one in Sultan Kudarat owned and operated by KIDI and another in Buluan, Maguindanao, owned and operated by Agumil. KARBEMPCO only deals with KIDI in marketing of the FFB. The cooperative does daily deliveries to the mill and is paid within a period of fifteen days based on the current price and oil recovery rate results from the laboratory.

Pricing

The pricing of oil palm is highly dependent on the world market and current exchange rates. Local pricing is guided by the formula presented below. Other assumptions considered in the computation are the extraction rate and the

milling charges, which are shouldered by the producer. The milling fee at the time of writing was pegged at PhP 600/ton in KIDI and the recent proposed contract of Agumil pegged at PhP 750.

Price formula (from the recent contract of Agumil)

[(A x B) + (C x D) – P750/MT] x 85%, where:

A the Selling Price per ton of crude palm oil or CPO (Net of Vat)

B the oil extraction rate based on Average OER in the mill or few new planting is (based on #1 below provided the crop quality does not exceed the limit as indicated in schedule B)

C the Selling Price per ton of Kernels (net of VAT)

D the average kernel extraction rate of KER

* milling fee per ton (subject to annual review based on escalation of cost in labour and materials which is estimated at 2% per year).
Marketing of oil based on weekly published oils and fats index.

NOTE:

1. Oil Extraction Rate (OER) shall be based as follows:

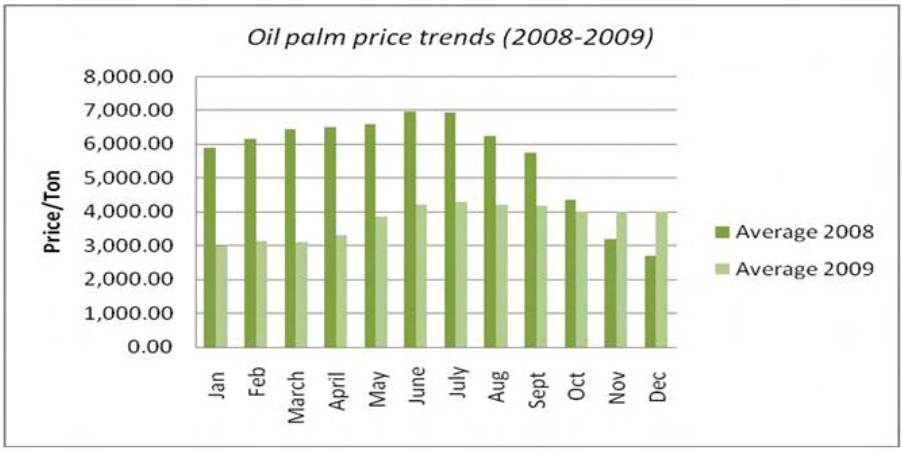
3-4 years from field planting	15.0%
4-5 years from field planting	17.0%
5-6 years from field planting	18.0%
6-above from field planting	based on Mill Actual KER

2. Kernel Extraction Rate (KER) shall be based as follows:

3-4 years from field planting	3.0%
4-5 years from field planting	3.4%
5-above from field planting	based on Mill Actual KER

NOTE: OER and KER shown above are for reference. Actual extraction is furnished from mill analysis.

Oil palm price trends (2008-2009) (Source: KARBEMPCO)



Current situation from the cooperative's perspective

Collective over individual title

The distribution of the land on which Kenram plantations are located took place in 2002. Compared to the difficult and sometimes violent struggles reported as having taken place on banana plantations, the awarding of land to the ARBs in the above plantation was relatively smooth and facilitated by partnerships between the People's Organisations (POs), non-governmental organisations (NGOs) and the Department of Agrarian Reform (DAR). The landowner did not display much resistance either and reportedly showed openness to negotiations related to land distribution, management options and marketing agreements. It helped, of course, that the landowner retained ownership and control of the milling facility despite it being located within the area covered by the plantation.

During this period, social preparation activities were undertaken to speed up land distribution processes. Formation of the POs through cooperative organising

became the primary focus of these activities. Subsequent activities were launched to build up the awareness of and strengthen PO members' capacity to engage in active participation. The PO was ensured that its members would be the potential beneficiaries. The cooperatives were organised and served as claimant organisations. While strengthening of people's organisations was being undertaken, advocacy work, networking, lobbying and negotiations were also given attention to speed up the process.

The cooperatives KARBEMPCO and MAPARBEMPCO received their collective Certificates of Land Ownership Award (CLOA) in 2002. KARBEMPCO has 413 members (2 women and 411 men) while MAPARBEMPCO has 295 members (59 women and 236 men). It was also during this time that the viability and feasibility of a PO managed plantation operation was decided by the beneficiaries. At present, *barangay* Kenram and Mapantig are within an Agrarian Reform Community (ARC) and receive priority government support for community development through the DAR and Local Government Units.

The cooperatives set up mechanisms to sustain the plantations' operation. The workers, now ARBs, were retained. Wage increases and provision of benefits including profit sharing were also implemented. Management of the plantation is under the general assembly (GA) but the Board of Directors also makes decisions in between GA meetings. A general manager administers all of the economic projects of the cooperatives while field managers oversee the plantation operation.

Cooperative-managed plantation

The table below shows the annual dividend of members, exclusive of their salary and other benefits. In 2008, every member received PhP 10,000 but this was decreased to PhP 4,500 in 2009 due to the decrease in net income of the cooperative generated from oil palm production.

The decrease in production income in 2008 and 2009 is attributed to the fluctuating FFB prices during that period. The production of FFB also

decreased due to the replanting program of the cooperative from 2005 to 2009, covering a total of 559.39 ha (72 ha in 2005, 348 ha in 2006, 140 ha in 2009), representing more than half of the total production area of the cooperative. Production in the 72 ha replanted area has begun and is expected to peak in the twelfth year.

Cooperative's income 2002-2009

KARBEMPCO	**Year end 2002**	**Year end 2003**	**2008**	**2009**
Income:				
Production/ Marketing	9,544,787.94	34,935,253.77	13,914,010.48	6,118,899.94
Capital Build Up	565,098.00	2,023,899.67	15,932,800.00	15,932,800.00
Dividend/member	16,426.65	34,878.62	10,169.63	4,500.00
Total asset	74,280,392.24	97,769,537.29	174,115,174.02	160,961,604.76
Members	413	413	413	413

Comparative data: during the takeover (2002-2003)
and most recent (2008-2009)

Through their earnings from oil palm production, the members of the cooperative were able to increase their capital build-up. This allowed them to diversify their economic undertakings after only two years of operation. KARBEMPCO is currently engaged in credit provision to members, consumer store management, swine breeding and fattening, and planting material marketing.

In addition to the annual dividends received by the members of the cooperative (refer to the table above), the workers' daily wage has increased from PhP 170 to PhP 218 (mandated minimum wage) with a PhP 15/day cost of living

allowance. The cooperative is also able to provide additional employment opportunities. From a workforce of 180 in the past, KARBEMPCO now has 190 plantation workers, mostly men. Employment is also generated through the other economic initiatives of the cooperative described above. The cooperatives have also been able to address the members' basic needs in terms of housing. Prior to the oil palm plantation takeover, most of the workers resided in bunkhouses owned by KPI. After the co-op takeover, a residential area of 27 ha was allocated. Each member received a 500 square metre lot for housing.

Since the two *barangay* (Kenram and Mapantig) were launched as an Agrarian Reform Community (ARC), they have become priority areas for government projects through the DAR. The swine breeding and fattening in KARBEMPCO was among the projects funded by the DAR program. The potable water system project is also one of the support projects now directly managed by the cooperative. Other services they have access to are support for electrification facilities, a telephone system and cable TV line.

These gains are not confined to the cooperative members. The cooperative also provides salaries and subsidies for one catechist and two teachers in the *barangay* public elementary school. The swine breeding and fattening project also provides piglet dispersal to the residents of the *barangay*. Beneficiaries of this project are determined by a joint committee composed of representatives of the cooperatives and the *barangay* officials.

The ARBs are optimistic that they will be able to transform their cooperative into a major player in the palm oil industry chain. An initial step towards this is the setting-up of a nursery for their replanting program and expansion. The cooperative has obtained high breed pre-geminated seed from Papua New Guinea. It is also set to begin trials for a project on organic fertiliser production using piggery waste and bunch waste from the mill, as part of their bid to reduce chemical-based fertiliser application in the plantation.

However, there are limitations which they still have to overcome, foremost of which are the limited business skills and capitalisation available to the cooperative members. Education seminars for leaders as well as the

members have been implemented since the cooperative took over the plantation. However, despite these training and seminars, specific problems in organisational and business management are still encountered. This may be understandable considering that the ARBs are still in the phase of scaling up from single plantation management operation to multiple business operation. Limited capital hinders the expansion of the current plantation operation and business expansion of the cooperative. A concrete example of this is the nursery installation. Even though the co-op has established the nursery, it is limited to the replanting program of the cooperative's existing area. Other areas for plantation expansion cannot be accommodated as a result.

Conclusion

The ARBs of the Kenram oil palm plantation work within an industry controlled by big players where pricing depends on world prices and seedlings are sourced from outside the country**.** They, however, have command of land which is an important endowment and the source of millers and buyers' much needed produce. The benefits gained, as seen from the cooperative's point of view, cannot be underestimated. However, their present situation does bring to mind certain concerns worthy of consideration by the cooperative, NGO partners, and government.

Firstly, collective titling, when tied to market-led schemes, undermines the redistributive principles of agrarian reform. This is very clear when one looks at the condition of women beneficiaries who experience exclusion in many respects. They are not hired in the plantation, nor do they have a voice in the cooperative leadership. Women earn income by collecting fruits that fall from fruit bunches and selling these to the cooperative for PhP 30-40 per kilo. Only one woman is employed in the co-op's office. As minority members, no projects have reportedly been implemented that specifically benefit the women. As landowners, they are practically denied access and control over land that they own.

In the case of a number of individually distributed banana plantations, anti-reform arguments are clearly mistaken in claiming that breaking down

plantations into small farms would result in losses for the banana export industry. Amidst challenges, the situation points to potentials for poverty alleviation under small farming systems and the increasing capability of ARBs to directly engage and influence the market.[34] In a number of these plantations, women and men beneficiaries work on their individual farms and supply the production volume required by their cooperatives that are in charge of marketing.

Due to the market-oriented land transfer scheme, annual payment for amortisation runs into millions of pesos. KARBEMPCO's amortisation is based on the Average Gross Production of the plantation, which is computed at 5% for the first five years and 10% from the 6th year up to the 30th year. If computed based on the table of earning shown earlier, in 2003 for instance, some PhP 1.747 million would have gone to payment of amortisation from the cooperative's reported earnings of PhP 34.395 million. This amount could easily have financed rehabilitation of the plantation or livelihood projects for women and other members who could not be absorbed in the plantation. The company also made the wise move of holding on to the milling facility and transferring costs of production to the cooperative.

A large portion of the existing oil palm production in the province is in the hands of KARBEMPCO. They can maximise this position as leverage in negotiating with the companies. Their proximity to two oil mills should work to their advantage in getting a better price for their produce since milling facilities now work below their capacity because of low supply. The development of a nursery is a good initiative but this should not be limited to the co-op's needs. Strategically, they could consider investing in providing transport and seedling to other palm oil growers, especially the small out-growers. This would help diversify their income while providing support to their immediate community outside the co-op membership.

Beneficiaries can surmount challenges in a market-led land reform if there is a confluence of strong social movement and government action that cushion against pressures posed by transnational companies and landowners within commercial farms. Borras quotes Fox in referring to this as the *bibingka* strategy wherein "mutually reinforcing interaction between societal and

State pro-reform forces" can counter anti-reform actions.[35] This has been experienced at the distribution stage of CARP for a number of plantations in Mindanao, including that of Kenram.

A similar strategy is called for in terms of post–distribution. The government should not abandon its regulatory function. No good contract for instance can be forged between investors/former landowners and beneficiaries without the government balancing the disparity in negotiating power between the two parties. Land transfer should also be "complemented by other policies that provide access of small farmers to markets, inputs and improved production incentives".[36] In the case of Kenram, the co-op beneficiary is equally responsible in making sure that the gains of agrarian reform accrue to all – leaders and members, men and women alike

CASE STUDY 2.
Oil palm expansion in Impasugong, Bukidnon

Impasugong is located in the north-eastern part of the province of Bukidnon and politically subdivided into thirteen *barangay.* Its proximity to Malaybalay City, Bukidnon's capital, and Cagayan de Oro City is considered an advantage in terms of trade. Based on the 2010-2019 Comprehensive Land Use Plan of Impasugong, the municipality's population is composed of 65% Higaonon and 35% mixed tribes. It has a total land area of 107,167 ha, 83% of which is classified as timberland while the remaining 17% is considered alienable and disposable land. The second biggest land area and biggest timberland area (18% of total timberland) in the municipality is located in *barangay* Kalabugao.

The Comprehensive Land Use Plan also shows that corn and rice are the two major food crops produced in Impasugong which are planted over approximately 2,000 ha and 645 ha respectively. Plantation crops such as pineapple, sugarcane, and banana are produced on some 3,000 ha. Oil palm is planted on at least 800 ha of land. The local government of Impasugong

promotes oil palm as an agro-forestry crop along with abaca and banana. It prides itself as the "palm oil capital of Northern Mindanao" with oil palm production as its top priority for the next five years.

Actors involved

The local government unit and other State agencies

State policies provide a conducive atmosphere for oil palm expansion in Impasugong. The local government has made oil palm a priority crop that is envisioned to propel economic development for the municipality. As such, it has entered into partnership agreements with farmers and government financing institutions such as QUEDANCOR to act as a conduit for loans for small farmers who wish to engage in palm oil production. The Municipal Enterprise and Economic Development Office (MEEDO) of Impasugong also provides technical assistance to farmer-growers and takes charge of promotional activities to encourage local farmers to produce palm oil. Plans for the setting-up of an agro-industrial trading centre are also said to be underway to support other economic activities related to oil palm production such as *amakan* weaving.

The Department of Environment and Natural Resources (DENR) has provided maps that identify available lands for plantations. The Department of Agriculture (DA) has tested the suitability of land for oil palm production. The National Commission for Indigenous Peoples (NCIP) on the other hand, is responsible for certifying whether identified lands are within or outside the boundaries of ancestral domain areas.

The company

A. Brown Company, Inc. is engaged in trading, energy/power source generation development and production, quarry and mining, and real estate development. Although known as an American-owned company, a company official claims that it is a 100% Filipino owned company, with the owners based in Cagayan de Oro City.

The company has two subsidiaries, namely, Nakeen Development Corporation and A. Brown Energy Resources Development, Inc. (ABERDI), for its oil palm plantation development and palm oil production, respectively. Located on a five ha property in Barangay Poblacion, ABERDI operates a plant with a ten ton/hour capacity and produces crude palm oil. Faced with inadequate supply from within Impasugong, the company sources FFB from about 600 ha of farmland from as far as Cotabato province in order to meet its production targets. The palm fruit oil produced by ABERDI is distributed to local feed millers in Manila, Cebu and Bukidnon. A small amount of crude palm oil is also exported to Malaysia.

ABERDI palm oil mill in Impasugong,Bukidnon

Although it currently operates below capacity because of low supply, ABERDI has plans to expand its operation and set up a compact refinery plant to produce crude palm oil (CPO). It targets a 520 metric ton production of CPO a month and intends to expand its plantations to 2,500 ha. Company officials are optimistic that this could be done, especially in the light of Nakeen's projected 5,000 ha expansion site in Opol, Misamis Oriental. The company has conducted sitio, municipal and provincial level consultations in preparation for the plantation development in Opol.

Nakeen reportedly owns a 70 ha oil palm plantation (40 ha in Maluko, Bukidnon; 27 ha in Dalirig and 3 ha in Lunocan, Manolo Fortich). It also operates a nine ha pre-oil palm nursery situated in Lunocan, Manolo Fortich,

and another ten hectare main nursery in Impasugong. However, the Nakeen official interviewed for this study admitted that conflicting claims over land prevents their expansion efforts. For instance, reportedly uninhabited areas on DENR maps turned out to be inhabited by communities growing permanent crops in those areas. However, the official also stated that titled ancestral domain areas were not a priority for the company because of the tedious requirements of the NCIP.

The communities

Ancestral domains and public lands under various tenurial arrangements such as stewardship and pasture lease are targeted by existing expansion activities. Oil palm is now planted in at least six of the thirteen *barangay* in Impasugong. The LGU's joint venture contact with farmers covers the *barangay* of Guihean, Sayawan, Poblacion, and Pinaanan. Nakeen has direct investments in *barangay* Hagpa and Kalabugao. Prior to the planting of oil palm, the farmers produced corn, rice, abaca and coffee, mainly for household consumption and local trading.

Nakeen's development contract

About a third of the total timberland areas (or 5,000 ha of Barangay Kalabugao) has been identified by the DENR as suitable for oil palm. In 2006, the Kapunungan Sa Mga Mag-Uuma sa Kaanibungan (KASAMAKA - Association of Farmers in Kaanibungan) together with the LGU and the DENR developed a five year development plan for the barangay, which included oil palm production as a priority project. This process was approved by the DENR as a requirement for the granting of the Community Based Forest Management Agreement (CBFMA) applied for by the community, which covers some 2,100 ha.

Under the CBFMA, KASAMAKA is mandated to develop, manage and protect the allocated community forest project area. Moreover, it is allowed to enter into agreement or contracts with private or government entities for the development of the whole or a portion of the CBFM area. Nakeen became

involved in 2006 when it negotiated with KASAMAKA for the use of 1,200 ha of the CBFMA covered areas for oil palm production.

A twenty five year development contract was soon signed between Nakeen and KASAMAKA and planting of oil palm began in 2007. Priced at PhP 6,000/ha, Nakeen reportedly paid members of the people's organisation a total of PhP 7.2 million in cash in exchange for the sole authority to develop the area. A member claims that KASAMAKA took PhP 1,000/ha of the PhP 6,000 rental fee.

Del Monte's pineapple plantation lies below the hilly slopes planted with oil palm in Impasugong,Bukidnon

Quoting a contract provision, a company official stated that the "claimant waives the right to develop the area in favour of the company." The contract is said to contain provisions for social service delivery such as PhP 10,000 medical assistance per year, the setting up of a water system in Sitio Kaalibungan, school improvement, amakan weaving as a livelihood project, and financing for rice production. The company official also claims that eight datu (village

chieftains, usually the highest officials in the indigenous traditional political structure) in the community are given Php 1,500 monthly compensation "for keeping peace in the area".

The company gives employment priority to KASAMAKA members or their household members. For every five ha owned by a KASAMAKA member, his/her family is entitled to nominate one worker to work in the plantation on a regular basis. On average, a worker earns PhP 200 a day. The organisation also doubles as a labour contractor during harvest and planting seasons, charging a 15% service fee to seasonal labourers hired by the company. Even though the majority of the barangay population is Higaonon, KASAMAKA members are mostly Dumagat or settlers from other areas.

Barangay Hagpa is another target of expansion. Unlike barangay Kalabugao, barangay Hagpa with its thirteen sitios is covered by a 14,000 ha ancestral domain area that was already awarded a CADT in 2008. Unlike other CADT claimants, the Agtulawon-Mintapod Higaonon Cumadon (AGMIHICU - "Pure Higaonon tribe in Mintapod and Agtulawon Ancestral Domain") has two leaders, a head claimant for the CADT and a President who allegedly takes charge of activities for economic development. The President, Agulio Nanolan, is a former barangay captain and now municipal councillor. He reportedly facilitated the signing of the contract between AGMIHICU and Nakeen despite the opposition of a number of datu, including the head claimant, datu Amay Mantangkilan Cumatang.

Although only 200 ha of the ancestral domain have been converted into oil palm plantations, conflict is already brewing between those who oppose the presence of oil palm in their ancestral domain and those who take interest in the company's offer. It is reported that a good number of tribal council members from the thirteen sitios of barangay Hagpa are in favour of the development contract. Some Dumagat expressed concern that some Higaonon leaders themselves would lead in pursuing oil palm expansion. As one local official revealed, "nisugot mi ato nga mag CADT mapangalagaan ang yutang kabilin apan ang usa ka datu nga hinuon mag-una una sugot nga mapasulod ang A. Brown dinhi". ("We applied for CADT in order to protect the ancestral

domain. However, it is one datu who would approve for A. Brown's entry here"). Other community members, Hiagaonon and Dumagat alike, oppose the expansion since the expansion site is their protected forest while other sections are used for agricultural purposes.

The 200 ha expansion area has already been sold by the Higaonon to various Dumagat families but it was the People's Organisation, AGMIHICU, who signed the development contract with the company. The rental fee of Php 8,000/ha for twenty five years in barangay Hagpa is a little higher than the rate applied in barangay Kalabugao. The cash given by the company was received by AGMIHICU but was turned over to the Dumagat who are now considered owners of the land. The Higaonon are reportedly content to work as employees in the plantation. Some fifty Higaonon were given training on basic forest management to act as forest guards hired by Nakeen and are paid PhP 3,000 a month each. Labourers receive PhP 200 per day. Landowners who get to work on the farm are paid only PhP 120 per day. Women work as seasonal workers and are paid only PhP 80 per day.

LGU-Farmer Joint Venture Arrangement (JVA)

Enticed by the availability of financing offered by QUEDANCOR in 2004, the LGU of Impasugong introduced the Oil Palm Production Project to small farmers. Under this project, the LGU would enter into twenty five to thirty year joint venture contracts with farmers formed into seven-member self-reliant teams (SRT). The LGU's policy was that no expansion activities would be carried out in watershed areas. Target areas for production would be those covered by pasture lease agreements and not being utilised.

The LGU committed to providing technical assistance, financing road construction and maintenance, and paying the initial four years loan interest by the farmers. The farmers were required to obtain a PhP 50,000 loan from QUEDANCOR as their counterpart to cover the labour cost, seedlings, hauling, inputs and management cost to be paid to the LGU at PhP 5,000/ha. Interestingly, the farmers were also supposed to pay the LGU PhP 6,000/ha per year for road maintenance even though the LGU had committed itself

to subsidise this expense. The farmers' loans are to be released through instalments to the LGU which acts as project manager. The agreed net profit sharing between the farmers and the LGU is 60:40 in favour of the farmers from the start of harvest up until the project's termination period. Nakeen is the sole supplier of oil palm seedlings and the sole buyer upon harvest of oil palm.

The venture began with fifty-one farmers owning a total of 128 ha. These figures have now fallen to ten remaining farmers with about 34 ha of productive land. QUEDANCOR suddenly stopped releasing money two years after the venture began in 2004 due to lack of funds. The LGU reportedly released some PhP 500,000 as counterpart to continue financing the project. To save the investments, the LGU is presently negotiating with Nakeen for the rehabilitation of the farms with a possible sharing arrangement on the income. Meanwhile, SRT members who are not as fortunate as the remaining ten remaining have outstanding loans. The farmers whose investments failed are said to have gone back to planting corn.

Issues and conclusions

The case of Impasugong illustrates several of the issues of concern currently surrounding oil palm expansion. First is the fact that the lands the government claims as marginal and uncultivated and therefore targets for expansion are in reality existing agricultural lands and ancestral domains, in which various customary tenurial arrangements are already in place.

Secondly, farmers and indigenous peoples end up shouldering social and environmental costs of expansion activities while benefits are skewed in favour of the investors. Communities lose their access and control over their land and other resources as a result of the agreements they sign with the company or LGU. Although we can also observe variations in existing forms of agribusiness venture arrangements, the terms have remained essentially the same, that is to say, in favour of investors. Elements of a lease arrangement are present in the development contract between Nakeen and its expansion areas. A twenty five year contract in exchange for PhP 6,000-8,000/ha is obviously

a lopsided arrangement, exploiting the communities' weak negotiating power. In lease schemes, farmers and indigenous peoples become mere workers of the company and not allowed to use the land for other economic ventures for extended periods of time.

Thirdly, land use conversion stresses the existing unequal power relations between men and women and leads to a further denial of women's land rights. Women are increasingly marginalised through their exclusion from employment opportunities on the plantations.

Fourthly, land use conversion also presents concerns over food security as food crops produced by farmers give way to production of an industrial crop under the guise of reforestation. Fifthly, the fact that oil palm is not grown organically means that the use of chemical-based inputs may pollute watersheds found in ancestral domains which will also affect water supplies in the lowlands, a concern shared by both the Higaonon and Dumagat populations. Although research so far has not documented any specific cases of harassment of plantation workers and smallholders, experiences in plantation development in other parts of Mindanao present lessons that should be considered and best avoided.

Other than regular employment in the plantation, there is not much evidence to show how the local communities benefit from the agribusiness arrangements. There also seems to be very little public awareness on environmental issues related to oil palm production such as soil erosion and destruction of biodiversity due to mono-cropping. Six years after expansion activities began, the question likewise remains of whether these will indeed usher in economic development as envisioned by the local government.

Without a doubt, there are obvious economic, social, and environmental concerns that need addressing in relation to the presence of oil palm plantations in Impasugong. Envisioned partnerships for local economy development may work if policies make sure that benefits accrue equally to, if not in favour of, the poor and vulnerable sectors and that stakeholders negotiate on equal grounds. This is far from becoming a reality in the case of Impasugong.

CASE STUDY 3. Oil palm cultivation in Palawan: Status of investments and impacts on communities and the environment

With a total land area of 1,489,626 ha, Palawan is the largest province in the Philippines, equivalent to 5% of the Philippines' territory. An archipelago composed of 1,768 islands, noticeably with irregular coastlines, Palawan is bounded on the east by the Sulu Sea, on the northeast by the Mindoro Pass, on the west by the China Sea, and on the south by Borneo Island territorial waters. It is politically subdivided into one component city, twelve mainland and eleven island municipalities. The latest population count of Palawan is 892,660. The economy is largely agriculture-based. Primary agricultural crops grown are rice, corn and coconut.

While the history of oil palm cultivation the Philippines started in the 1950s with the establishment of oil palm plantations in Basilan, the establishment of oil palm cultivation in the Province of Palawan, considered the country's Last Ecological Frontier, began with talks and discussions that took place only in 2003. The idea of introducing oil palm and its potential environmental impacts were received with deep concern by both government and non-government sectors. Experiences from the neighbouring countries of Indonesia and Malaysia in terms of the adverse effects of oil palm cultivation on the environment were the sources of these uncertainties. However, the Provincial Government of Palawan remained keen to open up certain areas in Palawan for oil palm cultivation with the belief that it would benefit the rural economy.
According to a study conducted by the Philippine Coconut Authority (PCA) and the Palawan Palm Oil Industry Development Council (PPOIDC) for foreign investors[37], out of the 454,405 ha of agricultural area in Palawan, 208,997 ha are appropriate for oil palm plantation. Current sources reveal that at first, the Provincial Government of Palawan identified some 80,000 ha for oil palm cultivation. However, out of the 100,000 ha nationwide target for palm oil production in the country, Palawan was allocated 20,000 ha to be planted until 2011. Agusan Plantations Group, the Palawan Palm and

Vegetable Oil Mills Inc. (PPVOMI) and the Agumil Philippines Inc. (AGPI) dominate the palm oil industry in Palawan and intend to cover 15,000 ha with oil palm plantations.[38]

Presently, more than 3,746.31 ha in South Palawan are already planted with oil palm, and another 2,000 ha are programmed for next year.[39] Current oil palm plantations are found in the municipalities of Aborlan, Narra, Quezon, Rizal, Sofronio Espanola, Brooke's Point and Rizal. These areas are planted and owned by individual self-financing growers, cooperatives and PPVOMI (called anchor areas by the company). In the span of seven years, palm oil investors have brought in PhP 1.2 billion worth of investments to Palawan, as disclosed in the PCA 2009 Report. Although palm oil is a known feedstock for agro-fuel, a demand which will certainly sustain and increase the price of the commodity due to emerging biodiesel markets, palm oil production in Palawan is mainly for use as edible oil.

A previous study assessing agro-fuel development projects in Palawan identifies *jatropha* and oil palm as agro-fuel crops currently being invested in Palawan[40], noting that oil palm had the most mature feedstock plantation development. Unfortunately, the study also points out that the plantation owners do not pass through usual regulatory channels. The study further took notice of the problematic attitude of the environmental regulatory agencies in terms of stopping further land conversion or imposing stricter surveillance and control mechanisms. It cites experiences in mining areas where established zones have been modified to suit development proposals and concludes by expressing concerns over the likelihood of science being overtaken by political and economic demands. The study also raises the implications of oil palm cultivation for indigenous peoples in relation to their tenurial security, including benefit-sharing arrangements between the company and cooperative community members.

Development of oil palm cultivation in Palawan

In a meeting between oil palm investors and President Gloria Arroyo, it was reported that the Philippines imports around PhP 840 million (14 million USD) worth of palm oil. the Philippine Government has found a remedy to reduce

the cost of import and provide solutions to the growing domestic demand for palm oil; to develop its own palm oil industry. In 2002, the average production of palm oil was of 54,333 metric tons, while the average consumption requirement was of 94,400 metric tons.[41] The growing demand for palm oil is expected to reach 134,500 tons by 2010 and 171,700 tons by 2015.[42]

Initial activities started to shape the oil palm industry in Palawan in 2003. The Provincial Government of Palawan invited the Agusan Plantations Group of Companies and the Philippine Palm Oil Development Council (PPODC) to Palawan, according to Ponciano Narciso, General Manager of PPVOMI/ Agumil-Palawan (also Chair of PPODC during that time). The first visit to Palawan occurred sometime in February. Successive visits were carried out to conduct an in-depth study on the potentials of Palawan for palm oil project. A forum held at the Palawan State University (PSU) served as a venue where attendees from the government sector manifested their interest and pledged support to project implementation.

According to Ponciano, around October 2004, the Agusan Plantations Group of Companies began its intensive information drive in South Palawan and conducted studies on the ground specifically to assess and stimulate the interest of local inhabitants and the LGUs in project implementation. One field personnel was sent to Palawan to scour around for potential plantation areas, talk to local inhabitants, assess the acceptability of the project and carry out necessary preparations. North Palawan was the first region to be considered for oil palm cultivation. However, Romasanta claimed that LGUs in South Palawan were more active and the municipality of Brooke's Point quickly donated a piece of land in *barangay* Maasin for the establishment of the company's nursery area. However, Nelson Sombra, an indigenous leader in Brooke's Point, thought the area was merely for the company's nursery. This area too is now an oil palm plantation. Sombra claims the area was supposed to be a reservation for future use and is now covered by a twenty five year Memorandum of Agreement (MOA). When the nursery was established, around 600,000 pre-germinated seedlings from Kimbi, Papua New Guinea, arrived in Maasin. During this time too, the company began acquiring areas to serve as the company's anchor areas.

According to Romasanta, the focus of the company was on Mindanao, but the lobbying carried out by the cooperatives, coconuts farmers and the mayors somewhat encouraged Agumil to establish itself in Palawan, with the support of the Provincial Government which created the Palawan Palm Oil Industry Development Council through a provincial legislation (Provincial Ordinance No. 739-04) on January 2004.[43] The ordinance states that the Council was established to enhance the economic prosperity of the agricultural industry. The duties and functions of the Council are: to formulate policies and plans for the development of the palm oil industry in Palawan and to recommend the same to the Sangguniang Panlalawigan for appropriate legislative measures if necessary; to initiate research on palm oil development; to advocate the promotion and institutionalisation of the palm oil industry development in Palawan; to encourage investments and promotion of palm oil industry development, particularly the establishment of milling plants/refineries and seed farmers; to monitor, evaluate and recommend measures in the implementation of the programs of the Provincial Government on palm oil industry development; to determine the areas suitable for palm trees plantations within Palawan, and; to perform such other duties and functions as may be necessary for the effective implementation of the program.

The Provincial Government showed its support by including oil palm in Palawan's development plan. The Provincial Comprehensive Development Plan of Palawan for 2005 has as its vision "to become a province where people, culture, religion and economy are in harmony with the environment and natural resources and the population living in peaceful, orderly and prosperous communities." Notably, two of the identified priority programs and projects are on oil palm as part of the development of plantation crops with private investors and processing plants. It was also a timely opportunity for the oil palm sector since the Land Bank of the Philippines (LBP) had established a financing program for such projects. According to Narciso, the Provincial Government, through Governor Joel Reyes and Vice Governor Dave Ponce De Leon, formed an investment team that visited Mindanao to present the potential of Palawan and business proposals for oil palm develoment.

Project brief: the integrated palm oil processing project

Location: Municipalities of Aborlan, Narra, Quezon, Sofronio Espanola, Brooke's Point, Rizal and Bataraza

Investors/Proponents: Palawan Palm & Vegetable Oil Mills Inc. (PPVOMI), AGUMIL Philippines, Inc. (API) – Palawan Operation

Project components:
Palm Oil Mill – Cost: PhP 390,000,000.00
Oil Palm Nursery – Operation: PhP 49,043,817.08
Oil Palm Plantations – Operation: PhP 84,682,694.2.

Project cost: PhP 523,726,511.33

Production purpose: edible oil

Environmental Compliance Certificates (ECCs) issued:
ECC R4B 1006 0102 covering the palm oil mill of Agumil Phils. Inc. (AgPI), issued July 1 2010
ECC R4B 0901 025 3909 covering oil palm plantation in: (1) Bgys. Mabini, Sagpangan and Iraan in Aborlan; and (2) So. Mariwara, Bgy. Princess Urduja in Narra
ECC R4B 0807 0178 3909 covering oil palm plantation in Bgys. Isugod, Panitian, Aramaywan and Tagusao in Quezon
ECC R4B 0807 0177 3909 covering oil palm plantation in So. Salungsong, Bgy. Iraan in Rizal
ECC R4B 0807 0170 3909 covering oil palm plantation in Bgys. Pulot Interior, Punang, Labog and Iraray in Espanola
ECC R4B 0811 327 3909 covering oil palm plantation in Bgys. Calasaguen, Maasin, Pangobilian and Samarinana in Brooke's Pt.
ECC R4B 0901 024 3909 covering oil palm plantation in Bgys. Sandoval, Tarusan and Igang-Igang in Bataraza

PCSD-SEP clearance issued:
March 25 2010 for the Integrated Palm Oil Processing Project

Source: PCSD 165th Regular Meeting. Evaluation Report Brief for the Council. 25 March 2010.

By December 2005, PPVOMI was organised and registered as a local company and part of the Agusan Plantations Group of Companies. The company began official operation in January 2006. Narciso claims that the company pursued the project in Palawan only after the construction of their processing plant in Bohol due to certain financial limitations. However, the project was not received positively by all; the Department of Environment and Natural Resources (DENR), the Palawan Council for Sustainable Development (PCSD) and the Environmental Legal Assistance Centre (ELAC) in particular raised numerous environmental concerns. The company nonetheless continued to carry out and obtain the necessary requirements and documents, including an Environmental Compliance Certificate (ECC) for the plantations and the project. Narciso also noted that after securing their first ECC in 2007, it became much easier for the company to proceed because the project was claimed to be that of the Provincial Government.

At present, many of the oil palm trees are bearing fruits. For now, the harvests are left to decompose and used as compost, as the agreement for production is for 2011. The mill plant with the capacity to process 15 tons/hour of oil palm nut to crude palm oil is still under construction. According to Narciso, the mill plant will be able to process the FFB of the 15,000 ha oil palm area.

Existing palm oil investments and projects

At present, the oil palm industry in Palawan is dominated by PPVOMI and AGPI who currently implement the Integrated Palm Oil Processing Project. Both companies are part of the Agusan Plantations Group of Companies, which also includes Agusan Plantations, Inc. (API) and the Philippine Agriculture Land Development and Mill, Inc. (PALM, Inc.). Their mission is "to develop oil palm plantations in the Philippines in areas that are conducive for such cultivation with the objective of achieving participation of farmers to out-growers program, thereby alleviating the poverty at the countryside".[44] The group envisions becoming the largest oil palm plantation company in the Philippines. Narciso claims that they hold an estimated 50% of the domestic market share on palm oil, excluding operations in Palawan. PPVOMI and AGPI share the market with Pilipinas Palm Oil Plantation Inc. and Kenram Industrial Development Inc.

During community interviews, the name of the construction company Cavite Ideal International Construction and Development Corporation (Cavdeal) came up several times. Cavdeal is based in Cavite and owned by Mr. Lamberto Lee, Jr. The construction firm became controversial when it was blacklisted by the World Bank for "collusive practices" involving the bidding for the Philippines' National Road Improvement and Management Program (NRIMP) Phase 1. Cavdeal is involved in the PhP 1.8 billion road-building project in South Palawan. Sources claim that CavDeal is purchasing lands in South Palawan, and according to agents of CavDeal, the target quota is of 500 ha. It is however unclear if the purchased areas are intended to be used for oil palm plantations. However, the PPVOMI General Manager confirmed that CavDeal intends to invest in oil palm. The PPVOMI or AGPI have no business ties with CavDeal. However, Narciso claims that they were already approached by the company and that they could help CavDeal on the technical front. However, he also suggests that it would be difficult to come up with enough land area to allow for a palm oil mill to operate.

Project status

Located in Bgy. Sandoval, Bataraza, the total area of oil palm cultivated is 250 hectares.

Oil palm nursery

The nursery is located within the thirteen ha project site. It is the source of seedlings for out-growers and plantations. The nursery is accredited to PCA. This requirement helps the PCA to monitor the source of planting materials and whether or not they comply with the requirements. The company must also

comply with the quarantine and guidelines on the importation of oil palm planting materials of the Bureau of Plant Industry (BPI). In particular, oil palm planting materials should be free from Chlorotic Ringspot virus, Lethal Yellowing and *Brontispa longissima*. Pest and disease control have an important impact on the productivity and profitability of oil palm. Oil palms are prone to the attacks of pests such as bagworm, nettle caterpillars and rhinoceros beetles (locally known in Palawan as *bagangan*).

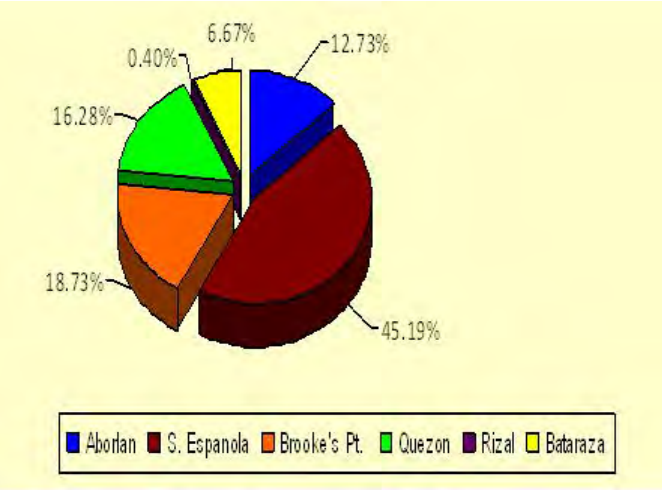
The pre-germinated seedlings of PPVOMI/Agumil come from Kimbi, Papua New Guinea, the world's fifth top supplier of palm seedlings. The supplier of the company is New Britain Palm Oil Limited. The company finds importing pre-germinated seedlings from Papua New Guinea (PNG) cheaper than engaging in seed production in the Philippines. Seedlings are made available to the growers as part of their loan. Growers buy seedlings from the nursery at PhP 117 each. Each hectare of land may be planted with 120 to 130 oil palms. A single palm tree with a good yield is of forty five kilos and over, while fifteen kilos or less is considered a failure. Harvest occurs two to three times a month. The estimated gross income per hectare is PhP 9,000 for four to ten year old palm; PhP 72,000 for ten to fourteen year old palm and PhP 60,000 for fifteen to twenty five year old palm.

Oil palm plantations

The target sites for the establishment of oil palm plantations are located in the municipalities of Aborlan, Narra, Quezon, Sofronio Espanola, Brooke's Point, Rizal and Bataraza, all of which are in South Palawan. The target total hectarage is of 15,000 ha.

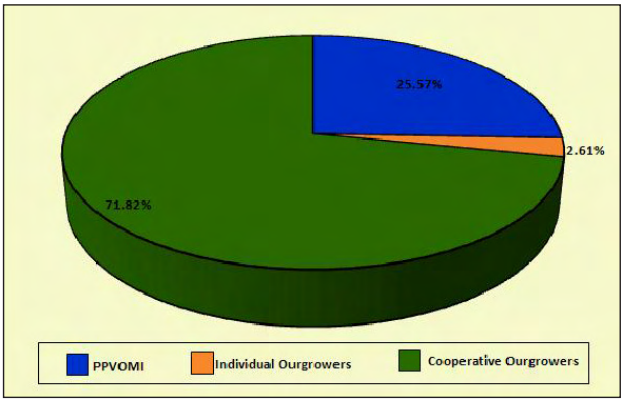
Data from the company on the statement of hectarage was 3,750.71 ha as of December 31 2009 and 3,746.31 ha as of July 31 2010, while the data from the PCA as of December 2009 was of 3,687.39 ha. It is worthy to note that these figures do not include some twelve ha (source's estimate) in *barangay* Sumbiling and Taratak of Bataraza. Furthermore, during an interview on October 14, 2010, the PPVOMI General Manager mentioned that the total area planted was of 3,790 ha. Regardless of these disparities, the data shows that the overall area of oil palm cultivation in Palawan is of around 4,000 ha.

Figure 1: Oil palm cultivation - total hectarage by location



Plantings are spread over the six municipalities, except Narra. Currently, the biggest plantation is located in S. Espanola (see Figure 1). All plantations are managed and owned by individual self-financing growers, cooperative out-growers and PPVOMI (see Figure 2). PPVOMI plantations represent around 25% of the total area planted while the remaining 75% are plantations belonging to the contract growers of AGPI, most of whom are cooperatives with very few individuals.[45] Puerto Princesa City is soon to be added to the list as 10,000 ha have been surveyed and offered by the Iwahig Prison and Penal Farm for oil palm development and around 1,500 ha offered by the City Government.[46] An additional 2,000 ha are projected for the coming year.

Figure 2: Oil palm cultivation - total hectarage by ownership/management



Palm oil mill

The mill plant, which has the capacity to process fifteen tons/hour of oil palm nut to crude palm oil, is currently under construction. It will be located in the allocated seven ha area within the thirteen ha project site in Bgy. Maasin, Brooke's Point. Processed plant products are Crude Palm Oil (CPO) and Palm Kernel (PK) which are sold to processors and refiners, including the San Miguel Corporation and Philippine Refining Company.

Road leading to the mill plant being constructed at
the PPVOMI oil palm plantation in Bgy. Maasin, Brooke's Point.

Palm oil as edible oil and as bio-diesel feedstock

Oil palm expansion in Palawan is geared towards the production of palm oil as a substitute for cooking oil for the domestic market. PPVOMI is able to compete locally because it produces quality products, according to PPVOMI General Manager Ponciano Narciso. Palm oil is rarely exported as it takes time to transport the palm oil and its quality decreases over time.

Around 2008 and 2009, the company felt the pressures brought about by ongoing discussions and concern over climate change. However, Narciso explained that this had faded when the price of gasoline fell. He considered the use of palm oil for biodiesel as a last resort. PCA Palawan Manager Romasanta further claimed that the production of palm oil for biodiesel would probably not be agreed to since Palawan's food security would be consequently affected.

Oil palm plantation adjacent to rice cultivation area,
Maasin-Calasaguen, Brooke's Point.

Contract agreements

The two existing agreements are the Production, Technical and Marketing Agreement and the Management Services Agreement. Both are agreements

made between AGPI and the Contract Grower (Cooperative or Individual). The project package of PPVOMI for Palawan is the same package introduced by PPVOMI in Mindanao; technology, assured quality of planting materials, and market assurance, according to Narciso. The Production, Technical and Marketing Agreement as stated in the agreement is entered into to ensure success of the oil palm cultivation and sale of produce. Some of the key terms and conditions between the cooperative and AGPI are as follows:

1. That parcels of land entered into the cooperative and utilised for oil palm cultivation by the growers cannot be mortgaged, sold, transferred, assigned or leased to any third party without the prior written consent of AGPI;
2. That the grower procures F1 seedlings directly from AGPI;
3. That compliance with labour laws is the sole responsibility of the grower;
4. That guidance and permission from AGPI is needed if there are plans to plant intercrops; and that lowland paddy/rice intercropping is not allowed;
5. That if the project is not managed by the grower to the satisfaction of AGPI, it will hand over the management of the project to AGPI (covered in the Management Services Agreement);
6. That execution of Management Services Agreement is within seven days of the receipt of the letter from AGPI or Management Take-Over;
7. That AGPI provides technical assistance, trains the grower and its farm workers in all undertakings of the farm, and assists the grower in the administration and maintenance of efficient accounting and internal control systems;
8. That purchase of FFB shall be made under the following conditions set forth based on the crop quality standards and pricing formula;
9. That there are corresponding charges if AGPI spends for the restoration of the project (14% compounded interest per annum) and 10% management fee or 10% total operational cost, whichever is higher.

Oil palm plantation in Bgy. Iraray, Sofronio Espanola, which has the largest oil palm cultivated area in Palawan.

Additionally, in the Management Services Agreement, the grower authorises AGPI to take over management of the land and use the funds under oil palm development loan provided by LBP and AGPI for the development of the land into an oil palm plantation, including the technical and financial matters pertaining to the project. Several views exist on the two agreements mentioned above. PPVOMI claims that a cooperative will always present themselves as capable of managing a plantation, but that in reality, they cannot. This, according to him, is the reason for the existence of the Management Service Agreement. AGPI returns the management of the project to the grower upon the expiration of the term of the Management Services Agreement. The simultaneous signing of the two agreements in itself is a sign that the possibility of project management turning ugly is anticipated. One contract grower in Bataraza says that the contract looked good on paper but not in its actual implementation. Others have questioned the management fee and why the two agreements have to be signed at the same time. A further problem is that these agreements have been signed without clear explanation to local inhabitants of their content and consequences.

Land leases/rental

PPVOMI has leased some of their land as anchor areas for oil palm plantation. Lease rates are of PhP 1,000/year for the first three years; PhP 2,000/year up

to the tenth year; and PhP 3,000/year for the eleventh to the twenty fifth year. Andres Colegio of the Irrigators Association in Calasaguen in Brooke's Point, who has worked for a long time in sugar plantations in Negros, raised the possibility of adopting the lease rental sharing in agrarian reform (Republic Act 6657). He suggested a 75:25 sharing percentage division. Colegio explained that from the first to the fifth year, all earnings go to the company. In the sixth year and beyond, the AR sharing of 75% (company) and 25% (farmers), or even 70-30 or 65-35 sharing would be advisable.

Contract growers: Cooperatives, their plantation areas and loans

PPVOMI confessed that their commitment to the cooperatives was quite complicated. All cooperatives are not qualified to avail financing from LBP. If the cooperative tries to loan, they are asked to come up with 20% equity. In Palawan, AGPI has decided to set up the equity for the cooperatives in order for the LBP to commit to 80% equity. Hence, the cooperatives have double loans, both from AGPI and from LBP. The responsibility of ensuring that the implementation will be closely monitored has been given to the company in view of the financing commitment of LBP.

When a cooperative commits a particular area for planting, the company has to assess if it really exists, according to Narciso. He further explained that the photocopy of land titles (or *barangay* certification) is used as reference for initial area inspection and validation, in case the land is hilly or rocky. When the photocopy has been fully scrutinised, the bank requires the submission of the original. Narciso explained that at first the original titles had to be deposited in the bank. But later on, LBP passed the responsibility onto the cooperative who was asked to keep it. The first batch of titles and certifications are with the LBP and those which arrived later are kept by the company. This would appear as collateral but Narciso clarified that the difference is that in true collaterals it would be treated as real estate mortgage and stamped. The documents of the cooperatives kept by the cooperative are for safekeeping and require no stamp.

Once the loan of the cooperative is approved, the cooperative will have an account for their oil palm project. The account requires signatories from

the cooperative and one signatory from the company. Once the actual work is done, and at the end of the payroll period, the lead man submits a report which the technician inspects, validates and certifies. The documents enter the office and processing of payment starts. This is done according to PPVOMI to ensure that funds to be withdrawn from the bank are funds used to pay for the completed jobs.

Integrated palm oil processing project
SEP clearance: terms and conditions
(issued March 25 2010)

- Confine project operation of the nursery and oil mill within the approved area covering 13 ha.
- Secure permits/clearances from concerned agencies prior to construction and operation of projects.
- Establish a Multi-Partite Monitoring Team (MMT) to monitor the air, water quality, waste disposal and other effluents that will be generated by the project.
- Implement mitigating measures as stipulated in the submitted EIS.
- Should the implementation of the project cause adverse environmental impacts and pose a nuisance to public health and safety as determined by PCSDS, these factors shall be sufficient ground for the cancellation or suspension of the Clearance.
- The herein grantee shall assume full responsibility and liability for damage to private/public property caused by the project.
- In case there is a need for additional conditions to ensure environmental integrity and public safety as a result of regular monitoring inspections, the same shall be imposed by the PCSD.
- In the exercise of their visitorial power, authorised PCSD/S officials/ personnel shall be allowed to conduct monitoring/inspection without prior notice.
- Any expansion of the project is subject to a separate SEP clearance.
- This Clearance is non-transferable.

In terms of the accountability of the cooperative, PPVOMI explained that if one is a member of the cooperative, one's accountability is pro-rata based on the extent of one's participation. For example, in a loan of PhP 100,000 for one hundred ha, Member A with one hectare would receive PhP 1,000 in loans while Member B with ten ha would receive PhP 10,000 in loans. Narciso further stated that the cooperatives were aware of their loans. The financial and accounting books are transparent materials which anyone may consult. Regularly, copies of these financial reports are made available to the cooperatives.

The financing programs of the Land Bank of the Philippines for oil palm projects are open only to cooperatives. Cooperative applicants must have one hundred members and a three year track record, paid-up capital, complete core management, and other such requirements. The bank commits 80% financial assistance while the remaining 20% becomes the borrower's equity. The anchor firm (the company) shoulders 10% of the equity. The 80% include, for one hectare of oil palm with production cost of PhP 144,000; a development and planting cost of PhP 109,310, working capital of PhP 34,690, labour inputs of PhP 21,740 and materials of PhP 122,260. The bank requires no collateral but does require original land titles for safekeeping reasons.

PCSD policy and SEP clearance

From its forests down to its marine and coastal areas, Palawan's biological diversity is incomparably rich and unique, but also extremely fragile. It is for this reason that a special law was passed, Republic Act 7611, or the Strategic Environmental Plan for Palawan Act, popularly referred to as SEP Law. The main strategy of this law is the delineation of an Environmentally Critical Areas Network (ECAN) consisting of terrestrial or forest areas, coastal/marine areas and ancestral/tribal lands into the following zones: multi-use, restricted, buffer and core zones. Certain activities are allowed or prohibited within the different zones. The Palawan Council for Sustainable Development (PCSD) oversees the implementation and realisation of the SEP Law, with the support of the PCSD Staff (PCSDS). All development projects and undertakings to be implemented in Palawan must first secure an SEP Clearance from the PCSD.

According to PCSDS, PCSD currently has no specific policy regarding agro-fuels. When projects such as the Integrated Palm Oil Processing Project come into effect, SEP clearance is required at the policy level. However, no specific clauses refer to agro-fuel. If the application for and clearance of land is for the production of edible oil but bio-diesel is produced, the project needs to apply for another SEP clearance.

Fruit bearing oil palm tree in Bgy. Tagusao, Quezon. Tagusao has a 150 hectare oil palm plantation.

PPVOMI-Agumil has obtained one SEP clearance for their Integrated Palm Oil Processing Project, consisting of the nursery, the palm oil mill and the plantations. Plantations which are owned by, and projects implemented by, cooperative out-growers are not covered by an SEP clearance. The explanation for this by the PCSDS is that the responsibility to manage the contract growers lies with the company. A cooperative with an oil palm plantation project will not pass through the process of securing an SEP clearance because the company/proponent has already been given an SEP clearance and it is the company that contracts the out-growers. As understood at the PCSDS level, compliance to the terms and conditions of the SEP clearance applies not only to the company but to the out-growers too. This means that the out-growers should also be aware of the terms and conditions of the SEP clearance and that the company should provide them with sufficient information in this regard. As the PCSDS has not yet carried out any monitoring activities with respect to out-growers, they cannot yet assess the degree of

compliance to the terms and conditions of the company and whether or not these are also imposed on out-growers in practice.

A critical issue is that of allocated plantation land regulated by SEP clearance. In this particular case, the company targets 15,000 ha for their palm plantations but according to the SEP clearance terms and conditions, project operation of the nursery and oil mill must be confined to the approved area of thirteen ha. Hence, the 15,000 ha, which are assumed to be private lands of the cooperatives, are in fact oil palm plantations which are not covered by any SEP clearance. The PCSDS considers the establishment of oil palm plantations in Palawan as a major land use change. But a proposal such as this is evaluated on a project basis; SEP clearance is based on a "per project" issuance.

Financial institutions have been asked by the PCSD/S to include SEP clearance as part of their requirements in order to ensure the environmental viability of the area and development project. It is worth mentioning that in a previous agro-fuels study, PCSDS Officials Atty. Adel Villena and Executive Romeo Dorado claimed that the LBP has financed various oil palm projects covering 3,740 ha of the 4,245 ha targeted to be financed. They questioned why LBP had disbursed a significant amount of funds to projects that did not pass through the proper licensing and permitting process. It is assumed that these statements were made when the project has no SEP clearance yet.

Oil Palm Plantations and Ancestral Land/Domain Areas

According to NCIP Provincial Officer Engr. Parangue, consent for changes in land use and development is not necessary where land is privately owned. The process of securing consent disappears when privately owned land has been entered into the cooperative, together with other lands owned by the cooperative members to be planted with oil palm. However, there are cases, as in Tagusao, where local inhabitants have requested a large area of CALC land. In this case, entering a communal area does require consent from the community, which requires a long time to obtain. Therefore, Parangue advise the local inhabitants to limit their land use to their own individual lots/land outside of their CALC. The inhabitants reportedly did not push through with their application for the CALC area.

However, it would appear that there are portions of the 150 ha oil palm plantation in Tagusao that do belong to a CALC area. According to one member of the cooperative, around forty ha of CALC area were supposed to be part of the 150 ha oil plantation project of the cooperative, but the CALC planted area already reached 150 ha. There are also portions of the CALC which were sold by IPs to non-IPs, although this was not caused by the oil palm project as it was land sold earlier on. However, these areas are now planted with oil palms. Parangue claims he was not aware that part of the CALC area had been sold. The piece of land that he himself had sold was not part of the CALC area. He also states that if indeed part of the CALC area had been sold, it would be the buyer's loss as he would no longer own this land.

Parangue also explained another case in Berong, also in Quezon, where local inhabitants wanted to invest in oil palm plantations and obtain around 500 ha to establish the plantations. NCIP certification was necessary for them to enter into a contract with the palm oil company. However, the company is reportedly trying to avoid taking responsibility for the application for this certification as it is a time-consuming process. According to PPVOMI General Manager, the company is attempting to establish oil palm plantations in CADC areas, but finds it far more complicated as they consequently need to deal with NCIP and consult with the indigenous people. If, on the other hand, the community submits the application, the project becomes a community-initiated project for which there is no need to pass through the FPIC process. The project need only be validated by the NCIP to the community. If an agreement is needed, the agreement will be a sign of their consent of the terms and conditions. In the words of Parangue, "it is a circumvention of the FPIC process, which is not illegal".

Another case is that of CBFM in Iraan, Rizal, where a portion of the applied-for CBFM area is also claimed as ancestral land, although there has not yet been any formal application for this latter claim on the part of local inhabitants. The CBFM applicant (cooperative) consists of IPs and non-IPs who have already obtained a certification precondition for a palm oil project from the NCIP.

Oil palm plantations and DENR tenurial instruments

According to Caluya, Chief of the DENR-FMS in South Palawan, the DENR supports the processing of tenurial instruments required by palm oil projects and recommends that proponents of the palm oil projects concentrate on A&D (alienable and disposable) land. If the area is timberland, the DENR supports the project by issuing appropriate tenurial instruments within that timberland. In areas already covered by CBFM, proponents are encouraged to coordinate with the Peoples' Organisation (PO) which is the CBFM holder. However, if the area is not yet covered by a tenurial instrument, they may apply for the appropriate tenurial instrument, such as SIFMA or any kind of lease from the government. Tenure is over a period of twenty five years, renewable for another twenty five years. It is a requirement for the application of the tenurial instrument to conduct and submit a feasibility study to DENR. An ECC must also be submitted, particularly for forest tenurial instruments, since the area required is often large, as is the case for oil palm plantation projects.

According to Caluya, oil palm plantations in Palawan are concentrated on A&D land covered by titles. Caluya also claims there are no oil palm plantations in CBFM areas yet and planning for the establishment of plantations in such areas is still ongoing. In CBFM in Isugod, Quezon, for example, the process of planning and coordinating with the PO is still underway. In Iraan, Rizal, the CBFM application is under consideration for approval by the DENR Central Office.

The PPVOMI is trying to establish an oil palm plantation in Iraan, Rizal, an area which is currently under CBFM application. According to the PPVOMI General Manager, a clause is included in the guidelines of implementation in CBFM that such land can be utilised as agricultural production area. The latest statement of hectarage indicates that over fifteen ha of oil palm have already been planted in the area of Iraan. One source suggests that the areas planted with oil palms are IP-inhabited areas. However, Caluya claims that any oil palm plantations would be in the A&D (alienable and disposable land), in which case CBFM application could be withdrawn as the land is no longer utilised for forestry purposes but for agricultural production. If timber is to be

cut during the clearing period, regardless of whether or not it is an A&D area, the owner is still required to coordinate with the DENR. Any impact on timber or trees resulting from the establishment of the palm oil project is the concern of the Forest Management Services (FMS) of the DENR whose role it is to monitor if and how felled trees are used and whether or not felling is taking place in line with forest regulations.

Caluya claims that there were no plantations within MMPL area, but that there are plantations close to buffer zones, such as in areas of Espanola (Pulot Interior) and Brooke's Point (Maasin and Calasaguen). When asked whether or not the 20,000 ha targeted by the Provincial Government of Palawan could be specifically located, Caluya said that further verification on the ground was necessary. Data on the actual delineation and verification of such areas were unavailable at the time of writing. As such, there are no exact figures available regarding where these areas located.

The PPVOMI General Manager explained that their focus for oil palm development was the area between rice lands and forest areas, an area he claims is rarely used by people. The 80,000 ha of potential area mentioned is spread throughout North and South of Palawan. As of yet, only one project module of 15,000 ha has been confirmed. While going beyond 15,000 ha is tempting, Narciso says that local capacity is limited. Taytay and Roxas, both municipalities in North Palawan, have already expressed their wish to establish their own oil palm plantation projects but will face similar capacity constraints.

Impacts on communities and the environment and emerging issues in oil palm cultivation

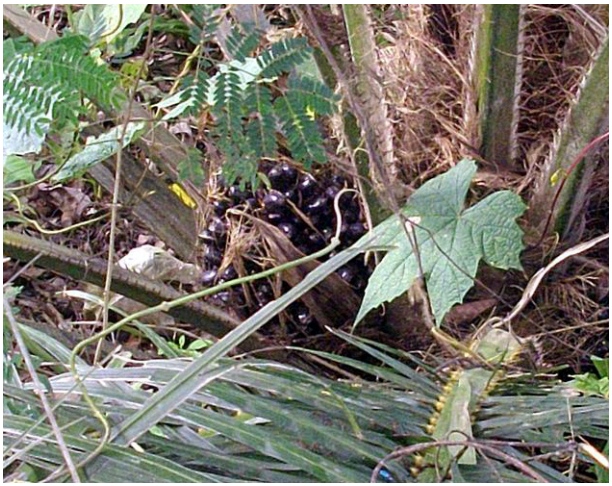
Socio-economic impacts and emerging issues: local perspectives

At the community level, Goyok Tiang, an indigenous leader from Iraan in Rizal, reports having been approached to engage in oil palm plantation. However, he and several other *panglimas* (traditional indigenous leaders) decided against it as they did not feel that they understood the system well

enough and were already content with the *almaciga* (resin) concession granted to them. Calib Tingdan, an indigenous leader from Sowangan in Quezon, claims there are no oil palm projects or plantations in his area because the local community was able to monitor these early on and has decided against it ever since. After seeing a film showing the effects of oil palm development on local communities, they feared the adverse effects that the chemicals and wastes used on oil palm plantations would have on their rice farming areas. In particular, the local inhabitants did not want to take the risk of infecting their coconut trees with *Brontispa*. As Tingdan explained, between a coconut tree and an oil palm tree, *Brontispa* would most certainly attack the coconut tree as the oil palm tree would already have been protected by sprayed pesticide.

At first, Fermin Queron of Espanola thought of using his land to plant oil palm but decided against it later on after a friend from Mindanao warned him of its negative effects. He was also told that most oil palm farmers had lost their lands to the banks and that it took several years before their land became productive, by which time their loan interests had accumulated. These were the main reasons why many among the community did not pursue oil palm cultivation. Their area is clear of oil palm plantings, although Fermin is a member of the cooperative in Punang that has an oil palm plantation.

Otol Odi, an indigenous leader from Punta Baja in Rizal, says that he cannot yet decide whether or not to agree to have an oil palm plantation within his CADC area. He believes further consultation with the CADC officials and members is necessary. If the MOA is positive and the process carried out fairly, he thinks oil palm plantations might not be such a bad idea.



Fruit bearing oil palm tree in Bgy. Malatgao, Quezon.

On the other hand, Chieftain Paldina Japil of Pulot Interior in Espanola admitted to being rather confused regarding the actual benefits of oil palm projects for local inhabitants. He had been told by a group of people who came to visit him that "even owners of tiny pieces of land could become millionaires". Feeling that he did not completely understand the project and its implications, Paldina decided against growing oil palm on his own land, despite the fact that his rice-planting area is already surrounded by oil palm plantations. Although there was no land conversion on his part, land conversion that has occurred in adjacent land has inevitably had implications on the local food security of the community in the area.

Despite these negative consequences, one clear benefit of oil palm plantation development as seen by the PCA is the generation of rural employment. In their 2009 Year End Report, it was computed that the number of jobs created by the oil palm project was of one worker per hectare. This means that if the total area planted with oil palm is of 3,790 ha, the oil palm project can provide 3,790 jobs to community members. The report also mentions the fact that the capacity to purchase has significantly improved. However, Bonifacio Tompong of Tagusao in Quezon, who works in the plantation as a team leader/timekeeper, has voiced his concern over the remuneration of plantation workers. He has successfully lobbied to increase the salary of labourers from PhP 120 to PhP 150/day, where it has since remained and once fallen back down to PhP 120.

Oil palm trees bordering the rice fields in Bgy. Panitian, Quezon.

It is evident that the generation of employment is not only about the number of jobs created for the community but also about how much a worker earns a day. Work in oil palm plantations is in the capacity of lead man/foreman (*kapatas*), headman or labourer. The lead man and headman are both cooperative members but the lead man is chosen by the cooperative while the headman is chosen by the company. Work is paid based on a daily rate which ranges from PhP 100 to PhP 150 for the team leader and labourers and PhP 180 for the headman. The daily rate varies with different cooperatives. Increases or changes in daily rate can be requested through a resolution by the cooperative to the company, asking the company and cooperative to deliberate with the bank in order to make such a change. However, the company and/or bank have argued that the standard or minimum wage rate cannot be given because the money is loaned from the bank.

Increasing the daily rate would equate to an increase in salary expenses, interests and loans. On the other hand, low daily pay rates is one of the reasons why many have already stopped working in the plantations. Another reason has been repeated experiences of late payment.

In Maasin, taking an absence leave from cooperative activities was once used as justification for a salary deduction. In Espanola, extensive land clearing (*rabas*) was carried out by workers, young and old, who were paid only PhP 130 daily. Most of them had to walk from their houses to the assigned area

at the break of dawn. Sources report that during that time, some workers complained that they had not been paid for all their working days and received less than they expected. Previously, a case of payroll padding had also been reported in the Bataraza area.

Tompong is a plantation worker who receives a very low salary for his labour on the oil palm plantations. However, Tompong, who entered a hectare of his land (which is part of the CALC area) in the plantation, observes that prior to the establishment of the oil palm project, life was very difficult. However, with the continuous amount of work available since then, life has become slightly easier. He feels very positive about next year for by then, the mill will have been built and harvesting will begin. He was told by the plantation supervisor that for the first two years, the growers would have the privilege of receiving their full harvest earnings as they would not be required to pay the bank back yet and loan deductions would only start in the third year. He learned that there would be a 75% deduction and the remaining 25% would be left for them. This situation appears to differ to that in the Bataraza area where, according to one grower, the workers would only begin to receive a share from the harvest in two years' time (i.e. 2012).

A number of growers reasoned that oil palm projects were beneficial in terms of making idle lands productive. For instance, Danny Ayson, Chair of the CFC FAMICO in Quezon, is not worried about having entered his fifteen ha of land into oil palm plantation.

In his words, *"Ang nakakatakot ay kung hindi mo matataniman, isang kasalanan yan, na mayroon kang area na nagiging masukal at walang silbi"*. ("What is worse is if you do not plant your land; it is a serious lapse if you let your area become infertile and useless.") The palm oil expansion craze has led to massive land buying and selling in Espanola and Brooke's Point area. Suede, an indigenous leader in Espanola, observes that many of the landowners who lived elsewhere came back solely to sell their land when they heard that certain people wanted to purchase land properties, and then left again.

Chieftain Paldina, also in Espanola, reports that some indigenous people sold their land for the very cheap price of PhP 1,000/ha. In Pulot Interior area,

around five to six indigenous families sold more than thirty ha of their land, which is now planted with oil palms, although the Chieftain is not sure who owns it. He finds it difficult to do anything about situation as the decision rests with the indigenous land owner, adding that it becomes even more difficult if the landowner has already been partially paid. When under pressure to sell their land, some indigenous people have also been duped and given limited information regarding the actual terms and conditions of their sale. According to Paldina, one indigenous person was dismayed when he read the Deed of Sale; it stated that he was selling his land at PhP 40,000/ha but the agent had only paid him PhP 10,000 as initial and another PhP 10,000 as the final payment. In Chieftain Paldina's words, "it is our attitude as Palawan that when we are confronted by pressure such as when we find ourselves in the middle of an area already surrounded by oil palm plantations, we are forced to sell. Although that is my case, I do not want to sell my land because I have nowhere else to go. But this presents a problem because when others sell their land, they have nowhere else to go but encroach on timberland area. It becomes a threat to the forest."

Environmental impacts

According to Narciso, the environmental concerns raised by oil palm development are shared by both the company and the labourers. Striking a balance between plantation productivity and scale and environmental sustainability is also critical for the crops themselves. Narciso reasons that the establishment of an oil palm project is a better option because only one clearing is required as compared to the yearly burning caused by *kaingin*. Among the positive environmental impacts of oil palm plantations, the PCA reports that vegetation has regenerated itself and that birds, bees and other fauna are frequently seen in the area. The PCA does not share the same environmental concerns as Malaysia or Indonesia. According to Romasanta, this is because the type of government and management of resources in the Philippines is different. Moreover, a Council exists for farmers to raise any complaints.

One of the indigenous leaders in Maasin states that at present, the effects of oil palm expansion have not been felt yet. (*"Sa ngayon, ang oil palm hindi pa laganap na nararamdaman ang epekto"*). Negative impacts are not always

expected as PPVOMI told local people that no wastes at all would be created by palm oil production, according to PCSDS. However, this will only be proven when operation of the plantation starts. For a ton of oil processed, it has been reported that 2.5 tons of effluents are discharged. As an island province, all wastes in Palawan are expected to flow to marine and coastal areas, at the detriment of the rich biodiversity which thrives in these environments.

According to PCSDS Abigail Cruz, the formation and approval of the project's MMT (Multi-Partite Monitoring Team) was put on hold after a complaint was received related to the *brontispa* infestation of around 4,000 coconut trees in Bataraza. The first meeting-orientation of the MMT members was held in the first week of October. Formation of MMT is one of the usual conditions in any ECC. However, it seems that the coconut trees are not only suffering from *brontispa* but also from rhinoceros beetle, locally known as "*bagangan*". Suede Taiban, an indigenous leader who has lived in Espanola his entire life, witnessed how his coconut trees were destroyed by the beetles. In Iraray area alone, more than 1,000 coconut trees belonging to twenty farmers were affected. Pointing to one such beetle-infested tree, Taiban explains, *"Kagaya nyan o, yung katabi nyan, katabi ng oil palm, ubos na nyog diyan. Papunta doon sa itaas."* ("Just like the one beside the oil palm, the coconuts there are gone. That goes all the way up.")

Many local inhabitants believe oil palm is to blame for the diseases ravaging the coconut trees. According to Taiban, this has never happened before. In his words,

> "We have coconut trees, we have *buri* (*Corypha Elata*, a large palm tree species) here. But when they planted oil palm that is when it all started. The pest here is not *brontispa*, but the *bagangan*. The *brontispa* is the one attacking in Bataraza at Brooke's Point. We suffered and experienced difficulty because of the beetles that attacked our coconuts. The way I see it, it is because of the oil palms. The beetles thrive and grow inside the coconut fruit. When we sought explanation, they said the beetles came from *buri*. They all

> cleared the *buri* and the beetles laid their eggs and became many. Although many are not content with this explanation, there is nothing we can do."

However, Danny Ayson of Quezon claims it is wrong to blame oil palm as the source of *brontispa*. In his words,

> "As far as I know, the seeds came from other countries. We have quarantine. If indeed the seeds had diseases, they would not transport them. There are also processes in the nursery, which are being managed by the PCA. They are the one who allowed this to happen. If they are not to blame, we blame PCA for allowing these seeds to be transported into the Philippines. The planting materials are covered by a permit. PCSDS are aware that previous imported seedlings of Agumil which were brought to Bukidnon nurseries were pest-infected. People could not help but connect the introduction of oil palm in Palawan to the condition of the palm trees suffering from pests."

On another note, the PCSDS has raised its concern over the impact of transforming a vast area planted with diverse crops into mono-cropped land. PCSDS Maria Luz Martinez explains that high biodiversity areas are more resilient to adapt to climate change, and has questioned how mono-cropping will compare in terms of resistance. In the 1980s, huge amounts of funding were spent to introduce intercropping annual crops such as coconut and coffee; changing this system to mono-cropping may have adverse consequences. The use of insecticides and pesticides to increase production yields may also pose major environmental and health risks. Other environmental issues pointed out by the PCSDS include the intrusion of oil palm among local species, oil palms depleting nutrients and carbon release of large scale plantations.

Finally, a farmer in Brooke's Point observes that oil palms are susceptible to rat infestation. He claims this has not caused serious problems yet as the mill plant has not yet been completed. Furthermore, he states,

> "A friend of mine from Mindanao told me that when the mill plant comes into the picture and the oil palms are not bearing fruits, insecticides will be sprayed that will affect the insects that come into contact with the flowers. They will use exotic bees that are resistant to [the insecticide] but will help in the fruiting process. I hope these bees will not affect our native bees that make excellent honey. We will not know until the plant operates. But we have to take the precautionary side rather than use a lot of chemicals and exotic species to force it to fruit."

The future of agro-fuel production in Palawan

It is expected that oil palm activities will increase in coming years, especially with the expansion of oil palm plantations and the completion of the mill plant construction. If ventures such as these are supported by the government, as is the case in Palawan, no government agency or office will stand against it. The PCSDS, for example, raised many environmental concerns and yet the project has been given an SEP clearance by the PCSD, which is not surprising.

In addition to oil palm and *jatropha*, a proposal has been submitted for sunflower bio-diesel in the Quezon municipality. This is led by the Cooperative Union of the Philippines (CUP) project and is expected to cover around 500 ha of land. The local newly organised cooperative, Southern Palawan Sunflower Production Cooperative, also has plans to implement a similar project for which the target financing institution is also LBP. The cooperative plans to obtain certification from the DENR and has already identified areas in Quezon for the establishment of its plantation, which includes areas adjacent to municipal roads, CBFM area in Bgy. Isugod and some other isolated areas. The market has not yet been fully established but the CUP will seek to develop it either locally or abroad. There is also a proposal to establish a milling plant. Danny Ayson, head of the cooperative and of the CFC-FAMICO which owns an oil palm plantation project in Quezon, explains that this will bring in various investments to Quezon to widen the employment choices of the farmers and make idle lands productive.

Conclusions and recommendations

More than anything else, investments or projects on oil palm in Palawan must be analysed in the context of environmental sustainability, due to the global, national and local significance of Palawan's environment. Debates on the acceptability of oil palm in Palawan would have been different if palm oil production was intended for agro-fuel feedstock rather than as edible oil to supply domestic consumption demand. This would present a policy challenge to PCSD as the PCSDS clearly admits that they lack a policy on agro-fuels. Nevertheless, this study draws out the following key points.

Oil palm cultivation is focused on South Palawan, and although there are some data inconsistencies as to its actual exact coverage, it is estimated that coverage is close to 4,000 ha. Since the existing cultivation area has not reached even half of the company's target, it is expected that there will be further cases of more land selling, land conversion and encroachment on areas inhabited and used by indigenous communities (i.e. areas covered by legal tenurial instruments and those held individually and privately by indigenous peoples), utilisation of CBFM areas and areas covered by CLOA sold below the ten year prohibitory period. Current areas being used for oil palm cultivation should be reviewed based on their slope, tenurial instruments (existing or proposed) and land status (forest land or A&D), with the view of protecting the environment and food security. Otherwise, there is the risk of compromising natural ecosystems and primary crop food production areas of rice, corn and coconut.

Data at hand and research duration are too limited to provide an in-depth analysis of the consistency of oil palm cultivated areas as well as existing and proposed land uses of the municipalities in South Palawan. Geographic coordinates of the actual cultivated areas and EIS documents of the project would be useful references. Thus it is highly recommended that the following agencies: PCSD/S, DENR, DA, DAR and NCIP, including NGOs, coordinate and identify areas which are appropriate for oil palm cultivation. Areas for oil palm cultivation should also have established criteria consistent with the ECAN Zoning and CLUP. This may in turn become the basis for the development of a policy specific to agro-fuels.

Community interviews on land acquisition (either through purchase or lease) for the establishment of oil palm plantations suggest doubtful transactions are made by agents of the buyers. Some indigenous people become vulnerable due to their lack of a clear understanding of land transactions. Some may underestimate the cultural value of their land in the light of quick economic gain. Access to information is essential to widen their options for making their land productive and yet not compromising the environment. It is particularly critical for cooperative out-growers to fully understand the agreements they enter. Surprisingly, not a single respondent commented that their contract was unfair. However, it is still too early to say that contracts are absolutely fair as there has been no harvest or production yet.

Some of the impacts that have been identified are perceived to occur in the future. As one indigenous leader accurately puts it, "we do not feel yet the effects because it is still early". But earlier activities such as the establishment of oil palm plantations, land acquisition mechanisms, the implications of land use change, and claims connecting *brontispa* and rhinoceros beetle infecting the coconut trees to the introduction of oil palms in Palawan, have already made initial impacts on both the community and the environment. It is expected that the MMT of the project will play a crucial role as the project progresses and expands.

CASE STUDY 4.
Woes of ARB cooperatives and oil palm workers in Agusan del Sur

The Caraga Region is comprised of the provinces of Agusan del Norte, Agusan del Sur, Surigao del Norte and Surigao del Sur. This region prides itself as "home to the pioneering large scale oil palm plantation." At present, two of the biggest palm oil mills are located in Agusan del Sur, where one also finds the greatest concentration of large nucleus estates and out-growers. Industry data shows that approximately 50% of the total oil palm area in the country is

located in this region.

The large scale consolidation of lands for oil palm plantation started in Agusan del Sur during the Martial Law period under President Ferdinand Marcos. Constitutional limitations to land ownership by foreign corporations was easily circumvented, thus making possible the consolidation of around 8,000 ha of land for oil palm plantation through the partnership of the National Development Corporation (NDC) and Guthrie Corporation, at the time a British-owned company. The Presidential Proclamation that made this partnership happen was criticised as leading to the violations of land rights and national patrimony.

Stories of "land-grabbing" that preceded the establishment of the oil palm plantation were quite well-known amongst the older residents in Agusan del Sur. AFRIM reports that "the development of oil palm plantations in the 1980's has displaced and disposed several communities." It recorded that around 400 farmers and Manobo families in the Municipality of Rosario, Agusan del Sur, were displaced when NGPI cleared the area for the 4,000 ha oil palm plantation. The company had "offered" to purchase lands at very cheap rates. The company was also backed by a paramilitary group (also known as the Lost Command) composed of around 250 former soldiers and headed by a retired Colonel.[47]

Apart from providing security to the plantation, the Lost Command was involved in harassment and intimidation of those who would not sell their lands to the plantations. The paramilitary was also charged with other atrocities such as "manhandling, murder, rape, theft and robbery." AFRIM further reported, "the crimes committed by the Lost Command on behalf of the NGPI were of such a degree that the Commonwealth Development Corporation, a creditor of NDC and Guthrie, made it a precondition that the Lost Command be replaced by a new security company before granting new funds for the expansion of the oil palm plantation."[48]

For those involved in promoting the oil palm industry at present, this dark side of the history of oil palm in Agusan is best forgotten. The Lost Command was justified as a necessary measure because of the heavy presence of armed rebels

(New People's Army) in the area during this period. Issues adversely affecting communities, workers and local cooperatives are nowhere to be found in the documentation or records of the palm industry.

At present, two of the biggest palm oil companies are operating in Agusan del Sur. The Filipinas Palm Oil Plantation, Inc. (FPPI), a Filipino-Singaporean firm, was established after consolidating the former NDC-Guthrie Plantations, Inc. (NGPI) and NDC-Guthrie Estates, Inc. (NGEI). It operates an 8,000 ha plantation in San Francisco and Rosario. In 1988, under the CARP, the 8,000 ha were redistributed to its workers. Organised into local cooperatives, the NGEI and NGPI leased their lands to FPPI, thus allowing the latter to continue its cultivation and operation of the oil palm plantation. FPPI also operates a forty ton palm oil mill. While FPPI maintains a nucleus estate of around 8,000 ha of oil palm plantation, it actively promotes oil palm cultivation among individual growers and corporate planters elsewhere in the Caraga region and other adjacent provinces.

Meanwhile, the Agusan Plantations, Inc. (API), also a Filipino-Singaporean firm, operates a 1,815 ha plantation and runs a palm oil mill in Trento, Agusan del Sur. In consolidating their nucleus plantation, they also leased land from another Agrarian Reform Beneficiary (ARB) located in Brgy. Manat, Trento. API is also known as the most aggressive player in the palm oil industry, having led the expansion of oil palm in Luzon (Palawan), Visayas (Bohol) and in many other parts of Mindanao. They own the newest (and considered to be the most sophisticated) palm oil mill in Buluan, Maguindanao.

Below are accounts involving three local cooperatives and a labour union in Agusan del Sur that will provide some of the present issues surrounding "just compensation," fair labour practice, undermined ownership and control of land, and some of the deceptions allegedly committed by oil palm companies in Agusan.

Legal suit against FPPI

The NGEI Multi-purpose Cooperative, Inc. is an agrarian reform workers cooperative in San Francisco, Agusan del Sur, which acquired ownership of

3,996.6940 ha of agricultural land cultivated with oil palm under CARP in 1988. In 1990, NGEI entered into a Lease Agreement with the NDC-Guthrie Estates, Inc., which is now assumed by Filipinas Palm Oil Plantations, Inc., for FPPI to continue the operation of its palm oil plantation in the said lands for a period of twenty five years. The lease agreement contained the following points:

a) That the period of the lease agreement shall commence from September 27 1988 and end on December 31 2007;

b) A fix rental of PhP 635/ha per year;

c) Variable component equivalent to 1% of net sales from 1988 to 1996 and 0.5% from 1997 to 2007.

On January 29 1998, NGEI, through its Chairman, Antonio Dayday, entered an Addendum to the Lease Agreement extending the original contract for another twenty five years from January 1 2008 to December 2032, with the annual lease rental remaining at PhP 635/ha.

NGEI argued that the said addendum to the lease agreement was null and void because the Chairman who led the negotiation and signed the amended agreement had no authority to enter into the said agreement, particularly in terms of extending the period of lease. Other grounds for complaint enumerated by NGEI include:

1) The addendum was not approved by co-op members and the PARC Committee as required under the DAR Administrative Order No. 5, series of 1997;

2) The annual lease rental together with the package of economic benefits is cheap, onerous, unfair and contrary to Republic Act 3844.

NGEI also emphasised that the exceedingly long period of lease would deprive the farmer-beneficiaries of the right to personally till the land, which is contrary to the real intent of Republic Act 6657 or the CARL. Petitioners asked for the addendum to be nullified, the lease area to be returned to them and for FPPI to pay all the accrued rentals and other economic benefits retroactive to the date of the lease agreement.

FPPI, on the other hand, argued that the said addendum was in order, that the Chairman who negotiated the contract was authorised to do so and that out of the 3,913.5951 ha under the lease, they would only pay for 3,231.1571 ha because the rest of the areas are still subject to segregation and survey or classified as problematic areas. Finally, the amount of rentals added to the economic benefits is more than that prescribed under DAR A.O. No. 5, series of 1997. Changes in the variable components (economic package) are shown below:

Years covered	**Amount (per hectare in PhP)**
1998-2002	1,865
2003-2006	2,365
2007-2011	2,865
2012-2016	3,365
2017-2021	3,865
2022-2026	4,365
2027-2031	4,865
2032	5,365

The DARAB, upon its review of the case, issued a decision on February 3 2004 "declaring the addendum to the lease agreement null and void; declaring the original lease agreement to be valid and binding between the two parties; that any renegotiation of the existing lease agreement must comply fully with Administrative Order No. 5, series of 1997." As stipulated in the said Administrative Order, "the terms and conditions of the lease agreement including the determination and computation of lease rental of palm oil land shall be mutually agreed upon by the contracting parties, subject to the approval of the PARC Executive Committee upon the recommendation of the PARCCOM and certification of the DAR that the lease agreement does not violate agrarian policies and principles". Furthermore, under the same A.O., it importantly states that "Renegotiation of the amount of lease rental shall be undertaken by the parties every five years, subject to the recommendation of the PARCCOM and review by the DAR."

This first decision was favourable to NGEI, but FPPI filed a Motion for Reconsideration to the DARAB. On March 22 2004, the DARAB issued its

resolution, completely reversing the earlier decision. Below is an excerpt of the DARAB decision:

> "Admittedly, foregoing facts and evidences were inadvertently overlooked by the Regional Adjudicator, and to insist on its honest error and inadvertence is not only fair to the respondent but will award undeserved benefits to complainants. Wherefore, the decision of the Regional Adjudicator dated February 3 2004 was set aside and the decision was rendered declaring the validity of the Addendum executed on January 29 1998 and accordingly dismisses the case on the grounds afore-stated amounting to lack of cause of action."

NGEI appealed against this decision to the Court of Appeals (CA). On May 9 2008, the CA promulgated its decision "affirming" the DARAB final resolution of the case. NGEI has elevated the case to the Supreme Court, asking for a review of the decision of the Court of Appeals. NGEI's petition to the Supreme Court is docketed as G.R. No. 184950. At present, no decision has been taken on the case. NGEI and its members are hoping for the speedy resolution of the case. In the meantime, FPPI has withheld all rentals payments and economic benefits due to the cooperative because of the unresolved case still pending at the Supreme Court.

Apart from this law suit in relation to the lease agreement, FPPI had been subject to various labour cases lodged by co-op members/FPPI workers to the Department of Labour and Employment (DOLE), particularly regarding the illegal dismissal of employees/workers. NGEI's current Chair, Kim Ronquillo, has requested NGOs and other support organisations nationally and internationally to support them in their case against FPPI.[49]

Violation of agreements

The Cuevas Agrarian Reform Beneficiaries Multi-Purpose Cooperative (CARBEMPCO) is a registered Agrarian Reform Beneficiary (ARB) with thirty nine members. In 2003, they entered into an oil palm project with AGUMIL Philippines, Inc. (API). The cooperative entered into a Management

Service Agreement with AGUMIL, whereby the latter provides for the technical management and guarantees the cooperative's PhP 10 million loan from the Land Bank of the Philippines. CARBEMPCO, on the other hand, will develop and operate the palm oil plantation of 220 ha. According to CARBEMPCO officers, the early beginnings of the operation of the oil palm plantation and the management of the cooperative was a turbulent period due to the demands of cash-strapped members to be paid their initial shares prior to the amortisation period. AGUMIL and LBP were reluctant to meet this demand and a series of dialogues and confrontations followed. It was only in October 2007 that regular shares were given to members from the proceeds of FFB sold to AGUMIL.

Apart from venturing into oil palm, CARBEMPCO had initiated other programs and projects earlier on. CAMBEMPCO's five year development plan outlines the thrust of the cooperative in improving its business operations. Members of the cooperative and its workers are already provided benefits such as the Social Security Service (SSS), Philhealth and emergency medical assistance. It has also received various grants such as the DAR and Agrarian Reform Support Project (ARSP) of the European Union, which supported the rehabilitation of road from the farm to the market in Brgy. Cebolin and Cuevas, and the establishment of nursery and agro-forestry projects. Livelihood assistance was provided by PATSSARD, with which they implemented goat-raising, feed mill water system and hog-raising. From the DOLE, they received financial assistance for a vegetable gardening project for female cooperative members. To date, CARBEMPCO has actively pursued its partnership with the LGUs and other government agencies such as DAR, CDA, TESDA and with NGOs.

Although the early period of CARBEMPCO's operations was generally smooth sailing, in recent years, the company had experienced problems with AGUMIL in relation to several violations of the terms and conditions of the Management and Services Agreement, such as delayed payments, loan interest and surcharges, price differences and the indiscriminate firing of labourers/ workers on the oil palm plantation. The cooperative formally raised these concerns with the company and during the National Palm Oil Congresses, but to this date, the problems remain unresolved.

Another cooperative, the Kabingwangan Upland Farmers Tribal Multi-Purpose Cooperative (KUFTRIMCO) also has an existing contract with API and LBP, a tripartite Production, Technical and Marketing Agreement, which they entered in 1998. KUFTMC is mostly composed of indigenous peoples who acquired a stewardship contract with the DENR under the Integrated Forest Stewardship Program (ISFP) over around 440 ha of forestland. They currently share an office with the local service centre of the NCIP in Brgy. Libertad, Bunawan, Agusan del Sur.

Similar to the marketing contract of CARBEMPCO, KUFTMC provides land and other farm inputs such as labour, while API extends free technical assistance and exclusively buys all the produce of the oil palm plantation at a guaranteed or prevailing price for a period of twenty-five years. LBP, on the other hand, provides the credit requirements of the project. In this case, LBP extended PhP 20.5 million development loan under its Todo-Unlad Financing Program. In 2006, KUFTRIMPCO paid for a quarterly amortisation of PhP 1,425,722.

Over the years, KUFTRIMCO has had a difficult time keeping up with its financial obligations towards the Land Bank. Among the reasons for their failure to pay are failing yields, high cost of operations and delayed payments of API for their FFB deliveries. Adhering to the demand of the LBP that the API should take on the management of the plantation to restore the projects' operations to normal production standards and until they would be able to meet their financial obligations, KUFTRIMPFCO entered into a Management Service Agreement with API in November 2006. Under this agreement, API is given free hand to manage the project and in return for its services and expenditures, charges KUFTRIMPCO 14% compounded interest per annum. This also applies to any accrued amount representing API's management fees. The Management Service Agreement will be in effect for a period of five years or until API's production targets and loan obligations of KUFTRIMPCO to LBP and API have been fully paid. Thus, KUFTRIMPCO is now in a position where it is mired in unpaid loans and has lost control over the management of its oil palm plantations. This has in turn aggravated the financial situation of its members, many of whom were already poor farmers.

Violation of workers' rights

The Filipinas Palm Oil Workers Union-National Federation Labour Union-Kilusang Mayo Uno (FPIWU-NAFLU-KMU) officially represent the plantation and mill workers of FPPI in negotiating for their Collective Bargaining Agreement with the company since January 19 2007. The majority of the officers and members of the workers union are also members of NGEI and NGPI, the ARB cooperatives that leased their collective CLOA to Filipinas Palm Oil, Inc. (FPPI). The current composition of the workers union includes 348 regular workers and 588 casual (contractual) workers.
On October 4 2010, the FPIWU staged a strike, citing two issues against the company: 1) deadlock in the Collective Bargaining Agreement and 2) unfair labour practices that violated stipulated provisions in the CBA. The union alleged that the FPPI management was not serious about its negotiations and had resorted to intimidation of its workers. On the CBA deadlock, the following were identified as "unacceptable" decisions of the company: 1) wage increase of PhP 4 for 2010 and another PhP 4 wage increase in 2011 and 2) additional rice subsidy of PhP 1,000 or a total of PhP 6,000 rice subsidy annually. The CBA deadlock for the past three years has made life extremely difficult for the workers considering that "casual" workers only receive PhP 150 per day and regular workers receive PhP 223-272 on average per day. As food and other basic product costs have increased by about 12% and the company reportedly earned a net income of PhP 1,231,606,674.80 billion for the period 2008-2009, the labour union believes that their demands are reasonable and could easily be met by the company.

Other violations in the CBA documented by the Labour Union for the past three years include the following: 1) non-regularisation of workers with positions; 2) lack of adherence to the agreement to pay for the repair of the houses of workers; 3) non-regularisation of "casual" workers who replaced those who had retired, were handicapped or had died; 4) indiscriminate firing of a female contractual worker (who replaced her dead husband) without any valid reason; 5) lack of provision of the Cost of Living Allowance (COLA) to workers as required by law; 6) underpaid "casual" workers; 7) non-implementation of salary increase as stipulated in the CBA; 8) no thirteen month pay given to regular workers; 9) non-payment of service incentive and holiday leave

for casual workers; and 10) mandatory benefits such as the Social Security Service (SSS) and *Pag-Ibig* Home Development Mutual Fund[50] not given by the company.

FPIWU alleges that the palm oil company has failed to honour its obligation as stipulated in the CBA and has not taken their demands seriously since they lodged their complaints regarding unfair labour practices. Instead, the company requested the Office of the Department of Labour and Employment (DOLE) to assume jurisdiction (Assumption of Jurisdiction) over the case. The Assumption of Jurisdiction (AJ) would give power to the DOLE to prevent a labour "strike" and order workers to resume work immediately. FPWU did not see this as an appropriate response to their demands, which come from members who are mainly driven by hunger and asserting their rights under the law.

Since the workers started the "strike", operations of both the plantation and the mill have completely stopped. According to the leaders of the union, the protesters are prepared to carry on their protest as long as the company fails to address their demands.

CASE STUDY 5.
Revisiting the Tabung Haj oil palm project

In the records of the oil palm industry, one can hardly find any account of a failed oil palm project as blatant as that of Tabung Haj. The story of the Tabung Haj project illustrates the case of a bilateral agreement (between Malaysia and the Philippines) that went wrong and how CARP was manipulated to grab lands from unsuspecting indigenous peoples. Atty. Ibarra Malonzo provides a detailed account of the case in his article published in the Philippine Daily Inquirer[51]:

"The case of the Malaysian company Tabung Haji will illustrate the folly of a foreign investor wishing to do good by investing in oil palm development in Mindanao. Tabung Haji manages the Haj Fund of Muslims collected by the Malaysian government to finance their obligatory pilgrimage to Mecca. It has gone into big oil palm development projects in many countries.

In 1996, Malaysian Prime Minister Mahathir directed Tabung Haji to undertake a 30,000 ha oil palm development project in Lanao del Sur with corresponding crude palm oil mills and refinery to hasten the pace of peace and development efforts in the wake of the breakthrough peace agreement between the Moro National Liberation Front (MNLF) and the Philippine government. Tabung Haji would finance the entire project.

As an initial project, Tabung Haji entered into a joint venture agreement with Janoub Philippines, Inc., a company owned by former Ambassador Abdul Khayr Alonto. Janoub undertook to acquire title over 5,500 ha of land situated in the municipality of Tagoloan II, Lanao del Sur and to acquire usufruct for and on behalf of the joint venture company, Tabung Haji Janoub Philippines, Inc. (THJP). For this contribution to the joint venture, Janoub was given 40% of the shares of stocks of THJP, while Tabung Haji owned 60% of the said shares. In addition, THJP paid a substantial amount of money to Janoub to cover expenses incurred for securing title and usufruct over the 5,500 ha of land.

This land was an agrarian reform settlement known as the Kapai settlement, awarded by President Marcos in 1978 to Mr. Alonto and a group of MNLF followers as part of a peace process following the peace pact brokered by Libyan President Ghaddafi in 1974. None other than President Ramos himself committed national government resources to facilitate titling of the Kapai settlement by the DAR.

Without waiting for the issuance of the Certificate of Land Ownership Award (CLOA) by the Department of Agrarian Reform-Autonomous Region of Muslim Mindanao (DAR-ARMM) and the registration of the CLOA with the Land Registration Authority (without which there is no valid title), THJP proceeded to clear the land and plant oil palm in 1997. But soon, opposition to the project arose from Muslim and *lumad* (indigenous peoples) occupants of settlement lands led by municipal mayors of Tagoloan and Talakag, the latter located in Bukidnon province. Both mayors claimed that their constituents owned the settlement lands. The beneficiaries previously identified by DAR-ARMM were all followers and relatives of Mr. Alonto who were not residents of the Kapai settlement.

Moreover, it turned out that 2,200 ha of the Kapai settlement fell within the boundary of the municipality of Talakag occupied by the members of the Higaonon tribe. Neither the Higaonon nor the Muslim natives of Tagoloan were identified as beneficiaries by DAR-ARMM nor were they even consulted by Janoub on the project.

For three years, the joint venture company persevered in clearing and planting 1,000 ha of oil palm despite growing opposition. In the absence of a clear title, agencies of the ARMM government issued certifications that the CLOA was forthcoming.

Faced with insurmountable opposition and holding no registered title to the Kapai settlement, in January 2000, Tabung Haji decided to pull out of the project, but only after having invested a total of PhP 200 million. Today, the 3 to 4 year old oil palm trees, chosen from the best hybrid seedlings of Malaysian nurseries, are already fruiting. But no one is harvesting because the ownership of land and plantation remains unsettled. Meanwhile, the oil palm trees are being choked to death by shrub, vine and returning forest.

Two years ago, President Arroyo visited the Tabung Haji plantation after Prime Minister Mahatir called her attention to the failed project during an earlier state visit to Malaysia with a begging bowl in hand for oil palm development assistance. A witness I interviewed reported that President Arroyo, employing her trademark *taray* [assertiveness], chided Mr. Alonto for claiming ownership to the 5,500 ha of land, saying, "How can you own these lands? These are CARP lands. A beneficiary can only own a maximum of three hectares."

Three months ago, I talked to the *barangay* chair of the area covered by the 1,000 ha oil palm plantation. Interestingly, he identified himself as a Muslim *lumad*. He claimed that the Muslim *lumad* of Tagoloan and the Higaonon of Talakag are the rightful owners of the land covered by the Kapai settlement. They favour the oil palm project on condition that they are listed in the CLOA and get a fair share of the harvest. But, if the problem of the CLOA is not settled soon, they will cut down the oil palm plantation and plant rice and corn for a living.

As a result of the Tabung Haji investment debacle, the Philippines have become a laughing stock in Malaysia. If three presidents could not fix a simple land title for 5,500 ha as local equity, why take seriously President GMA's ambitious goal to develop two to three million hectares for agribusiness?"

General concerns and issues relating to oil palm

The 50,000 hectares or so of land in the Philippines currently devoted to oil palm plantations is small compared to the millions of hectares of oil palm plantation areas in Malaysia and Indonesia. Thus, the threat of the scale and number of oil palm plantations is not as grave as in these countries. However, notwithstanding the issue of scale, the findings in this research have pointed out several serious issues pertaining to the conversion of prime agricultural

lands and forest lands into oil palm, land-grabbing in Agusan and in Lanao, violations of indigenous peoples in the case of Bukidnon and in Palawan, environmental issues raised in the case of Palawan and Bohol, violation of palm oil workers' rights and the breaching of terms of agreements between ARB cooperatives and API in Agusan.

Promises and realities

From the perspective of the palm oil industry and government, oil palm has the potential to significantly contribute to national and local economic growth as there is very high domestic and global demand for CPO. Thus, the drive for oil palm expansion has set the stage for the aggressive promotion of the industry and negotiations with smallholders, ARB's and indigenous communities that are holders of CADTs or CALTs, holders of CBFMs and also LGUs.

As the industry promotes the imperatives of expanding the palm oil industry, the opening up of lands to oil palm cultivation promises income and benefits that other agricultural crops will find difficult to compete against. Some promoting the industry go so far as to claim that oil palm development will bring untold wealth to those involved. Taking into consideration the huge demand at present in both the domestic and the largely unexplored international market, there is indeed a great potential for the palm oil industry to contribute to the Philippines' economic development and generation of employment.

At present, the palm oil industry is private-sector led, by nature primarily governed by the rules of the markets (global and domestic) and driven by profit. This is the same driving force that took centre stage in the historical economic development of Mindanao as the "land of promise" in the 1950s, which spurred the rush for large scale consolidation of vast areas of lands in the hands of rich, politically-influential elites and foreign transnational corporations. On the other hand, current realities on the ground and contemporary land conflicts that remains prevalent in many areas in the Philippines are reflective of the wanton disregard of rights, the failure to equitably share wealth among the poor and marginalised and the destruction of the environment for the sake of business and profit.

Land rights and poverty

Philippine laws generally guarantee land rights of marginalised communities. Tenures such as the CLOA and CADTs/CALTs, and the various DENR forest stewardship instruments seek to address the problems of landlessness and poverty that remain widespread in the country. Many experiences of communities, however, point to the fact that mere ownership of land is not enough to improve their conditions. At this point, it is worth noting the interesting debates of de la Rosa and Malonzo around agricultural development and poverty. De la Rosa contends that corporate farming in Mindanao, particularly the one "being spearheaded by government and the landlord-transnational combine in Mindanao has not eradicated hunger and poverty in Mindanao". Malonzo, on the other hand, argues that it is the lack of investments in agriculture in Mindanao that has resulted in a rural development gridlock. In the case of agrarian reform, this program has made access to large-tracts of lands in Mindanao for oil palm development by agri-business corporations difficult, if not impossible. No agribusiness investors in their right mind will invest hundreds of millions of pesos for plantation development without a secure and valid land tenure instrument. Malonzo proposes instead a convergence strategy of drawing together the different stakeholders, including the landowners and agribusiness investors with capital and knowledge.

Over the past years, the corporate-farming agricultural model that de la Rosa had referred to has dominated the agricultural development landscape in Mindanao. This has been the case for Mindanao's large-scale plantations of banana, pineapple, oil palm and recently, bio-fuel plantations. Some of the problems he cites with this model are that it is profit-driven and that control is mainly in the hands of the transnational and Filipino agribusiness investors. Government regulatory mechanisms are either not in place, or have done very little to protect the rights of small landowners. In agribusiness contracts, such as the ones for oil palm, investors have free rein in stipulating conditions that are designed to protect their investments, but completely disregard the conditions of the generally poor and small landholders. In the case of NGEI and other ARB cooperatives, these landowners are only paid a measly rental fee for their lands.

Key challenges and recommendations

Palm oil is increasingly becoming a promising crop in terms of potential income and benefits to landowners as well as contributing to a thriving domestic industry and employment generation. However, the various social, economic, environmental impacts of oil palm expansions are being experienced differently by different stakeholders, including the local cooperatives engaged in the industry, indigenous communities and civil society. Access to justice for individuals whose rights have been violated as a result of palm oil expansion stands out as a key area of concern. Legal remedies are in place, but do not always work. In other words, "the legal is political". Moreover, State policy frameworks and legislation on land and resources generally support oil palm expansion, but are often contradictory of indigenous peoples' rights (e.g. UNDRIP, IPRA) and environmental laws as it overlaps with other land uses such as ancestral domain, agricultural land for food (e.g. rice, corn), forest and protected areas. In addition, oil palm expansion is occurring amidst overlapping land rights conflicts in relation to mining, logging and other large-scale bio-fuel/agro-fuel plantations.

The expansion of oil palm raises numerous questions:

- How do we regulate the oil palm industry and curb its "bad" practices?
- What principles and standards should be pushed on the oil palm industry?
- What are the minimum standards that should govern the operation and practice of oil palm industry?
- How can the legal system be made responsive to the injustices created by the oil palm industry sector?
- How do we press for State accountability over its failure to address land rights issues, lack of livelihood support on poor and marginalised farmers, failure to support its community forestry programs (e.g. CBFM, ISFP) and ancestral domain areas?
- What approach can be taken towards government bodies that collude with oil palm companies?
- Is oil palm a sustainable livelihood option for poor and marginalised farmers and indigenous peoples?

- Is oil palm an ecologically-friendly crop?
- Is it an economically-viable vis àvis other crops in terms of fair and equitable benefit-sharing for landowners and the government?
- What development approach should we adopt to develop this prime commodity that takes into consideration effective land use, equitable benefit-sharing, environmental impacts and most importantly respect for human rights?
- What is the role of civil society in addressing oil palm issues?
- What forms of collaboration should be forged among different stakeholders (e.g. landowners and planters, indigenous communities, industry intermediaries, government)?
- What inside and outside strategies should be undertaken in addressing oil palm industry issues and what forms of collaboration at the local/national and regional/international should be taken?

In response to these concerns, the following recommendations have been devised to help overcome the numerous challenges posed by oil palm expansion in the Philippines.

- Documenting "success" stories throughout the Philippines, not only in terms of monetary gain, but also in terms of other important values such as human rights, ecological preservation, respect for cultural norms and so on. Such stories and experiences in different oil palm areas must be shared so as to stimulate a dialogue between the various stakeholders involved
- Documenting case studies (of abuses and violations) for advocacy and lobbying purposes
- Building greater awareness of communities regarding their legal rights
- Building the capacities of local communities to make informed choices when engaging into contracts or agreements with investors, palm oil companies and banks
- Reforming the legal system so that it is responsive to the injustices created by the oil palm industry sector
- Undertaking a detailed analysis of the social, economic, and environmental impacts of agro-fuels; pending that, a moratorium on agro-fuel development

needs to be enforced

- Assessing any "perverse incentives" of the agro-fuel industry
- Lobbying the government to put into place regulatory and enforcement mechanisms to forestall forest degradation and all the social, economic, and cultural ramifications this brings to local communities
- Developing a dossier or case study of instances of rights violations in the Philippines in order to disseminate and publicise the cases and stimulate advocacy.
- Creating a dossier on human rights and oil palm for the national Human Rights Commission and activate joint action through the national Human Rights Commission
- Establishing a network for indigenous peoples to share their experiences and lessons learned
- Filing the case of Palawan to the National Court
- Linking Philippines NGOs to regional level advocacy networks
- Creating campaign calls to stop the expansion of plantations, uphold the rights of smallholders and plantation workers, provide access to justice, give recognition to community ownership over land and natural resources, and recognise their right to self determination and right to life
- Calling for improvements in industry standards through certification processes such as the RSPO
- Engaging at the national level through: advocacy, community participatory mapping, reforestation projects/multi cropping/sustainable farming, negotiations with companies and the government, meetings and consultations with public and private investors
- Informing and engaging Parliamentarians in the issue of palm oil
- Lodging police reports in cases of human and labour rights violations
- Sending petitions, memorandums and letters
- Lobbying for community safeguards using national and international laws
- Using the RSPO to gain political space and voice for the powerless

(Endnotes)

1 PPODO 2006
2 *ibid.*
3 Derequito 2005
4 From the Keynote Speech on "Pursuing Palm Oil Potentials" by DAR Secretary Luis Lorenzo, Jr. during the 3rd National Palm Oil Congress held in Butuan City, July 16-17 2003.
5 Presidential Decree 1468, Article 1, Section 2.
6 Draft document from the Philippine Coconut Authority presented during the Palm Oil Congress.
7 From the speech "Seizing the Oil Palm" by Danilo Coronacion, Administrator of the Philippine Coconut Authority, during the 3rd National Palm Oil Congress, Butuan City, July 16-17, 2003.
8 Some of the salient provisions of the law include: a) phasing out of the use of harmful gasoline additives b) mandatory use of bio-fuels with the following requirements: 1% biodiesel blend and 5% bioethanol blend for all diesel and gasoline fuels sold in the country.
9 PPODO 2006
10 *ibid.*
11 *ibid.*
12 *ibid.*
13 Mini-Workshop on Oil Palm Development in Mindanao, June 18 2009.
14 Palm Oil Industry Situationer Report by the Department of Agriculture-Agribusiness and Marketing Assistance Service 2007.
15 The Philippine Oil Palm Development Plan 2004-2010. Mill to be established is either of a 30 ton FFB capacity for every 7,000 ha or a 20 ton FFB capacity for every 5,000 ha.
16 David et al. 2003; Llanto & Estanislao 1993
17 1987 Philippine Constitution, Article 7, Section 2-3.
18 Executive Order No. 263, 1996.
19 DENR Administrative Order No. 29, 1996 Series.
20 The period covered by the CBFMA is of twenty-five years, renewable for another twenty-five years.
21 Lamcheck 2006
22 DENR's commercial forestry programs such as the Industrial Forest Management Agreement (IFMA) and the Socialised Forest Management Agreement (SIFMA) obtain funds from the General Appropriations (GA) approved by the Philippine Congress.

Funding for CBFM relies mainly on donors under the Foreign Assisted Projects (FAPs). Thus, the lack of assured or guaranteed funding to implement the program has effectively derailed the success of achieving its avowed goals.

23 Republic Act 8371

24 *ibid.* section 3.

25 The 2006 FPIC Guidelines on Free Prior Informed Consent came into effect on October 10 2006.

26 2003 Philippine Country Report of UN Special Rapporteur on Indigenous Peoples; ICERD 2009

27 Flores-Obanil & Manahan 2006

28 According to the FMB Region 10 Technical Director, this is the only existing policy that governs oil palm.

29 Memorandum Circular No. 2004-12, August 2004.

30 *ibid.*

31 Flores-Obanil & Manahan 2006

32 de la Rosa 2005

33 The other cooperative beneficiary is the Mapantig Agrarian Reform Beneficiaries Multipurpose Cooperative (MAPARBEMPCO).

34 Clamonte 2002; Pacaba-Deriquito 2004

35 Fox cited in Borras 1998:9

36 Griffin et al 2002:314

37 Cited in Dalabajan 2010

38 Based on Key Informant Interview with Mr. Ponciano Narciso, General Manager, PPVOMI/AGPI-Palawan Operations, October 14 2010.

39 Agumil Phils. Inc. – Palawan Operations. Hectarage Statement as of July 31 2010. It is worthy to note that this figure does not include some twelve hectares in the municipality of Bataraza (total area based on the estimate of the source), which based on initial information at hand, are planted with oil palms by the land owners. These plantations can be found in *barangay* Sumbiling and Taratak. Furthermore, this figure is not consistent with the company's December 2009 Statement of Hectarage which reported around 3,790 hectares, consistent with the figure mentioned during the interview with the PPVOMI General Manager in October 2010.

40 Dalabajan 2010

41 *Palm Oil Industry Destined for the Philippines* 2002

42 Department of Agriculture 2009

43 PPOIDC is composed of Governor as Chairman, Vice Governor as Executive Vice Chair, PCA as Lead Agency , along with other members – Office of the Provincial Agriculturist, DENR, PCSD, Provincial Cooperative Development Office, DAR, Land Bank of the Philippines, Palawan State University, Provincial Assessor, PPVOMI, BPI,

LGUs, DTI, ELAC, NCIP and the City Agriculture Office.

44 Agusan Plantations Group 2010

45 PCA Palawan Field Office 2009

46 PCA- Palawan Field Office 2009

47 Derequito 2005:21

48 *ibid.*

49 Philipine Oil Palm Meeting in Brgy. Bayanga, Cagayan de Oro City, August 23-24 2010.

50 The *Pag-Ibig* Home Development Mutual Fund is a mandatory benefit for all Filipino employees in both private and public companies whereby both the employer and employee give regular monthly contributions taken from the monthly salary of workers and additional contributions from the employer. Employee benefits include housing and salary loans.

51 Malonzo 2010

About the authors

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Marcus Colchester is English and received his doctorate in Social Anthropology from the University of Oxford. He is Director of the Forest Peoples Programme. Marcus has over 30 years' experience working with forest peoples in the humid tropics. His expertise is in indigenous peoples, social and political ecology, standard setting, human rights, environment, development land tenure, policy reform and advocacy, FPIC and conflict resolution. He has served on several committees of the Roundtable on Sustainable Palm Oil. Marcus has worked intensively on logging, plantations, palm oil, extractive industries, dams, colonisation and protected areas.

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Sophie Chao is French and Chinese. She holds a BA in Chinese and Tibetan studies and a Masters in Social Anthropology from the University of Oxford. Her first experience of working with ethnic minorities was on the Tibetan plateau, where she was curriculum advisor and English teacher to pastoral nomads at Nyanpo Yurtse monastery. Sophie has worked as a consultant for the Literacy and Non-Formal Education Division at UNESCO (Paris) and is Assistant to the Director of the Forest Peoples Programme (UK). Her areas of research are legal and human rights, land tenure, responsible finance, customary law and palm oil expansion in South East Asia.

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HEP Sokhannaro is a forestry and livelihoods specialist who has been working with forest-dependent communities for nearly a decade in the areas of development, and implementation and monitoring of community forestry management at the national level. Sokhannaro was Land Information Centre Coordinator with the NGO Forum on Cambodia, which has played a leading role in policy advocacy on the land and forestry sectors in Cambodia at the national and international level for several years. At present, Sokhannaro works as Clean Development Mechanism (CDM) project manager jointly with the Group for Environment, Resources, Energy and Solidarity (GERES Cambodia). He assumes responsibility for ensuring that the project progresses towards meeting the accredited standards to generate carbon credits according to the voluntary carbon emission reduction methodology set out by the UNFCCC. Sokhannaro holds a Masters Degree in Sciences in Natural Resources Management from the Asian Institute of Technology in Bangkok, Thailand.

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Jo Villanueva

Jo Villanueva is a human rights and indigenous peoples' advocate, feminist and mining activist. For the past 19 years, she has worked with indigenous peoples and local communities, development organisations and social movements in the Philippines and others countries in Asia on the issues of land rights, natural resources and environment, extractive issues, women/gender and organisational development. She was former Executive Director of the Legal Rights and Natural Resources Center/Friends of the Earth-Philippines. She is a Fellow of the Samdhana Institute. Jo is also one of Samdhana's regional advisers for the Global Greengrants Fund (GGF) and adviser/facilitator for the Indigenous Peoples Support Fund (IPSF) in the Philippines. She currently resides in Cagayan de Oro in Mindanao.

About the partners

RRI (Rights and Resources Initiative)

The Rights and Resources Initiative (RRI) is a strategic coalition comprised of international, regional, and community organizations engaged in development, research and conservation to advance forest tenure, policy and market reforms globally. The mission of the Rights and Resources Initiative is to support local communities' and indigenous peoples' struggles against poverty and marginalization by promoting greater global commitment and action towards policy, market and legal reforms that secure their rights to own, control, and benefit from natural resources, especially land and forests. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit www.rightsandresources.org.

RECOFTC (The Center for People and Forests)

RECOFTC occupies a unique space in the world of community forestry in Asia and the Pacific as the only international, not-for-profit organisation that specialises in capacity building and devolved forest management from grassroots to the highest levels.

Starting out as a learning organisation in 1987, the Center has actively supported the development of community forestry institutions, policies and programs in the region. Over the years, RECOFTC's work has evolved through four thematic areas of engagement: expanding community forestry; people, forests and climate change; transforming conflict and securing local livelihoods.

Commercial agro-forestry, such as palm forests, has impacts across all these four thematic areas and RECOFTC's approach is guided by principles of clear and strong rights, good governance and fair benefits for millions of forest dependant people. RECOFTC pursue their goals through an active network of communities, partners, donors, NGOs, and government institutions at local and international levels through their offices in Thailand, Vietnam, Indonesia and Cambodia. For more information, please visit www.recoftc.org.

Sawit Watch

SawitWatch is an Indonesian non-governmental organisation which focuses on palm oil issues through the empowerment of synergistic movements of indigenous peoples, local communities, oil palm farmers and labourers towards social and ecological justice in the palm oil industry. SawitWatch's individual members are present in seventeen provinces where oil palm plantations are being developed. Key activities are undertaken to 1) establish, provide and manage data and information on palm oil issues; 2) increase the capacity of smallholders, labourers and indigenous peoples; 3) facilitate conflict resolution between smallholders, labourers and indigenous peoples in large-scale oil palm plantations; 4) establish synergistic movements of smallholders, labourers and indigenous peoples; 5) encourage the adoption of state policies in favour of smallholders, labourers and indigenous peoples. SawitWatch is committed to empowering smallholder farmers, strengthening workers' and trade unions; strengthening the accountability of sustainable palm oil regimes; strengthening the accountability of the global palm oil industry and; encouraging responsible and accountable investments. For more information, please visit www.sawitwatch.or.id.

Samdhana Institute

The Samdhana Institute was formed by a group of individuals, activists, conservationists, and development practictioners, with a commitment of 'giving back' what they know to the next generation; and bringing together

skills, knowledge, experiences, networks, colleagues and friends; delivering maturity, strength and sustainability to Samdhana's work. At present, there are 64 Fellows who contribute their time and resources to build the capacities of local communities through coaching, mentoring, and facilitating thinking and strategies with community groups and advocates. The Samdhana Institute operates in two offices - the Regional Office based in Cagayan de Oro City, Philippines and the Indonesia Office based in Bogor, Indonesia. Samdhana is a member of the Southeast Asia Global Alliance fund - a partner of the Global Greengrants Fund Network. It administers a re-granting program through Small Grants of US$100 - $10,000 to fund communities and grassroots organisations in the areas of community-based natural resource management; institutional and leadership strengthening; and resolving environmental conflict and mediation. In the Philippines, the Indigenous Peoples Support Fund (IPSF) focuses on assisting indigenous peoples' communities and organisations. Seed fund is provided to IP projects aimed at ancestral domain development and sustainable management, environmental conservation, leadership and institution-building. For more information, please visit www.shamdhana.org.

Forest Peoples Programme (FPP)

Forest Peoples Programme is an international NGO founded in 1990 that supports the rights of peoples who live in forests and depend on them for their livelihoods. FPP works to create political space for forest peoples to secure rights, control their lands and decide their own futures by; getting the rights and interests of forest peoples recognised in laws, policies and programmes; supporting forest peoples to build their own capacities to claim and exercise their human rights; countering top-down policies and projects that threaten the rights of forest peoples; promoting community-based sustainable forest management; ensuring equity, counter discrimination and promote gender justice; informing NGO actions on forests in line with forest peoples' visions; and linking up indigenous and forest peoples' movements at the regional and international levels. For more information, please visit www.forestpeoples.org.

Glossary

***Adat*:** the customary, and often unwritten, laws of the indigenous peoples of Indonesia and Malaysia which govern various aspects of personal and social life, inclusive of land tenure and use. (see "customary law")

Alienated land: alienation, in property law, is the capacity for a piece of property or a property right to be sold or otherwise transferred from one party to another. Alienated land is land that has been acquired from customary landowners by the government, either for its own use or private development requiring a mortgage or other forms of guarantees.

Agro-fuels/bio-fuels/bio-diesels: fuels mainly derived from biomass or bio waste which are primarily used in the transportation sector and considered a greener form of energy and a means of reducing greenhouse gas emissions. Often looked upon as a way of energy security which stands as an alternative of fossil fuels that are limited in availability, their use has expanded globally, as has the expansion of agricultural products specially grown for the production of bio-fuels such as oil palm, soybean, corn, cassava and *jatropha.* (see "*jatropha curcas*")

Bagangan: local name for "rhinoceros beetles" in Palawan, Philippines. *Bagangan* has been cited as one of the pests to which oil palms are vulnerable.

***Berondol*:** fallen palm kernels.

Buri: *Corypha Elata,* or Talipot Palm. A large palm tree species found in the Philippines.

Cadastre: a comprehensive register of the geographic boundaries of an area or region. A cadastre commonly includes details of the ownership, the tenure, the precise location, the relief and area, the cultivations if rural, and the value of individual parcels of land.

Crude Palm Oil (CPO): commodity market terminology for the comestible vegetable oil extracted from the fruit of the oil palm tree through the milling process.

Customary law: traditional common rules or practices that constitute an intrinsic part of the accepted and expected conduct in numerous (indigenous) recognised by the State (see "*adat*").

Datu: *v*illage chieftain in the Philippines, usually the highest officials in the indigenous traditional political structure.

"Degraded" land: see "Idle land"

***Doi moi* reforms:** nation-wide economic reforms initiated in the 1980s in Vietnam as a means of enabling the country's transition towards a market economy. Land tenure policy reforms were part of *doi moi* and featured the decollectivisation of agricultural production and improvement of land tenure security along with the liberalisation of markets and the promotion of new economic incentives.

Economic Land Concession (ELC): a mechanism to grant state private land for agricultural and industrial-agricultural exploitation in Cambodia. The purposes for which they may be granted include investment in agriculture, rural employment and diversification of livelihood opportunities, and the generation of state revenues. Economic land concessions can only be granted over state private land, for a maximum duration of 99 years. These concessions cannot establish ownership rights over land. However, apart from the right to alienate land, concessionaires are vested with all other rights associated with ownership during the term of the contract.[1]

***Elaeis guineensis*:** African oil palm native to West Africa and used in commercial agriculture in the production of palm oil. Today's large-scale plantations of *Elaeis guineensis* are mostly aimed at the production of oil (which is extracted from the fleshy part of the palm fruit) and kernel oil (which is obtained from the nut).

Engineered consent: the manipulation of people without their consent or awareness to shape the decisions they make and the actions they take, generally in line with the interests of the manipulators.

Environmental Impact Assessment (EIA): A preliminary study usually carried out by EIA consultants to gather data related to the environmental effects of a development before deciding whether or not it should go ahead. Environmental assessment should lead to better standards of development and in some cases development not happening at all. Where developments do go ahead environmental assessments should help to propose proper mitigation measures.[2]

Free, Prior and Informed Consent (FPIC): the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC is now a key principle in international law and jurisprudence related to indigenous peoples. FPIC implies informed, non-coercive negotiations between investors, companies or governments and indigenous peoples prior to the development and establishment of oil palm estates, timber plantations or any other enterprises on their customary lands. (see "self-determination")

Fresh Fruit Bunches (FFB): oil palm fruit in compact bunches which grow after 24 to 30 months and from the kernel of which palm oil is extracted.

Gazettement: the publication of an official announcement concerning the designation of a particular area or land. In terms of forests, gazettement usually indicates that a forested area has been designated for protection by the State or other public authorities according to relevant legislation in force.

"Idle" land: land defined by the State as thinly inhabited, unproductive, under-productive, under-utilised, idle lands that can be transformed into zones of production for food and bio-fuels to solve the world's problem on food and energy without undermining local food needs. In reality, these areas may be existing agricultural lands or indigenous ancestral domains used by local communities.

Independent smallholder: independent smallholders while very varied in their situations are characterised by their freedom to choose how to use their lands, which crops to plant and how to manage them; being self-organised, self-managed and self-financed; and by not being contractually bound to any particular mill or any particular association. They may, however, receive support or extension services from government agencies.

***Jatropha curcas**:* a drought-resistant oil-containing perennial tree or shrub native to the American tropics and now cultivated primarily in tropical and subtropical regions around the world, due to its ability to grow well in marginal or poor soil, and as a source high-quality biodiesel fuel.

Kaingin: "shifting cultivation" (Philippines)

Kepata: leadman or foreman on oil palm plantations (Philippines)

***Konsep baru*:** also known as the "New Concept", *Konsep baru* is a Native Customary Rights land development scheme introduced by the Sarawak state government in 1995. In this scheme, all NCR lands in an area would be amalgamated into one large block deleting existing boundaries and only one land title would be issued, allowing. In terms of large scale plantations, the concept is that of a joint-venture model where either the Sarawak Land Custody and Development Authority (LCDA) or the Sarawak Land Development Board (SLDB) holds the NCR land-owners' interests in trust for them and, in turn, the agency would form a joint-venture company (JVC) with a well-established private company approved by the government.

Land grabbing: a usually swift acquisition of property (as land or patent rights) by domestic and transnational companies, often with encouragement and support from central governments and often for agricultural or industrial development.

Land tenure: the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Categories of land tenure include private, communal, open access and State. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

Leaseback: a financial transaction, where one sells an asset, such as land, and leases it back for a long-term period, therefore continuing to be able to use the asset but no longer owning it. After purchasing an asset, the owner enters a long-term agreement by which the land is leased back to the seller, at an agreed-to rate.

Leasehold: real property held by a tenant (lessee) under a lease for a fixed term, usually with conditions written in a lease, after which it returns to the freehold owner (the lessor).

Legal pluralism: the co-existence and interaction between multiple legal orders such as international, state, customary, religious, project and local laws, all of which can act as bases for claiming property rights. In a process referred to as "forum shopping", individuals may opt for one or another of these legal frameworks as the basis for their claims on a resource. The existence of multiple legal frameworks can thus allow considerable flexibility for people to manoeuver in their use of natural resources and of land. It also reflects the dynamism of property rights, as the different legal frameworks do not exist in isolation, but mutually influence each other, and can transform over time. However, legal pluralism can also create uncertainty, particularly in instance of conflict over the same resources, such as land, since any individual

is unlikely to have knowledge of all types of law that might be relevant, and because rival claimants can make use of different types of legal knowledge to lay claim to a resource.[3] (see "*adat*" and "customary law")

Lumad: a Cebuano term denoting a group of non-Islamised indigenous peoples of Mindanao, Philippines.

Mono-cropping: the high-yield agricultural practice of growing a single crop year after year on the same land, as undertaken for oil palm, maize, soybean and wheat.

Monopsonistic relationship: a market form in which only one buyer faces many sellers in a relationship where demand comes from only one source. A common theoretical implication of a monopsonistic relationship is that the price of the good is pushed down near the cost of production. This exemplifies imperfect competition, similar to a monopoly, in which only one seller faces many buyers.

Nuclear Estate Scheme (NES): a scheme by which a state plantation acts as a marketing/processing centre with a demonstration farm for technical extension, along which smallholders are organised in a manner similar to contract farming.

Orang asli: Malaysian term meaning "original people" or "first people" and synonymous to the term "indigenous people". Most *orang asli* live in Peninsular Malaysia and are divided into three main tribal groups; the Semang (Negrito), Senoi, and Proto-Malay (Aboriginal Malay). They number around 60,000 of which 60% live in the rainforest.

Outgrower scheme: an agreement established in the Philippines between farmers and multinational agribusiness companies whereby large conglomerates buy all the produce of the cooperative members who cultivate a particular crop.

Pag-Ibig: Home Development Mutual Fund (Philippines). A mandatory benefit for all Filipino employees in both private and public companies whereby both the employer and employee give regular monthly contributions taken from the monthly salary of workers and additional contributions from the employer. Employee benefits include housing and salary loans.

Panglima: traditional indigenous leader in Palawan, Philippines.

Paraquat: a full-range herbicide widely used on oil palm plantations and known to poison thousands of plantation workers and small farmers every year.

Peatland: an accumulation of partially decayed vegetation matter often forming in wetland bogs and peat swamp forests which is contains of huge amounts of sequestered carbon and is harvested as an important source of fuel in certain parts of the world.

Rabas: the massive clearing of land for plantation development (Philippines)

The Roundtable on Sustainable Palm Oil (RSPO): a multi-stakeholder non-profit body established in 2004 and composed on stakeholders from seven sectors of the palm oil industry - oil palm producers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs and social or developmental NGOs - which seeks to improve company practices in terms of oil palm expansion and production.[4]

Schemed smallholder: smallholders who are structurally bound by contract, by a credit agreement or by planning to a particular mill. Scheme smallholders are supervised in their planting and crop management techniques, and are often organised or directly managed by the managers of the mill, estate or scheme to which they are structurally linked.

Self-determination: a fundamental right of all peoples that underpins the work of the United Nations. In relation to indigenous peoples in particular, this right is stipulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Article 3: indigenous peoples have the right to "freely determine their political status and freely pursue their economic, social and cultural development" and Article 4: "indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." (see "Free, Prior and Informed Consent (FPIC)")

Social Impact Assessment (SIA): a procedure that forms part of the formal planning and approval process for development projects in several countries in order to categorise and assess how major developments may affect populations, groups, and settlements.[5] SIA is often carried out as part of, or in addition to, Environmental Impact Assessment, but it has not yet been as widely adopted as EIA in formal planning systems, often playing a minor role in combined environmental and social assessments. (see "Environmental Impact Assessment (EIA)")

Smallholder: farmers growing oil palm, sometimes along with subsistence production of other crops, where the family provides the majority of labour and the farm provides the principal source of income and where the planted area of oil palm is usually below 50 hectares in size. (RSPO definition) (see "scheme smallholder", "independent smallholder")

Special Agricultural and Business Lease (SABL): in Papua New Guinea, a process called 'lease-leaseback' wherein the State can acquire a lease from customary owners theoretically with their consent and re-issue a lease on that land for agricultural or economic development purposes. Under these lease agreements, the government leases customary lands from traditional owners and re-leases the same lands, often to a third party, with customary rights to the lands suspended for the term of the lease.

Slash and burn agriculture: (see "swidden agriculture")

Swidden agriculture: an agricultural technique of alternating clearance of forest and a short cultivation period with a long fallow period during which forest returns and soils recover. Swidden (or slash and burn agriculture) involves cutting and burning of forests or woodlands to create fields.

"Vacant" land: see "idle" land".

(Endnotes)

1 OHCHR 2007

2 FOE 2005

3 Meinzen-Dick & Pradhan 2002

4 Colchester & Lumuru 2005

5 International Association for Impact Assessment (IAIA)

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Oil Palm Expansion in South East Asia
Trends and implications for local communities and indigenous peoples

The palm oil sector worldwide is in a phase of rapid expansion but has been strongly challenged by national and international civil society organisations that have shown that indiscriminate land acquisition and land clearing for oil palm is leading to rapid habitat loss and species extinctions, alarming green-house gas emissions, the dispossession of indigenous peoples, and the immiseration of the rural poor.

This insightful study by Forest Peoples Programme, SawitWatch, Samdhana Institute and the Centre for People and Forests documents in detail and for the first time the way oil palm plantations are now expanding in very different ways across South East Asia as a whole. The study complements the better known experiences in Malaysia, Indonesia and Papua New Guinea with new case studies of the processes of oil palm expansion in Thailand, Cambodia, Vietnam and the Philippines.

Rising global demand for edible oils and biofuels, global trade, escalating commodity prices and surging international investment are among the main drivers of this expansion. But domestic considerations are also significant. National governments are promoting oil palm to meet rising domestic demand for edible oils, to reduce their countries' dependency on imported fossil fuels and to limit their loss of foreign exchange. Moreover, where the circumstances are favourable, small scale farmers themselves are choosing to plant oil palm as a lucrative crop.

The consequences of oil palm expansion for local communities and indigenous peoples are thus very varied. Comparison of the national experiences shows that where farmers' and indigenous peoples' lands are secure and where there is rule of law, oil palm tends to develop modestly as a small-holder crop with better outcomes for local people in terms of income, equity and livelihoods. However, where land rights are insecure or law enforcement weak, then oil palm tends to be developed as very large company-owned estates with serious problems for prior occupants and workers, ensuing land conflicts and human rights abuse.

The implications of these findings are clear. To ensure that oil palm only develops in beneficial ways, voluntary standards of organisations such as the Roundtable on Sustainable Palm Oil need to be backed up by national tenurial and governance reforms which make mandatory requirements that ensure local peoples' rights really are respected and protected. Without such protections, expansion is likely to benefit investors, traders and national elites at the expense of the rural poor and vulnerable ecosystems.

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