

6. Analysis II Philippines

The amount of arable land in the Philippines is rather small. The country is spread across over 7000 islands with mostly mountainous interiors and is densely populated (Quizon/Pagsanghan 2014: 18). Administratively, the country consists of 81 provinces, which are subdivided into municipalities. The smallest administrative form is the *barangays*, of which there are over 42.000 (Loewen 2018: 83).

Historically, land has been distributed highly unequal – the causes dating back to Spanish colonialization (Borras 2007: 147). Since then, land distribution has been a highly contested issue in the country, from early peasant revolts against the colonizers (Borras 2007: 147) to the armed conflict in Mindanao (Vellema et al. 2011) and countless civil society campaigns (Curry 2013). The Comprehensive Land Reform of 1988 tried to address the distribution issue, but if its outcome should be regarded as success is highly debated (Borras 2006). Transnational companies investing in agriculture are not a new phenomenon in the country. Yet, the government policies of the early 2000s encouraged a lot of interest by additional investors. However, several intended land deals did not materialize – I will argue partly due to the legal system, which tries to protect local land ownership. Nonetheless, there are also a number of deals that were closed successfully – many of them through contract growing systems. I will take a closer look at two of those investments: Green Future Innovations in Isabela, located in Northern Luzon and Agumil in Palawan.

I will start this chapter by taking a closer look at large-scale land deals in the Philippines on a national level (chap 6.1). My discussion will include the agricultural background, including the agrarian reform, government policies to attract investment as well as civil society responses. In a second step, I will focus on the legal opportunity structure in the country (chap 6.2), which means reviewing the land tenure systems as well as specific regulations in regards to foreign investors.



Figure 6 Map of the Philippines (Cutout)

(source of map: http://d-maps.com/carte.php?num_car=5600&clang=en, last visited 15/06/2018)

The first case (chap 6.3) considers the investment of Green Future Innovations in a sugar cane plantation in Isabela. Initially, the joint-venture company acquired land through lease in different barangays in San Mariano; however, it turned out that some of the property leased was contested in its ownership. Through national networks local smallholders called on the Provincial government but also on Congress to intervene. These calls were

seconded by an attack of a national rebel group active in the region. It seemed that this mix of strategies led to a successful solution of the issue.

The second case study (chap 6.4) looks at an investment in palm oil by Agumil through lease and contract-growing. The project was set up in a way that put most of the economic risk on cooperatives, who had signed contract-growing deals with the company. As the debts started to accumulate, the cooperatives realized their problematic situation and were able to initiate a congressional investigation. Yet, at the time of research, no solution had been found. The case points to a failure of existing support and oversight mechanisms and the missing civil society support for the cooperatives.

Overall, the two cases show the difficulties of implementing and using an existing favorable legal opportunity structure and the relevance of varying networks. I will discuss these findings in chapter 6.5.

6.1 *Large-scale land deals in the Philippines*

Large-scale land deals with the involvement of foreign investors have not reached the same dimension in the Philippines as in Sierra Leone. This is mainly due to a large amount of agreements that did not materialize so far. Nonetheless, large-scale land deals have received considerable attention and contestation (de la Cruz, Rosselynn 2011: 6). The debate about them has to be regarded against the background of the extensive agrarian reform covering more than half of the country's agricultural land (Borras 2006: 80).

I will first describe the current trends set against the historical background (chap 6.1.1) before I turn to government policies attracting foreign investment (chap 6.1.2). The last part of the chapter will focus on the civil society involved in agrarian issues in the Philippines (chap 6.1.3).

6.1.1 Current trends and agricultural background

In this chapter, I will describe current trends of foreign large-scale land-based investment by taking a closer look at the data provided by the Land Matrix. These numbers by the Land Matrix provide some impressions about the role of foreign investors. However, it should be noted that a lot of direct investment in plantation agriculture in the country comes from national companies, even if they often cater to and are closely linked with

global brands such as Dole, Del Monte⁴⁹ or Cargill (Lockie et al. 2015: 125; Salerno 2015). Furthermore, smallholders in the Philippines are often threatened by investments by local businesspersons, which are smaller than 200 hectares and are therefore not covered by the Land Matrix database (interview PH3). The focus on foreign large-scale investment consequently only covers one particular aspect of the agrarian system in the country. It is, therefore, important to situate information on large-scale land deals in the broader agricultural context of the country and the extensive land reform.

Table 14 No. of intended/concluded land deals in the Philippines

year	Biofuels*	Food crops**
2005	1	
2006		1
2007	5	2
2008	6	2
2009	2	2
2010	1	2
2011	1	1
2012		2
2013		1
No year	7	2
Total	23	15

(Source: Land Matrix 2018)

Looking at the data of the Land Matrix, the high number of failed agreements stands out. Out of 38 planned large-scale land-based investment intended for a size of 4,8 million hectares, contracts were closed in only 14 deals covering around 610 000 hectares (Land Matrix 2018). It is not clear why many of these deals never materialized, but public contention and legal concerns played a role, at least in some of the most prominent cases. A one-million-hectare concession for a Chinese investor was, for example,

⁴⁹ These companies do also have their own plantations; however, those are usually a lot older and have been established before the year 2000, the starting point for the Land Matrix.

canceled by the Philippine Department of Agriculture “following massive public outrage, a series of Congressional inquiries and a case filed before the Supreme Court raising grounds of unconstitutionality.” (de la Cruz, Rosselynn 2011: 6). It is not clear how many cases failed because of existing land laws. As I will discuss in chapter 6.2, land legislation is regarded as rather progressive in the country and it could well be that legal concerns weighed too heavy when more concrete plans for investments were negotiated.

Another explanation for the failures could be that envisaged projects were driven by a ‘rush mentality’ and were not always rooted in realistic economic and managerial decisions. There were, for example, two intended deals with a size of one million hectares each – one with a British, one with a Malaysian investor. In both cases, the deal never materialized. There is a spike in interest in land between 2007 and 2008, which seems to be mostly driven by an interest in biofuels investment, as the table 14 shows (interest in food production seems to remain rather constant). The Biofuels Act was passed by Congress in 2006, explaining the sudden interest. Investors rushed in quickly to secure themselves a ‘first-mover’ advantage, which did not, however, lead to successful investment projects.

Still, even though many deals never materialized 11 out of the 14 ‘concluded’ contracts reported by the Land Matrix had plans to produce biofuels mainly through sugar cane (Land Matrix 2018).

The original plans to use 4,8 million hectares for large-scale land deals have to be understood against the availability of land. Only 12.4 million hectares of the approximately 30 million hectares landmass is agricultural land (World Bank 2018b), and practically all of it is used. Rice, corn, coconut and sugarcane are the major crops in terms of used area, while some other high-value crops such as banana, pineapple and mango are essential as export commodities but take up less land (Philippines Statistics Authority 2017).

Even though rice is the number one crop in the country, the Philippines imports rice to cover the needs of the population. The missing self-sufficiency in the national staple food is explained, among other reasons, by limited land resources in the country (Koirala et al. 2016: 372).

The amount of land available for investment in other crops, including rubber and palm oil, is not at all clear – official numbers range between 100,000 and nearly 9 million hectares of ‘idle’ land (Montefrio/Dressler 2016: 120). This discourse of plenty ‘idle’ lands, which should be put to productive use, seems to be one of the driving forces for the interest of

many foreign investors. However, it is questionable if this discourse paints a realistic picture of the highly populated island state (Montefrio/Dressler 2016).

Agriculture plays a vital role in the country in terms of poverty reduction, as it employs about one third of the workforce in the Philippines. It continues to play a big role in the lives of the rural population, which accounts for nearly half of the total population (World Bank 2018b). At the same time, poverty remains at high levels in rural regions. Farmers are poorer than the average population, with 34,3 % living below the national poverty line (Philippines Statistics Authority 30/06/2017). The high prevalence of rural poverty is associated with historical path dependencies in land ownership started during colonial times:

“The current agrarian structure can be traced from this period when landownership started to become concentrated in the hands of Spanish conquistadores, the mestizos, their local Filipino collaborators, and the Roman Catholic Church. More and more local people lost their formal claims of ownership, control or rights, over these lands, and have become share tenants, landless rural (semi)proletariat, and (sub)subsistence farmers. As late as the 1980s, it was estimated that about 70 percent of the peasant population work on lands that were not theirs.” (Borras 2007: 147)

This situation of a highly unequal agrarian system with wealthy landowning elites and a poor landless workforce was to be changed by the agrarian reform of 1988, which has not been fully completed to this day. Anchored in the post-Marcos constitution of 1987, the Comprehensive Agricultural Reform Programm (CARP) sought to redistribute land to those who worked on it (Curry 2013: 68). Landlords, having more than five hectares, were compensated for the land they could give up voluntarily or which would eventually be expropriated. Peasants who received land had to pay a subsidized price, which was to guarantee ‘affordability’ (Borras 2001: 551–552).

Especially in the first years, implementation of the reform was slow and highly contested, leading to an extension in 2009 for another 5 years but also to the downgrading of expectation of areas covered (Adam 2013: 234). As of today, 4.8 million hectares have been redistributed to 2.8 million beneficiaries according to official numbers (Cahiles-Magkilat 1/21/2018). However, if the agrarian reform should be considered as success is highly debated and depends on the criteria used (Feranil 2005; Adam 2013; Borras 2006; Vista et al. 2012). Even though reform beneficiaries do now have ac-

cess to land, they are struggling to survive as farmers because of missing support systems, for example, in terms of agricultural inputs (interviews PH3, PH6). Furthermore, in many cases, agrarian reform beneficiaries (ARBs) struggle to pay the amortization rate for the land they received.

Considering the background of the extensive land reform is important in order to understand foreign large-scale land investments and mobilization around them. I can make three observations:

First, civil society actors fear that large-scale land deals might reverse some successes of the land reform. There are reports about CARP beneficiaries being approached by companies to lease their lands, which might be tempting given the oftentimes-precarious economic situation that they are in. At the same time, creating new large-scale plantations will exactly lead to land concentration or new dependencies – essentially those dynamics that the land reform tried to tackle (de la Cruz, Rosselynn 2011: 10).

Second, institutions, rules and dispute resolutions mechanisms created during the land reform are also relevant for the setup of large-scale land deals. The Department of Agrarian Reform (DAR), for example, has to be informed about lease agreements of reform beneficiaries (Government of the Republic of the Philippines 2008: chap. 3, sec. 2.3) and is an important institution for land tenure dispute resolution (Franco 2008a).

Third, the civil society in the agricultural sector in the Philippines has mobilized extensively around the land reform. NGOs and local peasant organizations cooperated in many occasions to fight adamant landlords (Franco 2008a; Diprose/McGregor 2009). At the same time, CARP revealed substantive differences within the civil society between organizations engaging with the state to implement the reform and those who opposed the land reform completely (Curry 2013).

6.1.2 Government policies to attract foreign investment in agriculture

As mentioned, part of the rise of foreign interest in farmland in the Philippines was driven by government policies encouraging biofuel production in the country. This policy is part of a broader plan of green economy development (Montefrio/Dressler 2016). I will take a look at these policies before addressing the government agencies involved in large-scale land deals.

In 2006, the Philippine Congress passed the Biofuels Act, which requires that all gasoline sold in the country contains 10 % of bioethanol. To this

end, incentives such as tax exemptions and financial assistance are granted to bioethanol producers (Republic of the Philippines 7/24/2006: sec. 6). The rationale behind the law was to reduce dependence on imported fuels, develop renewable energy, decrease greenhouse gas emissions while increasing employment in the rural regions (Republic of the Philippines 7/24/2006: sec. 2). At the same time, the Biofuels Act had been pushed by a strong business coalition (Montefrio/Sonnenfeld 2011: 37–38).

In 2008, final implementing rules and regulations were laid out through a joint administrative order by numerous government agencies. The administrative order exempts land areas under 25 hectares used for biofuel production from the land reform (Government of the Republic of the Philippines 2008: chap. 1, sec. 3). This exemption incentivizes bigger landowners to invest in bioethanol as a means to protect their land from redistribution (interview PH3). Overall, the Biofuels Act and its implementing guidelines are just one part of the broader policy project of achieving ‘inclusive green growth’, which is regarded as a tool to curb rural poverty as well as fight climate change (Montefrio/Dressler 2016). These ‘green economy’ policies have pushed plans to develop up to 8 million hectares of ‘idle’ land for bioethanol production and attract foreign investors to support this development. Since then, the area planted for palm oil or rubber has grown substantially (Montefrio/Dressler 2016: 119). As another consequence interest in foreign large-scale land deals for the production of biofuels increased – especially in the years 2007 and 2008 – as shown in table 14 in the previous chapter.

Different government agencies are relevant for the facilitation of large-scale land deals in the country. The Philippine Agricultural Development and Commercial Corporation (PADCC) was founded to attract investors, to identify available land and facilitate land deals between investors and local governments (de la Cruz, Rosselynn 2011: 7; Aquino 2011: 2). According to interviewees from a national NGO, the PADCC had identified about one million hectares for biofuels production and was overseeing all foreign investments in biofuels. However, records such as the Memoranda of Understanding with the Philippine government were not accessible (interview PH3). In 2014, the PADCC was dissolved due to corruption by a presidential order (Esguerra 3/3/2014).

The PADCC had been housed at the Department of Agriculture (DA), which still plays a central role in facilitating investments. Investors leasing land for biofuels production need to obtain certificates from the DA, the Department of Agrarian Reform (DAR) and the Department for Environ-

ment and Natural Resources (DENR) as well as from the National Commission on Indigenous Peoples. This complicated process was supposed to be simplified by the creation of a one-stop-shop housed at the National Biofuels Board (Government of the Republic of the Philippines 2008); however, it seems like this one-stop-shop never materialized. In consequence, a plethora of actors is involved in facilitating, closing and overseeing foreign investment in biofuels production – making retracing of land deals difficult. At the same time, local government units play an important role in facilitating land deals and connecting companies to possible lessors, adding another layer of complexity (delos Reyes: 1). On civil society member described this confusing picture:

“[...] there's no clear mechanism where these investments would be discussed. I mean, investors can directly go to a local government or to the community or to a Philippine private entity.[...] So, given all these things happening, it's really difficult to know what is really going on.” (interview PH4).

6.1.3 Civil society networks

The Philippines has not only a strong history of peasant mobilization, dating back to colonial times but also a passionate, vibrant and broad NGO community. Civil society activities in response to large-scale land deals are usually undertaken by those actors, who were engaged in or campaigned against the agrarian reform program. Similar networks are used and act with similar strategies around large-scale land deals. At the same time, the civil society in the agricultural sector is marked by an ideological divide between center-left and radical-left networks.

Peasant revolts have had a strong history since Spanish colonial rule: Since one of the first peasant uprisings against unjust land distribution took place in 1745 (Curry 2013: 66), the country has experienced multiple waves of peasant revolts. The Philippine government had made only small concessions, so “unrest remained an important part of rural politics throughout the twentieth century.” (Borras 2006: 79). During the 70s and 80s, these peasant insurgents became part of the National Democratic Movement led by the Communist Party of the Philippines, one of the main opposition groups against the Marcos dictatorship (Borras 2001: 560). The Peasant Movement of the Philippines (Kilusang Magbubukid ng Pilipinas = KMP) became the biggest and most well-known peasant organi-

zation of the far-left. Apart from the peasant movement, worker unions, church-based organizations and city-based civil society groups formed a broad coalition against the autocratic rule and overthrew the Marcos regime in the ‘people power’ revolution – also referred to as the EDSA⁵⁰ revolution – in 1986.

The civil society actors involved in the revolution were so heterogeneous that the coalition quickly fell apart (Loewen 2018: 157–158). The same was true for the peasant movement, where the ideological differences became apparent during the Comprehensive Agricultural Reform Programm. More moderate groups campaigned for a reform of the reform and later helped in the implementation, whereas the KMP stayed in total opposition⁵¹ (Borras 2001: 560–561). This pattern was repeated when center-left peasant organizations, NGOs and church actors campaigned for the extension of the land reform beyond 2009. The radical left, foremost the KMP, dismissed this campaign and instead demanded their own model of a ‘Genuine’ Agrarian Reform Program (Curry 2013: 70; Feranil 2005: 269). This main division between center-left and radical left organizations, does not only lead to non-cooperation between the groups (interviews PH8, PH28), but also to different strategies in dealing with conflicts around land.

The center-left coalition involves a number of organizations that work in close collaboration. The central peasant movement organization in this bloc is PAKISAMA (Pambansang Kilusan ng mga Samahang Magsasaka). The organization represents the interests of agrarian communities on a national level, supports local struggles of local peasant organizations and provides services for its members (Curry 2013: 72). PAKISAMA is a member of the Asian Farmer’s Association and the network organization AR Now!. Both network organizations have taken up the issue of large-scale land deals and published reports on it (Bernabe 2010). These membership-based organizations cooperate with the NGO ANGOC (Asian NGO Coalition for Agrarian Reform and Rural Development). ANGOC has been one of the main actors of implementing the VGGT and produced a number of studies on the issue (Quizon 2017; Quizon/Pagsanghan 2014). Other actors in the network are legal aid organizations such as KAISAHAN, which fo-

50 EDSA (Epifanio de los Santos Avenue) is the most important city highway of Manila and was the main location of the mass protests.

51 During the process the communist National Democratic Movement as well as parts of the KMP themselves split into different ideological groups (Borras 2001: 561).

cuses on legally supporting potential agrarian reform beneficiaries (interview PH6).

These are just some of the biggest organizations. Still, many more can be counted to this center-left part of the agrarian civil society, especially at the regional and local levels. These networks link local peasant organizations to national advocacy and legal aid NGOs and are regarded as an important component for the partial success of the land reform with examples from all over the country (Borras 2001: 563–566; Feranil 2005: 272–278). The main strategies used by local peasant groups involve pickets, demonstrations but also dialogues (Borras 2001: 565). National organizations support them through “making public statements; calling on support groups, encouraging student activism, building advertising campaigns, lecturing, and conducting workshops, as well as teaching requisite entrepreneurial skills” (Curry 2013: 72). At the same time, rights-based campaigns and the use of legal avenues to push the implementation of CARP are important strategies for these networks:

“It took an encounter with a rights-advocacy organization willing and capable of (re)interpreting state agrarian reform law as a potential resource for excluded groups in hostile farms for the peasants to move beyond inertia and individualized resistance, toward collectively claiming their rights.” (Franco 2008a: 1013)

Another important strategy are congressional inquiries. Civil society actors closely work with senators and house representatives to have specific land deals discussed in congressional committees:

“In the Philippines, the congressional inquiries are an effective tool. Either to push advocacy or to prevent or to stop or to delay. In recent experience, we utilized congress in three things: First, to advance our advocacies. Second, if we want to investigate or to stop, or to delay certain programs or deals that will affect the farmers. Third, to influence or to pressure the Executive through legislative inquiry to act on specific land cases.” (interview PH27)

While congressional inquiries do not create binding decisions, reports are used to pressure administrators of different departments and local politicians into taking action in favor of local farmers (interview PH27). In many instances, civil society actors cooperate with and support local DAR officials, who are often blocked in their work by powerful local politicians (interview PH27). Overall, these center-left civil society organizations combine moderate street actions like demonstrations with classic advocacy and

political-legal strategies. At the same time, they often collaborate closely with national and local officials to ensure the implementation of the agrarian reform and related programs.

Civil society actors that are associated with the radical left follow similar strategies, but also go one step further through including militant forms of action. One of the central actors of this bloc is the above mentioned KMP, which claims to represent 1,3 million rural people through 65 provincial chapters (KMP). The peasant movement organization closely associates itself with the far-left wing of Philippine politics, referred to as Bayan, while at the same time distancing itself from the revolutionary National Democratic Front (interview PH8). The National Democratic Front is linked to the National People's Army (NPA), a maoist-communist rebel group with an estimated 4500 members throughout the country (Walch 2018: 342). Despite efforts to distance itself from the NPA, the KMP frequently gets associated with the rebel group (Jimenez 2003: 282).

The central goal of the KMP and other far-left organizations is a 'Genuine Agrarian Reform', which would force the redistribution of all land for free. The existing CARP is described as 'bogus' and 'fake' and consequently not supported (interview PH8). Instead, the organization undertook a number of land occupations, especially in the beginning of the land reform process (Borras 2001: 560). Apart from land occupations, rallies and camp-outs are a part of the militant action of the organization (interview PH8) and often take somewhat confrontational forms (Jimenez 2003: 236). Nonetheless, the KMP also uses advocacy, fact-finding missions and campaigning to push their issues on the political agenda. Furthermore, they cooperate with sympathetic congressional representatives such as from Anakwapis, the associated party list (interview PH8). Overall the radical left wing strongly defines itself in its opposition to CARP and its more 'militant' forms of actions. At the same time, they do employ 'traditional' forms of advocacy and campaigning and are connected to sympathetic politicians.

Apart from the differences in ideology and strategies employed, international support networks vary between the two blocs. Support from NGOs and International Organizations is mainly channeled to the moderate left bloc of the civil society through project-based funding. Donors include Oxfam, Misereor, various development agencies, the European Union, the FAO, and the International Land Coalition, of which a number of organizations are a member (interviews PH2, PH3, PH4, PH6). Projects often focus on research reports, local capacity building and advocacy campaigns.

The far-left bloc around the KMP is mostly funded through its members and local fundraising efforts (interview PH8). However, they also have international links to other militant peasant organizations and anti-globalization movements (Jimenez 2003: 253–254). The KMP is a founding member of the biggest global peasant organization La Via Campesina; however, it does not engage with La Via Campesina anymore, due to ideological differences (Borras 2008: 278). Instead, the KMP focuses on the Asian Peasant Coalition, of which it hosts the secretariat. Through the Asian Peasant Coalition, KMP members also participate in international fora such as the Civil Society Mechanism of the Committee on World Food Security (interview PH8)

The standing of civil society activists in the Philippine state seems to have two faces: On the one hand, activists often work closely with the political and administrative system. Furthermore, staff members of NGOs but also farmer's movements frequently find their way into government positions (Lewis 2013). A remarkable example in this regard is the appointment of a former chairman of the KMP as Secretary for Agrarian Reform by President Duterte, even though Congress later rejected the appointment (Jesus 6/9/2017). On the other hand, farmer-, environmental- or human rights- activists, lawyers and journalists are regularly targets of repression and considerable violence. Private militias and the Philippine army are considered to be behind killings of activists, which often happen with impunity (Franco et al. 2014: 7). In the year 2017 alone, the international NGO Global Witness reported the killing of 48 land and environmental defenders in the country (Global Witness 2018: 15). Land rights activists, therefore, often oscillate between cooperating with authorities and being targets of violent repression and retaliation by state and non-state actors.

6.2 *National legal opportunity structure in the Philippines*

The Philippines has a number of laws and policies that regulate foreign large-scale land deals, leaving the country better off than other Southeast Asian countries. At the same, time the land governance system is fractured, which creates complicated tenure relations on the ground. Yet, I argue that for smallholders, especially agrarian reform beneficiaries, the national legal opportunity structure can be regarded as favorable.

In a first step, I will take a look at national-level legislation, including provisions made by the constitution as well as specific laws regulating land ownership (chap 6.2.1). In a second step, I focus on national policies gov-

erning foreign land investments, concentrating specifically on the rights of agrarian reform beneficiaries (chap 6.2.2). In a final step, I use this information to evaluate the national legal opportunity structure (chap 6.2.3) with the help of the criteria developed in chapter 4.1.1.

6.2.1 National land laws and tenure system

Access to land as a means for social equality plays a vital role in the constitution of 1987. Laying out the basic principles of the Philippine State the constitution requires the state to “promote social justice” (Republic of the Philippines 1987: Art. 2, Sec.10) and to this end “promote comprehensive rural development and agrarian reform” (Republic of the Philippines 1987: Art. 2, Sec.21). Against this background, the constitution recognizes that “[t]he use of property bears a social function” and is “subject to the duty of the State to promote distributive justice and to intervene when the common good so demands” (Republic of the Philippines 1987: Art. 12, Sec.6). The reduction of social, economic and political inequalities should be given the highest priority to ensure human dignity through regulating “the acquisition, ownership, use, and disposition of property and its increments” (Republic of the Philippines 1987: Art. 13, Sec.2).

These broad provisions of the constitution, which demand equal distribution of property to ensure social justice, are concretized in subsequent laws such as Indigenous Peoples Rights Act, the Fisheries Code and the Comprehensive Agrarian Reform Law (Quizon/Pagsanghan 2014: 22). Taken together with the Forestry Code and the Civil Code, these laws create the basis for the land tenure system, which is rather complicated.

On the most basic level, there are two different categories of land in the Philippines: Alienable and Disposable (A&D) land and protected forestlands, which both make up roughly half of the 30 million hectares of land. 65 % of A&D land is privately titled. The rest is publicly owned (but often informally used). While in principle all A&D land is open for private ownership, the category of forest land is formally owned by the state and administered by the Department of Environment and Natural Resources (DENR) (Koirala et al. 2016: 372). Forestlands can, however, be leased and used by small-scale farmers. Farmers and communities, who have cultivated this category of land for an extended period cannot be evicted and can apply for different certificates – some awarded individually, some awarded to community-based organizations. These certificates are usually awarded for 25 years and include agreements on forest use, agriculture and environ-

mental protection. A special certificate is the Ancestral Domain Title, which is awarded to indigenous communities and protects their land rights⁵² (van der Ploeg et al. 2016: 150).

Generally, land ownership can be claimed through registered land titles, deeds of sale and certificates received during land reforms⁵³ or from the DENR. Taxes paid on land improvements are often also accepted as proof for ownership; it is, however, a less formal way. What gets accepted as a legitimate claim for ownership is highly dependent on the reference legislation used: Basically, the Agrarian Reform Law accepts ownership through cultivation. However, older legislation, specifically the Civil Code of 1950, only accepts formally documented proofs. As older laws are usually not repealed in the country, a situation developed in which different contradictory legislations exist (Quizon/Pagsanghan 2014: 23; Franco 2008a: 999). In consequence, solving conflicts around landownership can become a complex undertaking:

“In practice, then, jurisdictional lines in agrarian reform and related disputes remain blurred even today, leaving it up to better-equipped litigants and individual judges to determine where and how a case will be processed.” (Franco 2008a: 999)

Table 15 Tenure arrangements of Philippine farmland

Tenure arrangement	% of farmland
Formal ownership	48 %
Owner-like possession	17 %
Tenancy (shared or leased)	19 %
Other arrangements (certificates)	10 %
Lease	6 %

(based on Philippine Statistics Authority 2012: 39)

Looking at available numbers, the Agricultural Census of 2012 counted 5.6 million farm households with a total size of 7.3 million hectares (Philip-

52 As mentioned in the introduction I largely exclude indigenous people’s rights from my analysis. I will therefore not go into more detail into the laws and regulations specific to indigenous communities.

53 Before the major land reform of 1988 certificates were handed out during earlier more limited reform programs and can still be used as claim of ownership (Koirala et al. 2016: 372).

pine Statistics Authority 2012: 11). Of the whole area, 48 % are formally owned, while 17 % are held informally in owner-like possession. 19 % are tenanted, while 6 % are leased and 10 % account for other arrangements such as different certificates⁵⁴ (Philippine Statistics Authority 2012: 39). In the local context, owner-like possessions are usually respected by surrounding communities and local officials:

“Farmers know that they do not formally own the land, but informal land claims, so-called ‘possessions’, are generally respected, also on fallow land. Possessions are sold, mortgaged or temporarily leased to other farmers. Such transactions—‘agreements’—are recorded by the Sangguniang Barangay, the elected village council.” (van der Ploeg et al. 2016: 151)

Consequently, even informally closed rent agreements can provide local tenure security. Research shows that farmers equally invest and produce on informally leased land as they do on formally owned land, pointing to the stability of relational contracting in the rural Philippines (Michler/Shively 2015: 166). However, in the context of foreign investors coming into a region, this security is challenged. It seems likely that the categories of owner-like possession and tenant farmers are the most vulnerable in cases of outside investments, as their access to land is often based on informal and oral agreements.

As mentioned above, there are different ways to claim ownership or use rights to agricultural land through different government agencies. Agrarian reform beneficiaries (ARBs) usually have certificates from the Department of Agrarian Reform; others have certificates of the DENR, while only some have registered land titles. The payment of land taxes usually happens locally, so tax certificates are issued by Local Government Units (LGUs). While this system creates a number of opportunities to proof a legitimate title for land-users⁵⁵, it also creates a considerable degree of chaos – especially since there are no complete cadastral maps:

“Several agencies and LGUs issue different tenure instruments, but there is no consolidated information on the tenure status of land

54 Percentages based on own calculation based on the numbers from the Agriculture Census (Philippine Statistics Authority 2012: 39).

55 Of course, this system is also susceptible to exploitation. In some instances people paying land taxes are middle class families, who live in cities but want to secure themselves the access to land in villages (Franco/Borras 2007: 73).

parcels; each agency maintains separate land records with different systems of recording and mapping.” (Quizon/Pagsanghan 2014: 29)

In consequence, it can become challenging to identify the tenure status of a specific parcel of land. Overlapping land claims and unclear boundaries are, therefore, a considerable problem in the country. To solve this fractured approach to land governance a National Land Use and Management Act has been proposed in Congress but has not been enacted (Lopez/Demaasisip 2014).

6.2.2 Rules and regulations regarding foreign large-scale land deals

No overall rules and guidelines have been developed for large-scale land deals specifically; they are, however, governed by “overall policies on land ownership and tenure” (Quizon/Pagsanghan 2014: 71).

The constitution does have a strong focus on protecting the country’s economic independence and autarky (Loewen 2018: 71). It does not allow for foreign land ownership and requires corporations which lease public or private land to be at least 60 % Philippine-owned⁵⁶. When corporations or individuals lease public land, they are not allowed to lease more than 500 hectares for longer than 25 years (Republic of the Philippines 1987: Art. 12). While this does not apply to privately owned land, these provisions set some considerable limitations to foreign large-scale land investments. Because of these regulations, investment projects usually consist of joint ventures between international and national investors and often revert to contract farming agreements instead of lease.

Apart from these constitutional rules, different regulations and agencies are responsible in different forms of tenure and types of investment. Registered land titles are probably the most straightforward, as it is the right of the owner to decide about the transfer and use of their land. Nonetheless, specific permits are needed, for example, if an investment requires the cutting of trees (interview PH33).

It becomes more complicated for the land of agrarian reform beneficiaries (ARBs), of which there are 2,8 million, as mentioned earlier. When ARBs enter into a formal agreement with a private investor, it is consid-

56 At the time of research there were plans by the government to abolish the restrictive provisions allowing for 100 % foreign ownership for investors in land as part of a bigger constitutional change (interview PH3).

ered an agribusiness venture agreement (AVA) and falls under the auspices of the DAR (interview PH46). While these AVAs can take different forms, the most common arrangements are leases and growership contracts (FAO 2016: 3). According to rules and regulations set out for AVAs in Administrative Order No. 9, the DAR is supposed to review and evaluate these agreements (Department of Agrarian Reform 2006: Sec.4.5). Local DAR officials should sign AVAs either as witness or as nominal party to the contract in cases where the ten years prohibition period, during which this land is not allowed to be sold, has not expired yet (Department of Agrarian Reform 2006: Sec.4.6). Approval of the DAR should only be provided in cases in which the AVA “guarantees the security of ownership and tenure of ARBs, and ensure[s] an increase of their income” (Department of Agrarian Reform 2006: Sec. 4.10).

The Administrative Order furthermore makes detailed stipulations on how AVAs should be set up:

“The terms and conditions of the AVA contract shall be fully known to all parties. If warranted, the parties may translate the contract into the local dialect known to the ARBs. It shall be the responsibility of the concerned DAR field officials to ensure that the ARBs are made fully aware of and understand the options available to them, including rights and obligations under the AVA contract.” (Department of Agrarian Reform 2006: Sec.4.7)

The DAR has the role to advise and support ARBs as well as monitor ongoing AVAs (interview PH46). It even has the power to end these contracts on various grounds such as “[w]hen the AVA is no longer financially and economically viable” (Department of Agrarian Reform 2006: Sec.19.3). In practice, this usually means that the company is asked to change the conditions of the contract so that ARBs can benefit from an AVA (interview OH46).

To enter into AVAs, the DAR recommends the formation of cooperatives or farmer organizations (interview PH46). Farmer cooperatives, in turn, fall under the responsibility of the Cooperatives Development Authority (CDA), which sets rules for the running of cooperatives. In the case of closing a contract with an investor, the General Assembly of the cooperative, consisting of all members, has to agree formally (interviews PH7, PH31). The CDA and related agencies on the provincial level furthermore provide cooperatives with managerial support and capacity training (interview PH31). Overall, these regulations of the DAR and CDA, therefore, go beyond ownership rights but aim to protect smallholders from unfair con-

tracts and to provide them with the necessary support to make informed decisions. However, these provisions are specific for ARBs; other tenure arrangements or informal tenure are not covered.

Apart from landowners, broader community consultations are only legally required in the case of land in question being part of a formally registered ancestral domain. In line with the national Indigenous Peoples Rights Act an FPIC process is required for any kind of investment in land that is certified as ancestral domain of indigenous people. Such a process is not necessary for communities not consisting of indigenous peoples (Quizon/Pagsanghan 2014: 27).

In addition, land investments affecting protected forest areas or investments in biofuel production sites need an Environmental Impact Assessment (Quizon/Pagsanghan 2014: 72; Government of the Republic of the Philippines 2008: Sec. 2). However, there are no general rules on risks and benefits sharing for investing companies with local communities (Eleazar et al. 2013: 36). Nonetheless, more significant investment projects are supposed to be discussed in periodic consultations with local administrations and civil society actors, according to the Local Government Code of 1991 (Neame/Villarante 2013: 212). However, this rather vague demand for consultations often seems to be unheard in the case of large-scale land investments:

“A key issue especially in large-scale land transactions is the overall lack of a policy on information disclosure and access to information by the public, especially by communities whose tenure and livelihoods are likely to be affected. There are many cases where local communities are unaware, or else misinformed, about an investment or project that is likely to affect their tenure.” (Quizon/Pagsanghan 2014: 71)

This lack of consultation seems especially problematic in cases where public land is leased and land users do not hold formal tenure⁵⁷.

Conflicts around land issues can be solved through various mechanisms. Locally, barangay captains and community level mediation are involved in resolving land issues and boundary conflicts. Barangay level conflict resolution has to be tried first before a land conflict can be lodged with a formal court (Eleazar et al. 2013: 32). However, local ‘authoritarian-clienteles’ elites – often large landowners, who managed to evade the agrarian reform – exert considerable control over the local population and local dispute

57 However, they are protected from forced eviction and have to be relocated adequately (Quizon/Pagsanghan 2014: 26).

resolution. This leads to a situation that is often detrimental to the rights and interests of the rural poor (Franco 2008b: 1864).

At the same time, formal court proceedings are often lengthy: In land cases, it can take up to 5 or 10 years to get a decision in a lower court, and if appeals go through to the Supreme Court, final decisions can take 20 or more years. The costs and extensive periods involved in these processes do not make formal courts an attractive way of dispute resolution (Eleazar et al. 2013: 32–33). In addition to the court system, government agencies, first and foremost the DAR, have quasi-judicial powers, for example, when it comes to the implementation of the agrarian reform and can be one accessible way for local smallholders to claim their rights (Franco 2008a: 999). Overall, there are, therefore, mechanisms to solve disputes and enforce laws, even if the formal way through the courts is often not the first choice.

6.2.3 Evaluating the national legal opportunity structure

I will use the background of the land tenure system and rules for foreign investment in land to evaluate the national legal opportunity structure according to the elements defined in chapter 4.1.1. It will become apparent that the national legal opportunity structure can be considered as favorable in the case of agrarian reform beneficiaries.

In regards to the first element, the veto right against foreign investors is mainly provided through the land tenure system. As shown in chapter 6.2.1, about half the farmland is used by farmers having formal ownership. In addition, 10 % is claimed via certificates, which is also a formal form of tenure. In the case of ownership like possession and tenancy, the picture is a little bit different. While these categories usually enjoy a lot of security locally, they are often based on informal and oral agreements, which could potentially be challenged or ignored in the process of land consolidation for outside investors. Yet, there are also several ways in which affected smallholders could prove their ownership even if it is not formalized. In consequence, many smallholders in the Philippines will have an effective veto against a foreign company investing in their land. However, this is certainly not true for all of them and depends on their individual tenure status. Furthermore, there is no requirement for broader community consultation, for example, in cases in which public land is affected. Element one, therefore, can be regarded as partially fulfilled.

The second element, which looks at support possibilities for smallholders making decisions on investments, is partially fulfilled as well. As discussed in the previous chapter, the provisions made in regards to ARBs are rather extensive. The DAR has the task to review agreements, to support ARBs in the decision-making process, and to oversee existing arrangements with companies. However, as mentioned, these regulations do not usually apply for non-ARB smallholders. Agreements between landholders and companies are regarded as private contract negotiations and, therefore, not subject to oversight through government agencies (Eleazar et al. 2013: 35). Furthermore, an environmental impact assessment is only needed in certain cases and does not require a social component. There is, therefore, no need for an independent social risk assessment.

The third element is, similar to the second element, mainly fulfilled for ARBs. The regulations on agribusiness venture agreements are clear that economic benefits and livelihood improvements have to be the aim of an agreement between an investor and ARBs. If an AVA does not fulfill these requirements, the DAR has the power to intervene on behalf of affected smallholders. General provisions of the constitution aim to protect the Philippine economy. Yet, in terms of benefit-sharing, there are no specific guidelines for ensuring that local communities benefit from large-scale investments.

The fourth element is again only fulfilled to a limited extent. There is no national inventory of large-scale land deals in the country and no clear responsibility in that regard. However, grievance mechanisms exist and judicial avenues are open to be used in cases of land rights infringements. Yet, especially calling on formal courts can be a lengthy and costly process. In the case of affected ARBs they can call on the DAR, which has far-reaching quasi-judicial competences as discussed.

Overall, looking at the national legal opportunity structure, a differentiated picture emerges: All four elements are relatively well fulfilled for agrarian reform beneficiaries, who therefore have a favorable national legal opportunity structure. For other smallholders, there is less support and oversight over their agreements with investing companies. However, it remains to be seen in the further analysis if the favorable legal opportunity structure for agrarian reform beneficiaries translates to better outcomes for them.

6.3 Case III: Green Future Innovations – success through combining strategies

The bioethanol project of Green Future Innovations was part of the biofuels frenzy, which set in after the new legislation in 2006. The investors planned to construct a bioethanol refinery and grow sugar cane through lease and contract grower agreements with the local population in the Province of Isabela, situated in Northern Luzon (Shohibuddin et al. 2016: 110). The central affected municipality is San Mariano, where the refinery is located.

Especially in the beginning, the project was contested by local far-left activists, who feared to lose access to their land. Local protests and land occupations escalated into an attack on company equipment, while a congressional inquiry and an international fact-finding mission raised national and international attention. The involvement of the Governor of the Province of Isabela solved the conflict and the company agreed to return a total of 2000 hectares of land. The mobilization efforts, of which legal mobilization was only a small part, can, therefore, be regarded as a success,

In this chapter, I will first give a short overview of the project focusing on the initial leasing process and problems associated with it before describing the current situation, which is rather beneficial for local smallholders (chap 6.3.1). In a second step, I will describe the mobilization efforts, among them legal mobilization through invoking international human rights and calling on the Philippine Congress and the Provincial Government to intervene (chap 6.3.2). Chapter 6.3.3 will then discuss the receptivity of the company to local concerns; however, this condition does not play an essential role in this case, and my data is not conclusive. More important was the effective mobilization organized through radical left networks, who were already in place before the investment (chap 6.3.4). In the last chapter, I will summarize the central findings and discuss open questions (chap 6.3.5).

6.3.1 Overview of the investment of Green Future Innovations Inc.

Green Future Innovations Incorporated (GFII) was founded in 2007 through Japanese, Taiwanese and Philippine investors. Encouraged by the biofuels legislation of 2006, the plan was to invest in sugarcane and to run a bioethanol refinery in San Mariano (interview PH12). A second company, Ecofuel Land Development Inc., was created in order to secure the land – an envisaged 11,000 hectares (Shohibuddin et al. 2016: 110). How-

ever, as both companies are closely related, I will not differentiate between them and simply refer to Green Future Innovations or GFII⁵⁸ in the following.

The leading investor in the bioethanol project was the Japanese Itochu Corporation, a company investing in a variety of business sectors worldwide, injecting 120 million USD in the project. The second Japanese company involved was the JGC Group, a company focused on engineering services such as the construction of industrial sites and plants (International Fact Finding Mission 2011: 11). Philippine investors were represented through the Philippine Bioethanol and Energy Investments Corporation, and the Taiwan-based holding firm GCO also participated in the project, however, as minor shareholders (Molina 11/1/2010). The planned bioethanol refinery was envisaged to be the “biggest biofuel enterprise in the country” (Molina 11/1/2010). Two thousand hectares were planned to be leased and managed directly by the company, and 9000 hectares of sugar cane were supposed to be covered by contract growers. The project enjoyed the broad political support of the Governor of Isabela and the Mayor of San Mariano (Burgos 7/2/2011).

In the initial phase, the company started leasing the land in 2007. Community meetings were held at the barangay level but mainly served the purpose of informing inhabitants rather than being open consultations about the investment.

“[...]the nature of the project and its possible implications for the community were not explained to the villagers, and nor was their input requested with regards to the introduction of sugar cane into their areas.” (Shohibuddin et al. 2016: 119)

Through the meetings, smallholders were approached to lease their land. Lease agreements covered a period of six years and rent payments ranged between 5000 to 10000 Philippine Pesos per hectare per year, depending on the accessibility of the land. Simple barangay certificates were accepted as proof of possession by the company (de la Cruz, Rosselynn Jaye 2012: 29–30). This simplified the leasing process and made the investment accessible for smallholders without formalized tenure claims; however, it also opened the door to land speculation and fraudulent land claims. As the rent money was paid as lump-sum in the early phase of the project, mon-

58 Ecofuel Land Developmen Inc. did not exist anymore at the time of research (2018). The company dealing with the sugarcane input is now called One Renewable Earth (interview PH12).

eylenders used the opportunity to convince their debtors to lease their land to the company to repay their loans (Alano 2015: 9). In these instances, the smallholders were more or less forced to give up direct control over their land in order to be debt-free. In addition, larger landowners bought up land from farmers with informal possession and in at least one instance expelled tenants from the land to use it for sugar cane production (Alano 2015: 12). In other cases, barangay captains, relatives of company employees and local political elites were claiming land that had been used by smallholder families without formal titles. These families faced displacement and the loss of their livelihoods (International Fact Finding Mission 2011: 16).

One such case took place in barangay Del Pilar, where the barangay captain had allowed the company to survey 700 hectares even though he did not hold possession of that land (interviews PH21, PH48). The company did seem to regard him as a legitimate representative of the actual landowners (interview PH48), who had allowed the barangay captain to temporarily use their fields as grazing land but did not agree to the investment (Aljibe 2015: 46–47). The affected farmers organized through the local farmers' organization DAGAMI (Danggayan Dagiti Mannalon ti Isabela), which belongs to the radical left KMP described in chapter 6.1.3. Through various strategies on the local, national and international levels, they stopped the company from including the 700 hectares in their plantations. I will take a closer look at the various avenues of mobilization in the next chapter.

Apart from these bigger cases, smaller land conflicts occurred and the company had to uproot already planted sugar cane or return leased land in several instances (Alano 2015: 10). The initial process of leasing land for sugar cane plantations was, therefore, not as smooth as planned and triggered conflicts and mobilization against the investment.

As a response to the initial problems and due to changes in management, the process of securing land for sugar cane plantations changed in later years. Land possession is now not only validated through the barangay captain but also through neighboring farmers, who are included in identifying the boundaries of parcels of land (interview PH20). Agreements with the company are only for three years and farmers can choose between three farming models: They can lease the land to the company⁵⁹, enter into a contract growing arrangement in which they receive all the in-

59 The rent payments were between 7000 and 12000 peses per hectare per year at the time of research in March 2018 (interview PH20).

puts from GFII, or become an independent planter only registering with the company as potential seller of sugar cane (interview PH20).

The small number of farmers I spoke to were satisfied with their options. Entering into a lease agreement is, for example, a way for them to make barren land useable, if they do not have the means to prepare it themselves. After three years, the company returns the land in a tilled state, giving the farmer the option to grow something else then (interview PH47). Farmers also entered into a contract grower arrangement as a step to eventually become independent planters and autonomous of the company (interview PH19). Independent planters enjoyed the freedom of being able to control their own farm (interview PH15) and were able to sell their sugar cane to another processing mill in a neighboring province when they offered a higher price than GFII (Alano 2015: 9). Most of the farmers seem to make a conscious choice to grow sugar cane but usually only do so as long as it is more profitable for them than growing other crops such as corn, the primary crop in the region (interviews PH14, PH18, PH21). While my own data gathering is in no way representative of all farmers, it does underline previous research that found that most smallholders entering into sugar-cane planting arrangements with the company had little complaints (Rutten et al. 2017: 11).

Even though the investment project is now well accepted in the region, the company has economic difficulties, as it is not able to secure enough land for sugar cane. At the time of research, in March 2018, 3000 hectares were used for sugar cane production, which meant that the bioethanol refinery was only running at half capacity (interview PH12). In 2016, a new management had taken over the company, which is now 100 % Philippine owned. The attempts of the new management to secure more land were not successful due to different reasons. First, the company wants to increase plantations with mechanized farming and therefore focuses on flat lands, which is rather difficult in the hilly area. Second, available land is often remote, making accessibility, especially during the rainy season, a big issue (interview PH20). Third, and probably most important, GFII has problems to convince farmers to grow sugar cane. One issue is that farmers do not have knowledge about sugar cane growing, as it had never been planted in the region before the investment. Furthermore, the conditions the new management is able to offer are not as attractive as earlier arrangements with the company, making it less profitable for farmers to participate (interview PH20). According to a staff member of the local DAR office, the net income from rice or corn is higher than from sugar cane. In

addition, ARBs are only allowed to divert lands to sugar cane that are not suitable for food crops such as corn or rice⁶⁰. Last but not least, local farmers also benefit from government support programs such as the provision of tractors for the production of corn, cassava or rice (interview PH47), presenting them with viable alternatives to sugar cane.

Overall the investment of GFII presents a project which was initiated as part of the biofuel boom but has until now not been economically sustainable for the investors. For the local farmers, GFII represents one additional option and most of the smallholders growing sugar cane do not seem to have significant complaints about the company. However, this was different in the beginning, when some individuals used the opportunity to make quick cash in wrongfully leasing land to the company. In the next chapter, I will take a closer look at the multiple mobilization efforts that took place to get back the land and ensure the rights of land-using smallholders.

6.3.2 Escalating mobilization efforts from below and above

The main mobilization efforts took place in the first half of 2011 when people in Del Pilar but also other barangays in San Mariano feared that they would lose access to their land. I will describe these mobilization efforts in a first step before discussing the responses of government actors and the company that resolved the issue. It becomes clear that the legal mobilization of the Congress was just one element of broader mobilization efforts that involved mass protest and violent means.

Local mobilization efforts were organized by DAGAMI (Danggayán Dagiti Mannalon ti Isabela), a local member organization of the KMP with about 3000 members in San Mariano (interview PH21). DAGAMI seemed to be especially strong in Del Pilar, where the barangay captain wrongfully leased the land to the company. Apart from the instances of contested land claims, farmers generally feared the loss of their land through the investment project. The first protest against the bioethanol project took place in February 2011 in San Mariano with 400 participants (Burgos 7/2/2011). Two weeks later, DAGAMI cooperated with the KMP and other far-left organizations to undertake a national fact-finding mission and collect data

60 This policy was introduced by the DAR, as a response about the debate about bioethanol and food security in 2008 (interview PH46).

on problems around the bioethanol project (International Fact Finding Mission 2011: 14).

In the meantime, congressman Mariano of the KMP associated party-list Anakpawis sponsored a House Resolution demanding an investigation into the investment project “that would turn small owner-cultivators/farmer-tillers into tenants under a contract-growing scheme threatening farmers to lose their farmlands” (House of Representatives 2011). The resolution puts the investment into the broader context of “prevailing contract-growing practice in the Philippines” which “favors the foreign partner” and “drives many farmers to bankruptcy” (House of Representatives 2011). Therefore it was demanded that the arrangements between the company and the farmers are scrutinized and a full investigation be undertaken (House of Representatives 2011). The resolution was referred to the Committee on Energy, which made efforts to get inputs from different government agencies and furnished meetings with company representatives.

In the follow-up, a second fact-finding mission took place at the end of May 2011 with the participation of international civil society members such as from Friends of the Earth Japan, the Global Forest Coalition or the Organic Consumers Association – USA. The mission was organized by KMP, APC, IBON International, People’s Coalition on Food Sovereignty and DAGAMI and contained visits to communities as well as meetings with the company, local administration, but also provincial government agencies and politicians (International Fact Finding Mission 2011: 3). The report of the international fact-finding mission claimed that the project was “exacerbating land grabbing conflicts and socio-economic inequities” (International Fact Finding Mission 2011: 1) and demanded that government agencies and the Itochu Group should withdraw their support for the investment. The report contained not only information on anomalous land titling processes in the shadow of the investment but also problematic labor conditions on the sugar cane plantations, a heightened military presence in Del Pilar. The report described expected adverse effects on the ecology as well as food security (International Fact Finding Mission 2011). The findings were used for national and international advocacy vis-à-vis Congress, national agencies and international institutions such as the UN Special Rapporteur on the Right to Food (interview PH8).

Apart from these national and international efforts, mobilization continued on the local and provincial levels. In April or May 2011, the conflict led to an attack on company equipment in Del Pilar and the burning of sugar canes in the municipality of Delfin Albano (interviews PH21, PH48). The attack was ascribed to the NPA, which is active in the remote moun-

tainous parts of San Mariano (interview PH12). The attack was perceived as a warning by the company:

“Actually, it was a warning. A warning with a cost. There is a big cost; there is a big loss on our part, because the tractors are for our farms. When we don't have tractors, we cannot manage the farm [...] and the cultivation.” (interview PH12)

After another rally, which took place in front of the company's office in Cauayan in June 2011, high ranking company officials met with leaders of DAGAMI. They agreed to halt the development of the land in question (interview PH48). In another dialogue that took place at the Provincial level, the Governor of Isabela intervened and called on all mayors to respect and ensure legitimate land claims. In turn, he asked the activists to provide mayors with evidence of fraudulent land claims, so they are able to resolve the conflicts (interview PH48). Subsequently, the mayor of San Mariano turned to the barangay captain:

“He [the mayor] presented the evidence that they have. They give it to these captains, who are involved in this. And then, he told them a question [...]: ‘Why did you do this? There is this evidence that this land belongs to someone else. So, why did you do it?’ That's the question. And then he ordered them: ‘If you have no evidence that this is yours, you better stop it.’” (interview PH48)

In consequence, the barangay captain of Del Pilar informed the company that the land was not his own and it was returned back to the owners⁶¹ (interview PH48). In neighboring municipalities, this did, however, not work and it took another rally – this time in front of the company headquarters in Metro Manila – and five more months before all the land was returned to the smallholders working on the land (interview PH48). According to a national KMP representative, a total of 2000 hectares were returned due to the actions of civil society (interview PH8). I, therefore, regard the mobilization attempts as a success.

61 These accounts about the involvement of the Governor were narrated by one interviewee only and I was not able to verify them through other sources. The meeting with the Governor was confirmed by others (interview PH47), who did however not participate and were therefore not able to help in establishing what was said during the meeting.

It is difficult to ascribe the mobilization success to individual instances such as the legal mobilization through the congressional resolution, the fact-finding missions or the NPA attacks. Instead, it makes sense to think about the different strategies working together to explain the outcome. It seems clear that the intervention of the Governor was an essential step in resolving the conflicts around certain lands. It is likely that he was pressured into doing so ‘from below’, by protests of DAGAMI as well as the threat of more violence by the NPA, and ‘from above’, by the activities going on at the House of Representatives. However, I do not have additional evidence to validate these points.

Other interventions seem less relevant, as they happened after the initial conflicts were resolved. In 2012, some leaders of DAGAMI traveled to Japan, upon the invitation of Friends of the Earth, Japan to meet with politicians and company officials (interviews PH21, PH48). In the same year, Olivier de Schutter, acting Special Rapporteur on the right to food and James Anaya, acting Special Rapporteur on the rights of indigenous peoples, formally addressed the Government of the Philippines to voice their concerns and gather information about the investment of GFII. Their letter summarizes findings from the international fact-finding mission and asks the government for clarification (OHCHR 2012). However, it seems like such an answer was never provided. It is also unlikely that the involvement of the two special rapporteurs made any difference, as the situation in San Mariano was starting to calm down. While there was another protest in front of the bioethanol plant in August 2012, which was mainly triggered by an unpleasant odor emanating from the refinery (Global Forest Coalition 30/08/2012), activists of DAGAMI seemed to change their mind about the investment. One of the central leaders of the protest later decided to grow sugar cane for the company himself (interview PH21). It seems that local critics of the project were convinced over the years that farmers do not lose their land and have another economical option now. It might even be that the relationship with government agencies like the DAR improved after the initial conflicts, as was described in an interview with different staff members at the local DAR office:

“Interviewee A: And then it was proven beneficial and then later on this left group they just went silent. [...] In fact, they are now our friends. They have acquired our program too!

Interviewee B: Yes, and we were able to keep them silent because we have proven that [the project] is really beneficial to the persons within

the area. And, they even extended their help! They help us in the conduct of our programs.

Interviewee C: They are asking for a certification from our office, so that their back up land, their barren land will also be planted with sugar cane.” (interview PH47)

This newfound cooperation seems rather remarkable as traditionally, the KMP regards the agrarian reform as ‘bogus’ and usually does not seek collaboration with the DAR. However, locally some activists seem to cooperate closely with government agencies and municipal administrators now (interview PH21).

Overall, mobilization against the unjust leasing of lands and the GFII investment more generally did take place not only locally, but also nationally and internationally. This combination of pressure from below and from above most likely encouraged the involvement of the Governor. Through reminding the mayors of affected municipalities to stop illegal land claims, the Governor helped to resolve the issue in barangay Del Pilar and other areas. In the end, general protests also died down when local activists realized that they are able to profit from the investment.

6.3.3 The company: complications of a joint venture business

The previous chapter showed that one of the decisive factors to solve the issue of the land illegitimately leased to the company was the involvement of the Governor, who made sure that local politicians do not sign and stop wrongful land claims. GFII and its foreign investors did not play a significant role in this context. Nonetheless, looking at some of the investment’s characteristics provides some insights into the difficulties of foreign investment in land.

As described in chapter 6.3.1, the leading investors in GFII and the bioethanol plant was the Japanese Itochu Group, with an investment of 120 million USD. The Itochu Group has an extensive portfolio with investments in textile, food, information technology, metals, oil products, energy, insurance, finance and real estate (Gatdula 9/22/2009). The investment in bioethanol was a response to both Japanese government efforts to reduce greenhouse gas emissions (Gatdula 9/22/2009) as well as Philippine legislation for biofuels (Molina 11/1/2010). It was planned to register the project as Clean Development Mechanism under the UN Framework Convention on Climate Change (International Fact Finding Mission 2011: 11), which did, however, not happen. As a big international corporation, the

Itochu Group has a well developed CSR program, ascribes itself to uphold human rights, and joined the UN Global Compact in 2009 (Itochu Corporation). The international fact-finding mission, as well as Japanese NGOs such as Friends of the Earth Japan, directly addressed the corporation and demanded action to be taken (International Fact Finding Mission 2011: 43–44). Yet, it is unclear if the Japanese company was able to directly influence management decisions made on the ground in San Mariano.

Evidence from my interviews indicates that the relationship between the local, mainly Philippine management and the Japanese investors was rather tricky. One of the activists who went to Japan to talk to the investors, for example, claimed that the Japanese managers thought that the lease money was between 15000 and 20000 pesos and were surprised to find out that locally the rate paid was between 5000 and 10000 pesos (interview PH21). There were also stories that company employees regularly stole fuel or fertilizer and sold it for their private gains (interview PH21). The land leasing process, as was described earlier, was problematic. Especially in the first years, the company tried to acquire as much land as possible. However, it turned out that some of those lands were not even suitable for sugar cane growing, leading to unnecessary expenses (interviews PH12, PH20). Due to the economic difficulties and local mismanagement, the Japanese investors eventually pulled out in 2014:

“Oh, their business partners here were not loyal to them. They were corrupt. [...] So, the investment didn't [pay off]. There were no more investments that were coming and so, yeah, they had to shut it down.” (interview PH48)

In consequence, GFII was sold to the Philippine investors and was acquired in 2016 by another Philippine business with experience in bioethanol production (interview PH12). In result, there have been two significant changes in management since the beginning of the investment, each bringing with them considerable modifications.

Despite some management problems, the company seems to be receptive to complaints made by farmers (interview PH19). At the same time, farmers have a good bargaining position, as they can simply quit the contract after three years.

However, overall I hardly have evidence on the company's receptivity for the years 2007 to 2011. At the same time, it did not seem too relevant for the solution of the problem, as the central conflict was between small-holders and some local elites who had used the investment to claim land.

6.3.4 Support network: the radical left

The organizers of the protest against the company were able to use preexisting network structures, which linked local actors with national and international civil society actors and politicians. I will discuss these links in the first part of the chapter before I will reflect on the risks that come with the support by the NPA.

When GFII started the investment project in the region, the farmers' organization DAGAMI already existed and had about 3000 members in San Mariano and up to 6000 members in the whole Province of Isabela (interview PH21). As such, it was easily possible for them to mobilize members for protests, such as in early 2011. As DAGMI acts as the provincial chapter of the KMP the organization is closely linked to national KMP activists who quickly got involved. Through their networks, they organized the international fact-finding mission, in which 13 national and international and six local organizations participated (International Fact Finding Mission 2011: 3). The international participation certainly created more publicity and Japanese NGOs were able to address the company in Japan. In addition, the KMP also provided the contact to the Congressman of Anakpawis, who was the former chairman of the KMP. In essence, through the KMP this whole machinery of mobilization strategies was started targeting different levels of government:

“The legal strategy is, of course, the advocacy work. For example, negotiations with the local government unit is part of the legal strategy, right? And then we also seek help from progressive congressional parties, representatives, like Anakpawis. [...] There is no legal court strategy because it is difficult. So we just use dialogues, advocacy. And also the international advocacy.” (interview PH8)

The citation mentions the difficulty of court strategies, which is probably linked to the fact that they can take up years and therefore be very resource-intensive (as discussed in chapter 4.2.2). Instead, the strategy focused on influencing politicians in order to get them to act on behalf of affected smallholders.

At the same time, the organizations of the radical bloc also used the case of GFII to advance their case for genuine agrarian reform through linking the issues:

“With the drive to develop new high-value export-oriented crops over the past decade, land grabbing in the Philippines has intensified and exacerbated land inequities. Small-scale food producers have been dis-

placed, indigenous ancestral domain has been violated, and the urgent call of hundreds of thousands of rural families for genuine agrarian reform have been ignored.” (International Fact Finding Mission 2011: 4)

In this way, the resistance of the KMP to investment projects such as GFII is based on the general belief that foreign investment in agriculture can never be beneficial for local farmers. In consequence, the national actors of the KMP remain in opposition to the bioethanol project (interview PH8), even though there are no more actions undertaken. Locally some members of DAGAMI have shifted in their opinion and are participating in the project as described in chapter 6.3.2. The case, therefore, shows how local farmers can use the support of the radical left network to create considerable pressure on the company as well as provincial and local politicians.

In addition to support from legal organizations from the radical left bloc, the farmers also received support from underground communist organizations, first and foremost, the NPA. The New People’s Army has had a presence in the region since the early 1980s and the municipality of San Mariano was once home to one of the biggest rebel camps in the country (Persoon/van der Ploeg 2003: 458). The remote mountainous areas, which are part of the Northern Sierra Madres Mountain range, seem to provide space for the NPA to set up camps and run their operations. During my field research, it became clear that some remote parts of San Mariano are known locally as NPA stronghold (interviews PH12, PH21) and are avoided by some locals. The NPA has a history of attacking agricultural or mining investors who they deem to exploit the people and the environment; however, they also extort ‘revolutionary taxes’ from companies, so there might also be economic motives for attacks (International Crisis Group 2011: 18–19).

The attack on GFII tractors was regarded as support for the demands of DAGAMI (interviews PH12, PH21). However, this support came at a cost, as “the government suspected that DAGAMI and the NPA were connected” (interview PH21). In consequence, the leader of DAGAMI was questioned by the military and described himself as lucky in getting away with his life (interview PH21). As mentioned in chapter 6.1.3, extrajudicial killings of farmer activists are not unusual in the Philippines and the Province of Isabela is no exception. In 2011, the vice-chairperson of DAGAMI was killed in San Mateo (International Federation for Human Rights 30/03/2011) and another leader of the organization in Delfin Albano in 2016 (Cervantes 9/9/2016). Even though killings are often associated with private militias, they also take place through official policy or mili-

tary actions against supposed rebels. In consequence, the support through the NPA has to be regarded as ambiguous: While the attack might have helped to show the company and local politicians the seriousness of the situation, being associated with the rebel group can become dangerous for activists, like the members of DAGAMI.

Overall, my evidence shows that existing farmers' organizations played a decisive role in starting a fast and effective mobilization against the investment projects and wrongful land claims. The combination of local pressure with a credible threat for violence, critical questions asked on the national level and international civil society attention proved efficient in creating a favorable outcome for local smallholders.

6.3.5 Discussion and additional issues

The case of GFII sheds some light on how foreign large-scale land deals are affected and shaped by local conflicts and existing networks involving violent actors. Nonetheless, legal mobilization also played a role in this case, even though it was only one part of a broader set of strategies. I will first discuss my findings through the lens of the three core conditions before discussing open questions.

First, the national legal opportunity structure does provide local smallholders with some protection. The barangay captain of Del Pilar had planned to lease land that he did not own. In consequence, legitimate tenure holders could have brought the case to court. However, as discussed, in the Philippines, this is not the most efficient way to claim rights. Instead, the farmers invoked their rights vis-à-vis the Provincial Government and, through the help of the KMP, also vis-à-vis Congress. Paired with other forms of mobilization, most importantly protests, fact-finding missions as well as an attack on company property, the farmers were able to defend their access to land. Yet, it is not clear which role the legal mobilization played in comparison to other forms for explaining the outcome. I will discuss this question further below. Looking at the case through the lens of the NLOS, it also becomes clear that tenure rights need to be actively protected in cases of large-scale agricultural investments. While local farmers had secure tenure, this was put into question as the investor triggered a rush for land through providing quick cash. The case, therefore, shows how foreign investment can lead to new and intensified contestation around land.

Second, the receptivity of the company did not play a big role. Instead, the conflict developed between local smallholders and political elites, who leased the land illegally or certified false land claims. The company did play a certain role, as they did agree to stop the further development of the land due to considerable pressure from DAGAMI. However, the solution of the conflict came with the involvement of the Governor, who warned local politicians to follow the law and stop wrongful land claims.

Third, local farmers had a strong support network, which existed already and was able to go into motion quickly. The farmers mobilized locally through protests and were supported on the national level by the KMP, which involved the Congressman and undertook fact-finding missions. Most activities happened within a couple of months, showing the efficacy of the mobilization of the far-left network. At the same time, the involvement of the NPA has to be regarded as ambiguous. It seemed to have provided farmers with additional pressure but also means the danger of retaliation by state forces.

The main open question, in this case, is the effect of different types of strategies. As discussed in chapter 6.3.2, it was not possible to disentangle the effects of local protests, two fact-finding missions, the violent attack and the Congressional inquiry on the outcome of the efforts. As described, the involvement of the Governor seems to have been central in enforcing existing rules and protect the rights of smallholders. However, if the involvement of the Governor was triggered by questions asked by the Congressional Committee on Energy, local protests, the fact-finding missions or the NPA attack, is impossible to infer from my available data⁶². I am therefore not able to draw conclusions on the effectiveness of legal mobilization in comparison to other forms such as protests, fact-finding missions and violent attacks. Furthermore, I am not able to understand the role the violent attack played in this case. Was it interpreted as a sign for the company to pay off the rebels, which would have not necessarily warranted the engagement of the Governor? Or, was it a signal to the Provincial Government to take care of local conflicts in order not to endanger the investment, which was largely supported by the Governor? In other words, was the violence necessary for local actors to achieve their goals?

Overall, the case of GFII provides an example of a case in which local actors were able to push for the protection of their land rights and ensure

62 Unfortunately I was neither able to interview the Governor of Isabela nor the Mayor of San Mariano who were involved in solving the conflict.

their access to land. This was reached through a combination of strategies of which the legal mobilization of Congress and the Provincial Governor were just one element. The radical left network offered important support in this regard.

6.4 Case IV: Agumil Philippines: Uninformed consent and the difficult struggle of local cooperatives

The investment of Agumil Philippines Incorporated in Palawan, which started in 2007, received considerable attention as the first palm oil project on the island. Agumil invested in Palawan through leasing land and contract growing arrangements with 14 cooperatives. However, the risk of the investment was predominantly carried by the cooperatives, who had to take out loans from the Land Bank to finance the setup of the plantations. Most cooperatives ran into substantial financial problems, as they were not able to repay their loans, leaving them highly indebted. The case thereby shows the failure of government agencies to support local smallholders despite existing safeguards.

After several years, cooperatives were able to push for a Congressional Inquiry into the matter. The inquiry found the agreements with Agumil to be problematic and instilled a dialogue process on the Provincial level. As a consequence, an offer for a revised agreement by the company and the Land Bank was presented to the cooperatives. However, the cooperatives were divided on whether to accept the deal or not, which would essentially take away remaining control over the plantations. The legal mobilization attempt can, therefore, not be described as a success.

In the following, I will first give an overview of the investment of Agumil through focusing on the setup of the investment and the agreements signed with cooperatives (chap 6.4.1). In a second step, I will discuss the failure of various government agencies to provide support for cooperatives' members and scrutinize the agreements before they were signed. I also describe the legal mobilization attempts, which led to a congressional inquiry and a dialogue process at the provincial level (chap 6.4.2). In a third step, I will take a look at the Agumil and the Land Bank, which is responsible for the loans to the cooperatives (chap 6.4.3). In a final step, I focus on the support network of the cooperatives, which will reveal that they have hardly received any civil society support. Furthermore, I will address the issue of missing coherence among cooperatives, which probably further

weakened their position vis-à-vis the company (chap 6.4.4). Chapter 6.4.5 will then summarize and discuss my findings.

6.4.1 Overview of the investment of Agumil Philippines, Inc.

The investment of Agumil Philippines Inc. focuses on the production of crude palm oil through the operation of a palm oil mill located in the municipality of Brooke's Point in the South of Palawan. The investment involved Malaysian, Singaporean and Philippine investors. Formally, two companies were created: The Palawan Palm & Vegetable Oil Mills, Inc., which is 60 % Singaporean and 40 % Philippine owned and runs the oil mill, and Agumil Philippines Inc. (AGPI), which is 75 % Philippine and 25 % Malaysian owned and deals with the plantations⁶³. However, both are part of the Agusan Plantations Group, based in Malaysia (Larsen et al. 2014: 3).

To create the necessary oil palm plantations, Agumil secured land for production either through leasing the land directly or through contract growing arrangements with 14 local smallholder cooperatives. In addition, two business-owned cooperatives grow oil palm independently of Agumil but have to deliver their fruit bunches to the Agumil mill, as it is the only one on the island (Larsen et al. 2014: 20). As the company does not provide official numbers, it is difficult to estimate the exact amount of hectares planted with oil palm in Palawan. Data from 2014 name a total area of over 6000 hectares (Department of Agrarian Reform 2017: 2), which could be up to 10 000 (interviews PH36, PH44) or even 15 000 hectares (Larsen et al. 2018: 9) by 2018. These numbers also include plantations by independently organized businesses; the amount planted by smallholder cooperatives is around 2900 hectares (interview PH43).

The investment was welcomed as a way to enhance economic development, create employment opportunities and tax gains (Larsen et al. 2018: 10). However, years after the growership agreements were signed, it became apparent that the investment was not beneficial but highly problematic for local smallholders. This is the issue I will focus on in the following; however, it should be noted that there are also significant issues around the encroachment on indigenous people's land, illegal logging and busi-

63 As the investor is usually referred to simply as 'Agumil' locally, I will refer to the company as Agumil in the remaining chapter. The contract signed with cooperatives refers to AGPI, which stands for Agumil Philippines Inc.

ness people buying up cheap land as an investment opportunity (Neame/Villarante 2013: 211).

To enable the investment, Agumil teamed up with the Land Bank of the Philippines, a government-owned bank with a focus on providing financial services to rural populations and encouraging economic development. The Land Bank provided loans to cooperatives that entered into a grower-ship agreement with the company. Funding conditions of the bank required farmers to form cooperatives, as loans would not be granted to individuals. Furthermore, the Land Bank demanded the signing of two agreements – the Production Technical and Marketing Agreement (PTMA) and the Management Service Agreement (MSA) – between the cooperatives and Agumil, as a way to ensure that there would be a buyer's market for the fresh fruit bunches (FBB) (interview PH45). Fourteen cooperatives signed these two agreements and received subsequent loans with a 14 % interest rate⁶⁴. However, as none of the cooperatives was able to present 20 % of the equity required for a Land Bank loan, the company put up the 20 % for the cooperatives. In consequence, the cooperatives also have a loan with Agumil (Palawan Council for Sustainable Development 2014: 6).

The PTMA regulates the relationship between the cooperatives and Agumil: The cooperatives commit themselves to using the land under contract exclusively for growing oil palm and delivering the fresh fruit bunches to the mill of Agumil for 30 years. The company provides seedlings and training for the cooperatives, while the cooperatives are obliged to follow the operating procedures set by the company. At the same time, Agumil has the right to take over the management of the plantation if “the plantation management was not carried out in accordance with AGPI’s technical recommendations” (Production Technical and Marketing Agreement 2007: Art.II.7). In case of such a takeover, a 10 % management charge is billed to the cooperative, who nonetheless has to pay for inputs such as fertilizer. Costs advanced by the company are charged with a 14 % compounded interest rate to the cooperatives (Production Technical and Marketing Agreement 2007: Art.II.Art. 7). The terms and conditions for the takeover of the management of the plantations are detailed in the Management Service Agreement. In the agreement, the cooperatives agree to the management of the plantations by Agumil and the use of the loans by the Land Bank for these ends (Management Services Agreement 2007).

64 12 % interest rate in addition to a 2 % service fee.

The MSAs were signed together with PTMAs and, in some instances, entered into force right away. In consequence, some cooperatives managed their own plantations, while other plantations were managed by Agumil (interviews PH35, PH39, PH44). However, irrespective of their management, most cooperatives ran into serious problems when it came to the first harvests and the paying back of the loans after five years. Yields were a lot lower than initially projected (interview PH35, PH39), while costs for inputs such as fertilizers and transport had increased significantly (Neame/Villarante 2013: 219). Furthermore, the prizing arrangement with Agumil included a 15 % profit share for the company as well as an additional milling fee of 750 Philippine pesos⁶⁵ per metric ton of fresh fruits bunches, which added another 15 %. In consequence, about 30 % of the revenue went to the company in addition to the 10 % management fee, considerably reducing the profit margins of the cooperatives.

At the time of research in 2018, only 4 out of 14 cooperatives were able to pay their monthly amortization rates (interview PH45). Over the years, the cooperatives had accumulated 218 million Philippine pesos (over 4 million USD) of debt with the Land Bank (Committee on Cooperatives Development 2017), and compounded debt of 93 million Philippine pesos (1,7 million USD) with Agumil (interview PH41). Most cooperatives' members had hardly gained any income from the investment and would have had considerable higher profits had they planted other crops such as coconut or banana (interviews PH36, PH38, PH42, PH43). I will argue that this situation could have been averted had the smallholder cooperatives had legal advice and institutional support before the signing of the agreement. Before I take a closer look at the failure of different regulatory mechanisms, I will describe the process leading up to the signing of the agreements.

Various consultations on different levels preceded the setup of the oil palm plantations in 2007. In 2004, Agumil, which already had a presence in Mindanao, was invited by the then acting Governor to explore and develop palm oil production on the island of Palawan. The project, which was known as the 'governor's project' (interview PH36), was then discussed with different local government units and endorsed by different municipalities in the South of the island. The municipality of Brooke's point donated land for the nursery while the company started to inform landowners about investment possibilities (Palawan Council for Sustainable Devel-

65 At the time of research in November 2018.

opment 2014: 1). In some barangays and indigenous communities, meetings took place in which the investment project was presented:

“However, when asked to describe these meetings participants stated that they were animated by all the positive information and the way the economic benefits of oil palm were pitched, such that there was almost no discussion of any possible negative impacts. In particular, participants pointed out the lack of discussion concerning wider social or environmental impacts, or on the impact of turning their land over for such a long period if the financials did not work out as planned” (Neame/Villarante 2013: 224)

At the same time, no environmental or social impact assessment was carried out, and the land was not surveyed in a participatory manner, which would have revealed land conflicts or illegitimate ownership claims (Neame/Villarante 2013: 224).

Agumil staff focused on convincing holders of land titles, many of them agrarian reform beneficiaries⁶⁶, to form cooperatives in order to enter into the agreement. Many cooperatives were formed solely for the purpose of the investment (interview PH35), while in other instances, inactive cooperatives were reactivated (interview PH39). Many landowners were excited about the opportunity to get rich:

“In 2006 or 2007 there were Agumil employees from Mindanao who came here to Palawan. They went from barangay to barangay encouraging people to plant oil palm. They said that oil palm is one of the most productive tree crops. So, that's why many landowners were encouraged to join the plantation – because, actually, we were expecting to become rich.” (interview PH44)

Stories about becoming a millionaire (interview PH36) or the prospect of owning a car (interview PH38) within a few years encouraged smallholders to agree to the investment.

The PTMA and the MSA were only signed by the chairpersons of the cooperatives, leading to a situation in which most cooperatives' members never saw the actual agreement (interview PH42). In addition, the grower-ship arrangement with the PTMA, the MSA and the loan line agreement with the Land Bank was presented as ‘take it or leave it’ package, which did not leave room for negotiation (Neame/Villarante 2013: 225). Further-

66 Five cooperatives consist mainly of ARBs (Department of Agrarian Reform 2017: 2).

more, the company seems to have exerted some pressure to sign the agreements as quickly as possible. In one case, the agreements were signed at the side of the road (interview PH42).

The cooperatives did not have any legal representation nor legal advice. Even cooperatives consisting predominantly of ARBs did not receive support from the local DAR office, as there seems to have been not enough time (interview PH39). In the end, the cooperatives agreed to the contracts without proper understanding⁶⁷: “Nobody explained the content of the documents. And, you know, most of us were farmers. We don’t know legal terms” (interview PH39).

The cooperatives questioned the contents of the agreement only years later when they started to realize that they are not profiting, but rather losing money through the investment (interview PH39). The realization came with the first harvests:

“[...] because of no consultation, I haven't seen the contract. So, I just presumed it's a good contract. But when the production started, there were already fresh fruit bunches from the plantation. I was really thinking: Why do we not have any profit from the plantation? [...] That's when I started my own computation and research on the internet” (interview PH35)

Only then did the cooperatives seek legal advice through lawyers they knew through their personal networks (interview PH35) or the DAR (interview PH39). However, it was too late to change the parameters of the agreements:

“When they asked the DAR for help we looked at all the documents; but the problem is, they are all legal. They are legal contracts, so we told them that they cannot breach the contract.” (interview PH40)

When the cooperatives began to understand their situation, they started to mobilize and call on different institutions. I will further analyze these mobilization efforts in the next chapter.

67 However, there were also landowners who were skeptical of the offer and did not join (interview PH37).

6.4.2 The failure of institutional mechanisms and subsequent legal mobilization attempts by cooperatives

Several institutions and agencies were involved as the company started to set up their operations. However, they failed to provide legal support or advice to the cooperatives. I will describe this failure in the first part of the chapter before I consider legal mobilization attempts made by the cooperatives in the second part.

Looking at the agencies, who were or should have been involved during the planning of the investment project, it becomes clear that relevant actors either did not feel responsible for scrutinizing the growership agreement between Agumil and the cooperatives or were not engaged enough to do so. As described in chapter 6.2.2, the agencies, which would have the mandate to support local cooperatives through legal advice, were provincial and local DAR (Department for Agrarian Reform) and CDA (Cooperatives Development Authority) offices. While the DAR officials are responsible for the support of agrarian reform beneficiaries, the mandate of the CDA extends to all cooperatives. However, both agencies were not involved at the moment the agreements were signed.

The CDA works according to the principle of subsidiarity and therefore leaves the decision to enter into contracts with investors to the cooperatives. The provincial office was only consulted by the cooperatives, once the financial problems became apparent (interview PH31). Similarly, the local DAR office was not consulted by the cooperatives at the time of the signing (interview PH39). Later on, both the CDA and the DAR provided support to the farmers, either in the form of trainings (interview PH31) or through direct material support such as the provision of tractors and trucks (interviews PH39, PH40). However, both the provincial CDA and the local DAR offices regarded the legal situation of the cooperatives as a hopeless case (interviews PH31, PH40).

Apart from the DAR and the CDA, other agencies have oversight functions even though they might not directly concern the cooperatives. The Philippine Coconut Authority (PCA), for example, is mandated to oversee the production of palm oil. However, it seems that the agency in Palawan was not able to fulfill this mandate at the beginning of the investment, as they did not have guidelines for the production of palm oil at the time (Larsen et al. 2018: 6). Locally the PCA only became involved in the investment in 2017 when they started gathering information on the project. The PCA now supports the cooperatives with training, free seedlings and maybe also fertilizer in the future (interview PH43). Interestingly, all three

agencies, the DAR, the CDA and the PCA seek to support the cooperatives through training and resources, while the growership agreements and the role of the investing company are not principally questioned.

Two government authorities responsible for environmental protection, the Department of Environment and Natural Resources (DENR) and the Palawan Council for Sustainable Development (PCSD)⁶⁸, seem to have voiced some concerns in the beginning about the ecological consequence of the introduction of a new plant on the island. Nonetheless, they supplied the necessary certificates for the operation of the palm oil mill (Palawan Council for Sustainable Development 2014: 2). However, no complete Environmental Impact Assessment was done, as the company did not formally control the plantations:

“On paper, they are different entities. So, somehow, they have circulated the law by doing that. If we call on a certain individual or cooperative, they would say: ‘Well, we are not covered by your [...] clearance system because we are just small scale farmers. My area is only five hectares, how would you regulate us?’” (interview PH30)

The certificate of the DENR sets environmental standards and requires the setup of a Multiparty Monitoring Team, which is supposed to address issues of concern (interview PH33). Monitoring Teams were set up on the municipal level with the participation of municipal officials; however, it is questionable how functional the Monitoring Teams ever were. Evidence from one municipality shows that grievances raised by cooperatives in these settings were not addressed by the company. Furthermore, in 2014, the quarterly meetings stopped altogether (interview PH36, PH39).

In one instance, the DENR filed a case against Agumil for illegal logging⁶⁹ (interview PH33); however, this happened only after an indigenous rights organization made them aware of what was going on (Community Environmental and Natural Resource Officer 2014). Overall, both environmental agencies were ready to give permissions to the company, while at the same time being limited in their monitoring role, which seems to be only fulfilled when civil society actors push for it. It, therefore, does seem fair to conclude that the company did receive ‘preferential treatment’:

68 The Palawan Council for Sustainable Development is formally a national agency, which was created to implement the Strategic Environmental Plan, a national law, to protect the unique ecological system on Palawan.

69 Until the time of field research in November 2018 the case was not decided in court (interview PH33).

“The project proponents managed to sail rather easily through the bureaucratic system, navigate regulatory failures and benefit from ambiguities in project implementation” (Larsen et al. 2018: 19).

All five government agencies, the DAR, the CDA, the PCA, the PCSD and the DENR had (and have) some oversight function over the Agumil investment; however, none of them raised critical questions in regards to the agreements with the cooperatives or provided legal support to the smallholders entering into the project. Admittedly, not all of them had the mandate to do so, but there were several opportunities to scrutinize the investment, which remained unused.

As described in the previous chapter, it took around four to five years before the members of the cooperatives realized that the investment might not be as profitable as they had expected. Cooperatives tried to address their grievances directly to Agumil and asked for renegotiations, which were denied. Cooperatives also addressed complaints to the Palawan Provincial Board, the DAR, CDA provincial offices (Larsen et al. 2014: 30) and the PCSD (interview PH30). Initial responses of these agencies were somewhat limited, as they viewed the contract between Agumil and the cooperatives “as matters to be dealt with between private parties” (Larsen et al. 2014: 31). As a consequence, cooperatives united in the Association of Palm Oil Growers in Southern Palawan through which they filed complaints and communicated with the Provincial Government collectively (Larsen et al. 2014: 31). Yet, this cooperation was not sustained as different cooperatives had different interests and demands and the association later dissolved (interview PH39).

Other mobilization efforts came from indigenous rights groups who mobilized through the NGO ALDAW (Ancestral Land/Domain Watch). ALDAW had rung the alarm bells as early as 2010. They deplored the threat to biodiversity and local food self-sufficiency, the introduction of new pests and the “risk that members of local communities who have joined the so-called ‘cooperatives’ will soon become indebted with the oil company” (ALDAW cited in Schertow 14/11/2010). In the following years, ALDAW collected data on encroachments of oil palm plantations on protected forests and ancestral domain and addressed the issue to the DENR, the National Commission on Indigenous Peoples and the President of the Philippines. In 2014, ALDAW organized members of cooperatives, smallholder farmers and indigenous groups into the Coalition Against Land Grabbing through which they called on a moratorium on further oil palm extension on Palawan (Dressler 2017: 657). As the province-wide moratori-

um failed, ALDAW focused on getting moratoria passed on the municipal level (interview PH29). In their subsequent advocacy work, they mostly focused on ancestral domains and indigenous rights issues and did not provide further support to the cooperatives.

In the meantime, the Land Bank met with the cooperatives, who had failed to pay their amortization rates. It offered them a restructuring of the loans with a reduction of the interest rate from 14 % to 7 % and a waiving of the penalty fee of 3 %. Subsequently, the loans of six cooperatives were restructured, while the others did not agree (interview PH45). However, the restructuring did not principally change the situation, as the cooperatives remained indebted and hardly generated income. In the following years, the cooperatives mobilized to a varying degree: For example, in 2016 or 2017 five cooperatives worked together and dumped their fresh fruit bunches in front of the Land Bank in Palawan's capital Puerto Princesa as a way of protesting against the high interest rate for their loans (interview PH42)⁷⁰. However, all these different mobilization attempts had limited effects. Some officials reacted sympathetically and their opinion turned against further oil palm expansion; yet, the agreement between cooperatives and the company was not changed or fundamentally questioned.

The agreements between the cooperatives and Agumil were for the first time officially challenged, when national CDA officials got involved and brought the case to Congress. After the Chairman of the Cooperatives Development Authority heard about the problems of the cooperatives in Palawan in 2015, he issued an investigation and called on Congress to interfere (interview PH7). In July 2016, House Resolution No. 120 was passed, calling on a congressional inquiry of the Committee on Cooperatives Development. The Resolution raised issues around the legality of the agreements based on various ground: First, the cooperatives had not been fully informed about the documents. Second, formal general assembly resolutions would have been needed for cooperatives to enter into the agreements, which was not always followed. Third, Agumil was accused of violating the contract as they took over some of the plantations from day one. It was furthermore reasoned that the cooperatives were not "operating on a cooperative basis" (House of Representatives 2016).

70 It is not clear, if the protest had an effect. The interviewee argued that the Land Bank subsequently lowered the interest rate. However, this information could not be verified. It seemed rather likely, that the Land Bank had lowered the interest through the restructuring of the loans.

As part of the congressional inquiry, two hearings took place, one in Quezon City (part of Metro Manila) in May 2017 and one in Puerto Princesa in August 2017, where all cooperatives were able to participate. During the process, different government agencies, especially the DAR and the CDA submitted their opinion on the investment.

The DAR clarified that no clearance had been provided by the Provincial Agrarian Reform Official. They also pointed out that the (quasi)-jurisdiction of the DAR and its Adjudication Board did not apply as the PTMA stipulated that only courts in Palawan could adjudicate contractual matters. The DAR reminded the company of its corporate social responsibility “to exercise positive dealing with the cooperatives” (Department of Agrarian Reform 2017: 6) and recommends the condonation of all interests and charges of the loans to help the cooperatives to overcome their debt (Department of Agrarian Reform 2017).

The CDA went one step further and demanded the rescission of the PT-MAs and MSAs (House of Representatives 2018). This recommendation was taken up as one option for the cooperatives to decide in the final report submitted to the House of Representatives in January 2018. The report made a total of 11 recommendations, such as the condonation of the loans by the Land Bank, the technical and financial training of cooperatives, the construction of an independent oil mill and a temporary moratorium on further oil palm expansion. However, not all recommendations were considered feasible by actors involved. The Land Bank argued that a condonation of loans would set a bad precedent (Committee on Cooperatives Development 2018). The Provincial Government of Palawan was mandated to create a rehabilitation plan for the cooperatives through the formation of a task force with the participation of Agumil, the Land Bank, the cooperatives and various government agencies (House of Representatives 2018). Subsequently, the matter was dealt with by the task force in Puerto Princesa.

The provincial task force met a couple of times throughout 2018 to essentially scrutinize a take-out deal, which had been developed by Agumil together with the Land Bank as a reaction to the congressional inquiry. The deal foresees that a new company, associated with Agumil, will take over all outstanding loans of the cooperatives with the Land Bank and the company. In turn, the cooperatives are supposed to lease all existing plantations to the company through a new lease agreement. The respective landowners would receive a rent payment of 3000 PHP (around 50 USD) per hectare per year, which will increase over the years to 4600 PHP (76 USD), in addition to a profit share of 200 PHP (3 USD) per metric ton of

fresh fruit bunched produced (interview PH45). In addition, a 15 000 PHP (250USD) sign in bonus was promised. Basically, all debts of the cooperatives would be paid and their contracts be changed to leasehold with a profit-sharing agreement.

During task force meetings, this proposal and demands made in turn by the cooperatives were discussed. However, for the cooperatives, it seemed like there was no room for negotiation, as their demands were not heard. They perceived that there was no space for compromise (interviews PH35, PH39, PH44). The cooperatives demanded higher rent and profit share payments in addition to a higher sign-in bonus, while the company maintained that meeting these demands would be financially impossible for them. An official from the Land Bank commented on the demands: “there was also a counteroffer, offered by the co-ops, but their numbers were not supplemented by figures or projections.” (interview PH45). The missing ability of cooperatives to show evidentiary data in their favor made it difficult to counter the company’s proposal, which was again a ‘take it or leave it’ offer. Essentially, cooperatives can decide if they want to take the new deal or stay with the initial contracts. At the time of research in November 2018, it was not clear how many cooperatives wanted to join the take-out deal and opinions about the deal varied greatly between cooperatives.

If cooperatives wanted to take the offered deal depended on the individual situation of the cooperatives. For the cooperatives, which were able to pay their amortization rates, the new arrangement might not make a lot of sense. By the time they will have fully repaid their loans, their profits from the plantations will be higher than the amount offered by the new deal (interview PH44). On the other side, some cooperatives signaled their willingness to enter the deal, as they were happy to finally escape the debt and have a stable income (interview PH34). Others simply considered the lease money to be too small:

“The negotiation failed because they wouldn't grant us the 7000, our cooperative, we only wanted 7000. [...] You cannot live of 3000 per hectare per year, that's 250 pesos per month. [...] we cannot live of that.” (interview PH35)

While the deal would have been acceptable for this cooperative with a lease payment of 7000 pesos, another cooperative asked the company also to refund the amount of the amortization that they had repaid to the Land Bank. This specific cooperative had already paid 9 million pesos and regarded the refunding the sum as a matter of fairness: “So, some of the co-

operatives agreed, but who? They agreed because they had not paid even a single peso to the bank.” (interview PH39).

Some considerable frustration and the feeling of being cheated were voiced and at least four cooperatives did not want to take the deal. At the time of research, they were debating about bringing the case to the court, which they hoped would nullify the contracts and award them damages. The cooperatives hoped to use the findings of the congressional inquiry in court to show the one-sidedness of the contract (interviews PH35, PH42). In consequence, I cannot define the current outcome as a success for the cooperatives, even though the congressional inquiry did bring considerable movement in the case and suggested a solution to the debt problem. However, while the take out-deal would redeem all the debts of the cooperatives, it would also mean that the smallholders would have to give up control over their land and lease it to the company.

6.4.3 Agumil and the Land Bank

When it comes to the investment of Agumil, not only the company itself but especially the role of the Land Bank is central for understanding the problematic setup of the investment and the failure of subsequent legal mobilization attempts of smallholder cooperatives. While I do not have a lot of information on Agumil⁷¹, I have anecdotal evidence that the company has not been acting transparently towards the cooperatives as well as government agencies. At the same time, the Land Bank, the main funder of the project, puts the blame of the financial failure on the cooperatives themselves. Both the missing transparency and the ongoing support for the company by the Land Bank make it difficult for the cooperatives to achieve their goals.

Agumil Philippines Inc. was founded in 1993 as Malaysian-Singaporean-Philippine joint venture in order to invest in the growing palm oil industry in Mindanao. In 1998, the company set up its first palm oil mill in Agusan del Sur. Two more mills were constructed, one in Bohol and one in Maguindanao (Habito 2012: 13–14). The palm oil mill in Palawan is the fourth mill of the company. All plantations together were estimated to

71 Agumil does not share any information on the internet and acts rather secretive towards outsiders. Information gathered here therefore relies on secondary sources and interviews with cooperatives and government agencies.

amount to 28 000 hectares across the country in 2013 (Land Bank of the Philippines 2013: 42–43). In Mindanao, the company encouraged ARBs to enter into growership agreements and sought the help of the Land Bank in providing financing to smallholders (Habito 2012: 14). The investment in Palawan was modeled after the project in Mindanao (interview PH45). While there is some evidence that yields in Mindanao are higher than in Palawan and some cooperatives can make a living of the palm oil plantation (Nozawa 2011: 24), there are still similar stories of cooperatives being trapped in debt, leading to decreasing production:

“The priority of the cooperatives is to pay the amortization, thereby reducing costs through decreasing the amount of fertilizer, which results in decreasing yields the following year. If the oil palm trees are neglected for several years, rehabilitation of the oil palm trees is necessary, incurring further financial assistance.” (Hambloch 2018: 21)

In Mindanao, there are additional problems with growers diverting the FBB to other mills and rebel group actions impeding access to plantations (interview PH45). In Palawan, the economic situation seems tense as well. According to one interviewee, the mill was running on less than 50 % of its capacity (interview PH45).

Agumil did not pledge to any industry guidelines or principles (Larsen et al. 2014: 6), nor are the plantations certified by the RSPO or any other scheme. Furthermore, it seems like there are no policies for ensuring a clear and transparent communication with the cooperatives or government agencies.

Right from the beginning, the communication between the company and the cooperatives proved difficult –, especially around financial management. Agumil essentially controls all the funds of the cooperatives, as they have to sign off on all expenses as a third party to the loans provided by the Land Bank. In essence, the cooperatives, therefore, do not have full decision-making control over the use of their own funds even though they are the ones bearing the risk.

“The cooperative has to pay the loans, not the company. It's like that: Agumil is the management of the cooperative, because of the MSA agreement. So, they became our management with the plantation. That's why they are the one holding the money, using the money for it.” (interview PH39)

Especially in cases where the company took over the control, cooperatives often did not fully know or understand how their own loans were spent, as the company failed to provide detailed reports of expenses:

“The ability of cooperatives to wrest documents from [Agumil] and obtain some degree of insight into the financial management of their operations appeared to depend partly on the technical competence and backgrounds of board members and managers: It was clearly an advantage when people had higher levels of education and regular employment, or contacts in government offices that they could use as leverage” (Larsen et al. 2014: 26)

Conflicts around how money should be spent seem to occur on a regular basis (interview PH41)⁷². Some individuals are extremely suspicious of the numbers provided by the company. They think that the company is cheating in regards to the pricing formula for FBB through claiming lower prices at which they sell the crude oil (interview PH35). As there is no independent audit of the pricing process and no agency which sets prices for oil palm, the cooperatives depend totally on the information given to them by the company (Larsen et al. 2018: 13). The missing trust was also voiced concerning the new deal:

“You know, they failed in the management although you were [trusting] them again and they say you will be earning big. Now they are giving us three thousand per hectare per year. So how can you believe them? Nobody believes them” (interview PH35)

As there is no functioning grievance mechanism, it is difficult for the cooperatives to address their concerns to the company in a timely manner and smaller issues tend to lure on (interviews PH39, PH40 PH41).

In addition to the problematic communication with the cooperatives, government agencies and local officials also find it difficult to retrieve relevant information from the company. When local PCA officers started to gather information on the project, they did not receive relevant data from the company. In consequence, they had to undertake their own data gathering through the cooperatives simply to arrive at the amount of hectares

72 It should be noted that not all cooperatives did regard the requirement of all expenses being signed by an Agumil officer as problematic. Another interviewee from a different cooperative welcomed this arrangement as it secured cooperatives' members against possible fraud by the board of directors, which is often voted for based on family ties (interview PH44).

covered by oil palm (interview PH43). Similarly, municipal administrators hardly received any information on the company either, even though their municipalities are affected by the oil palm plantations (interviews PH36, PH37).

The difficult communication with cooperatives and missing transparency vis-à-vis government agencies and administrations paints a picture of Agumil as secretive and non-cooperative.

The Land Bank plays a central role in financing the cooperatives in Palawan but also provides a credit line directly to the company (interview PH45). Right from the beginning, the Land Bank has supported the investment project of Agumil in Palawan. As the government-owned bank and Agumil had already collaborated in Mindanao, the investment in Palawan was just seen as an additional project and did not undergo any independent feasibility study or critical examination by the Land Bank (interview PH45).

To ensure economic feasibility, the Land Bank required the smallholders to form cooperatives and the signing of the PTMA and MSA as a way to ensure the proper management of the plantations. At the same time, the contracts were regarded as private business between the company and the cooperatives and were not further scrutinized, for example, in regard to risk sharing (interview PH45). And while the Bank's mission is dedicated to "promot[ing] inclusive growth and improv[ing] the quality of life especially in the countryside" (Land Bank of the Philippines), it does not require social impact assessments nor social monitoring activities. Despite receiving funding from the World Bank, the Land Bank does not formally adhere to IFC Performance Standards (Neame/Villarante 2013: 204–205). Therefore, no mechanisms were in place that would have critically examined the contracts between Agumil and the cooperatives or the consultation process leading up the signing of the agreements.

However, it seems that even some existing rules were ignored. For example, usually, to apply for a loan, "[c]ooperative applicants must have one hundred members and a three-year track record, paid-up capital, complete core management, and other such requirements." (Palawan Council for Sustainable Development 2014: 6). It seems clear that this requirement was not fulfilled by most of the cooperatives, who were either newly formed or reactivated for the sole purpose of the investment. It, therefore, cannot be surprising that some of the cooperatives face serious managerial problems, which the Land Bank regards as the cause for the economic problems:

“Actually, in all cooperatives, the key is to have good members. Otherwise some members are misusing the funds. Most of the [...] past due amounts of Land Bank cooperatives are due to mismanagement. [...] Sometimes when Agumil supplies fertilizer, instead of applying it to the oil palm they divert it to other grounds” (interview PH45)

In response to the mounting debt, the Land Bank has restructured the loans once and is ready for further restructuring. In the eyes of the Land Bank, it is not very likely that the smallholders will lose their land if they are not able to repay the loans, as the bank would rather write off the credits. Otherwise, “the farmers would go back to Congress” (interview PH45). However, at the time of research the Land Bank advised the cooperatives to opt for the take-out deal as all the debts would be taken over by Agumil and its new company: “That’s our best offer” (interview PH45).

The evidence shows that the Land Bank puts the main blame for the debt problem on the cooperatives and not on the company. They are unlikely to cut any funding for Agumil, which has received numerous credits from the bank. Exerting influence on the company through the main financier is, therefore, not an option for the cooperatives.

Overall, existing evidence shows that the company is not very open or cooperative in their communication. The missing transparency causes distrust among cooperatives and aggravates their difficult bargaining situation. The cooperatives had difficulties in making their point in the technical task force meetings, as they were not able to support their demands with data. However, if the data is not available to them, it is clear that they cannot make an offer that would be considered ‘realistic’ by the Land Bank and Agumil. In addition, neither the company nor the Land Bank adhere to any voluntary industry standards. The Land Bank, as the main funder of the project, sees the responsibility of the debt problem with the cooperatives and therefore supports the current deal of Agumil. Against this background, the company has to be regarded as unreceptive.

6.4.4 Fragmented support and missing internal mobilization

Taking a look at the support network the cooperatives had available, a fragmented picture evolves. Especially around the time of the signing of the contracts, the cooperatives were clearly missing independent advice. In the following years, NGO support was selective and focused more on stopping further oil palm expansion than improving the situation of the cooperatives. Cooperation among cooperatives did emerge but remained limited,

as they had different goals. Nonetheless, the congressional inquiry was triggered – it seems through some personal contacts at the national level.

The interviewed cooperatives did not report any NGO support (interviews PH35, PH39). Nonetheless, there were some mobilization efforts by ALDAW, an indigenous rights organization, which was later renamed into Coalition Against Land Grabbing. As described in chapter 6.4.2, the organization mobilized the cooperatives to demand a moratorium on further oil palm expansion; however, the NGO does not focus on providing support for the cooperatives more generally. Other NGOs involved in the case, such as the Environmental Legal Assistance Center, focus on environmental concerns and do not support the cooperatives with their debt problems. In fact, there are certain tensions between different goals: If the cooperatives were able to solve their economic problems, civil society actors would lose one argument (besides environmental concerns) to convince political actors of a moratorium on oil palm.

“[M]any cooperatives found it hard, if not impossible, to access support from NGOs in the province. These organizations have limited resources and a primary focus on indigenous land rights or environmental conservation, whereas the cooperatives were rather seen as part of the problem.” (Larsen et al. 2018: 15)

The missing support might have limited the efficiency with which cooperatives tried to achieve their goals. While it is difficult to prove, some expert knowledge on financial or legal issues might have helped the cooperatives to boost their arguments in the technical task force meetings, for example, through providing their own research or impact assessment of the proposed deal. It seems that there was a considerable knowledge inequality, which could have been overcome with the support of an NGO. Besides, there was no advocacy campaign calling attention to the congressional inquiry or its findings.

In addition to the missing NGO support, the cooperatives had troubles to mobilize together, therefore not always speaking with one voice or making the same demands. Initially, they formed the Association of Palm Oil Growers in Southern Palawan, through which they formulated common positions (Larsen et al. 2014: 32). However, over time interests of different cooperatives diverged too much, complicating cooperation. This led to a situation in which cooperatives individually approached the company with their demands. As described in chapter 6.4.2 regarding the new deal, one cooperative asked that their paid amortization rates be reimbursed (interview PH39), while another cooperative focused on demanding higher lease

payments (interview PH35). At the same time, there is some communication and cooperation between a few of the cooperatives, as the example with the protest in front of the Land Bank showed (interview PH35). Yet, the cooperatives are not speaking with a unified voice, which does make it less likely that the company gives in to their demands.

Even more, unity is often absent within cooperatives as well, as different members have different interests. For example, older cooperatives' members, who regarded the investment as part of their pension, had higher interests in immediate returns, were more sympathetic towards the take-out deal of the company (interview PH39). Others believed in the long term returns once the credits are repaid (interview PH44) or wanted to continue the fight for a better deal with the company (interview PH35). There are several instances in which individual landowning members prohibited the cooperative or the company from entering their land anymore, as they were upset about the decisions made (interviews PH41, PH45). These internal conflicts pose additional risks to the economic situation of the cooperatives (interview PH45) and further complicate possible attempts to find common positions among cooperatives.

Despite the missing NGO support and difficult internal mobilization of the cooperatives, a congressional inquiry was triggered, which did lead to the new offer by the company and the Land Bank. The driving force behind the inquiry was the national chairman of the Cooperative Development Authority (CDA). He had met some of the cooperative members at a national conference in 2015 and subsequently visited the region (interview PH7, PH35). In addition, one chairman of a cooperative, who was a former local politician, used his contacts to make some congressional representatives aware of the case (interview PH35). These national contacts seemed pivotal in achieving an inquiry, which questioned the whole agreement between Agumil and the cooperatives.

Summarizing the findings, it becomes clear that the cooperatives did not receive legal or advocacy support from NGOs in the region to achieve their goals of negotiating a better deal with the company. Even though it is difficult to prove, I suspect that the provision of expertise and a concerted advocacy campaign could have exerted more pressure on politicians and the company alike, for example, during the task force process. Besides, a more unified voice with common core demands might have helped cooperatives in achieving their goals. However, this would have required substantial mobilization efforts among cooperatives and their members.

6.4.5 Discussion and additional issues

In this chapter, I will review my findings through the lens of the three core conditions in a first step. In a second step, I will discuss the open question of why the government agencies failed to scrutinize the investment project before the agreements with the cooperatives were signed. In a last remark, I describe how the company profited and continues to profit from government agencies and regulations that are supposed to profit smallholder cooperatives.

Focusing on the three core conditions, the following picture emerges:

First, the legal opportunity structure of the cooperatives was initially not bad, especially when it comes to soft-law regulations that are in place to ensure that small-scale farmers, especially ARBs, do not enter into detrimental business ventures. However, these regulations were not enforced, as the responsible agencies were not consulted and did not take action on their own. A window of opportunity to scrutinize and change conditions of the agreements between cooperatives and the company therefore passed. When the cooperatives ran into financial problems and were unable to repay their debt, the situation looked a lot more complicated. While it would have been possible for the DAR to interfere, this is often not done:

“[...] from a strictly legal point of view, contracts which have not been approved by the DAR are null and void, in accordance with section 4.9 of DAR Administrative Order No 9 s. 2006, this provision has not been strictly enforced by DAR nor the parties involved.” (FAO 2016: 13)

The missing involvement of the DAR was partly made up for by the CDA and its chairman, who were able to trigger the congressional inquiry, which found numerous problems with the contract grower arrangement. Yet, the report of the Committee on Cooperatives Development is not a legally binding document but rather contains recommendations on how to solve the debt crisis of the cooperatives. As of now, these legal mobilization attempts have not led to a satisfactory situation for all cooperatives.

Second, Agumil does not seem to be very receptive. Neither the company nor the Land Bank as the primary funding institution adhere to voluntary international standards, limiting possible arguments in this regard. Furthermore, the Land Bank blames the cooperatives for the economic failure and continues to back the company. Minimal communication and insufficient transparency on the side of Agumil further aggravate the difficult bargaining situation of the cooperatives.

Third, the support network of the cooperatives remains weak and fragmented. They did not receive legal advice or NGO support before signing the agreements with Agumil. And, while there was some NGO mobilization around the investment project, it did not primarily focus on the situation of the cooperatives. Personal networks of individuals did help to trigger the congressional inquiry; however, there is no public advocacy campaign nor expert advice for the cooperatives on how to best deal with the company and the Land Bank. I do assume that this missing support made it more difficult for local actors to achieve their goals. In addition, I suspect that the missing unity among cooperatives further complicated the situation. While this issue is related to the focus on networks, it focuses on internal mobilization among local actors, a factor I have so far neglected. However, it seems plausible that this plays an essential role for successful legal mobilization. I will, therefore, discuss internal unity as a possible additional condition in the discussion in chapter 6.5.

In addition to the three conditions, it is important to discuss one open question: Why did the government agencies fail in their oversight function and consequently not scrutinize the agreements between Agumil and the cooperatives? There are three possible reasons which probably played together.

First, the development of oil palm plantations on Palawan was completely new. Provincial and local authorities were missing the capacities to oversee the investment. It seems that agencies like the PCA did not have guidelines in regards to palm oil (Larsen et al. 2018: 6). At the same time, local agencies and government officials were probably not able to assess whether the projections of the company, who predicted enormous yields and profits, were realistic (interview PH37). They believed that the company was an expert for oil palm and did not anticipate problems with the plantations or the financing.

Second, the investment was the ‘governor’s project’ (interview PH36), which probably led to government agencies turning a blind eye to possible risks. This sentiment was raised by local civil society actors (Coalition against Land Grabbing 13/10/2014) and elected politicians:

“As a member of the provincial board expressed it, the provincial politicians are particularly concerned not to interfere in this matter since this would influence the potential to attract private investors to Palawan” (Larsen et al. 2014: 31)

Third, coordination issues between agencies and missing procedural guidelines probably posed a hindrance as well. The DENR or the PCSD both had to issue environmental certificates and were not directly responsible for the cooperatives. However, it seems that they did not coordinate with the CDA or the DAR to inform them about the investment. The CDA and the DAR most likely did not get involved, as they were not informed about the project by the cooperatives themselves. It seems that there are no clear guidelines over how the DAR or the CDA should assist cooperatives in entering into agribusiness venture agreements if the cooperatives do not directly ask them. The case, therefore, points to more general problems with implementing rules for AVAs in the country.

The beneficiary of the missing oversight by government agencies was Agumil, who profited indirectly from regulations and technical attempts to resolve the debt crisis of the cooperatives. The investment is set up in a way that takes advantage of rules that are supposed to support smallholders in the country. Through setting up the investment with out-growers, the company did not only get access to land but also access to credits, for which they did not have to bear the risks. “We [the farmers] were the ones helping Agumil to get the loan, providing them with the necessary capital for the plantation” (interview PH42). Besides, the company avoids paying higher taxes, as these have to be paid by the cooperatives, who, however, have to pay lower rates than the cooperation would have to (interview PH37). Furthermore, the setup with the cooperatives also helped Agumil to circumvent clearance for the plantations from the PCSD. While the rising debts of the cooperatives also created problems for the company, especially with the congressional investigation, they indirectly profit from technical support provided by government agencies. As seedlings, fertilizer or machinery are provided for free by the PCA and the DAR, profits for the company will rise as cooperatives improve their productivity. The lowering of the management fee and the possible takeover of the debts by the company are the only measures that make the company pay a share of the economic difficulties incurred by the cooperatives. Overall, this case shows how a company can make use of the cooperatives system in the Philippines and how difficult it is to make substantial changes to an out-grower system once it is in place – especially with a long term crop such as oil palm.

6.5 Within country comparison and discussion

In this chapter, I will compare the findings from the investments by Green Future Innovations and Agumil and discuss them against the background of existing research on the Philippines (chap 6.5.1). In the final part, I will describe my findings on an abstract level and discuss one possible additional condition (chap 6.5.2).

6.5.1 Comparison of Green Future Innovations and Agumil

To compare my findings from the case studies, I will use once again the lens of my three core conditions, before I discuss one possible additional condition. Apart from my case studies, I will use additional interview material as well as existing research to underline central findings.

As described in chapter 6.2, the national legal opportunity structure has to be regarded as somewhat favorable – especially for ARBs. They should receive support from the DAR when they enter into agreements with investors. However, both case studies showed that these rights have to be claimed and regulations have to be pushed to be enforced. In the case of Green Future Innovations, local farmers called on different administrative levels, such as the national and the provincial level. Through the quick mobilization, they were able to stop the wrongful land claims by local elites before substantive land development had taken place. This situation was more difficult in the case of Agumil, where farmer cooperatives entered into a contract with the company without fully knowing their rights or receiving support. Both cases, therefore, show the weakness of enforcement of laws and regulations in the Philippines (interviews PH3, PH27, PH29, PH37).

“The law is good. But the problem is the law enforcement, the implementing agency. Why you do not implement according to the law? That's a problem, the implementing agency and the person, who is in charge to exercise power according to the law” (interview PH29)

In consequence, local actors and civil society networks have to push for the implementation of rules and regulations. In neither of the two cases were the courts invoked to interfere, even though some of the cooperatives in the Agumil case were thinking about a court strategy in the future. Instead, local farmers called on different agencies, administrative officials

and politicians to help them enforce the law. This behavior fits with the description of ‘rightful resistance’ in China:

“They recognize that state power nowadays is both fragmented and divided against itself, and, if they search diligently, they can often locate pressure points where elite unity crumbles [...]”(O'Brien/Li 2008: 14)

In the case of GFII, the decisive person seems to have been the Governor, who had both the authority and it seems the political will to solve the conflict. In the case of Agumil, a possible benefactor is the Chairman of the CDA, who helped get Congress involved, while other agencies such as the DAR stayed mostly inactive. Getting politicians and administrative officials on different levels on their side is an important aspect of successful legal mobilization in the country. This finding is in line with existing literature on struggles around agrarian reform implementation in the Philippines (Franco 2008a; Borras 1998).

When it comes to the support network, there were considerable differences between the GFII and the Agumil case. In the case of Green Future Innovations, local smallholders were able to mobilize through the existing farmers’ organization DAGAMI and link to national actors through the KMP. The preexisting network provided links to international civil society actors who participated in the fact-finding mission as well as to members of Congress through the Anakpawis party list. The network created considerable attention for the investment in San Mariano within a couple of months and likely helped to build up enough pressure for the Governor to intervene. In the case of Agumil, there was a lot less outside support provided to the cooperatives. The KMP does not have a member organization in Palawan, and existing NGOs on the island focused on indigenous peoples’ rights and environmental concerns. In consequence, the congressional inquiry and subsequent meetings at the Provincial level were not accompanied by a broader civil society campaign, which could have heightened the pressure on officials and the company to find a solution.

Experiences from other land struggles in the Philippines show that legal strategies usually need to be paired with political pressure to achieve a positive outcome for farmers (Franco 2008a: 1015). As an NGO staff member described it: “How the law is written is good, but the executive system is a lot out of balance [...] drastic measures have to be taken to push the system” (interview PH27). She named hunger strikes, marches and camp-outs as essential elements and argued that a certain sensationalization and media attention is needed for campaigns to be successful (interview PH27). The case of the cooperatives indebted through the Agumil deal certainly

did not achieve this kind of attention, whereas the GFII case got a lot of attention through the fact-finding missions. The two cases, therefore, underline the need for a support network that is able to create a broader campaign to garner attention and pressure officials to get involved.

The third condition of the receptivity of the company did not seem to play a big role in both cases. While I was not able to determine the receptivity of GFII back in 2011 based on the broad questions formulated in chapter 3.4.2, Agumil does not seem to be a very receptive company. Nonetheless, comparing the two companies, one interesting issue emerges: Different crops can lead to different set-up of contract-growing agreements with important implications for smallholders. In the case of GFII, initial lease and contract-growing arrangements lasted six years and were later reduced to three years, the lifespan of a sugarcane plant (interview PH12). This allows farmers to decide after three years if they want to continue contracts or exit the arrangement. They can react to changing sugarcane prices or new alternative options. According to the bargaining logic, this arrangement makes it more likely that companies listen to local complaints, especially in the context of sugar cane shortages, such is the case in the GFII investment.

In contrast, oil palm is usually grown as a 25 years plant, making long-term contracts necessary. Fresh fruit bunches have to be processed within 24 hours to ensure high quality, making proximity to a mill a necessity (Hambloch 2018: 6). Even if farmers grow oil palm independently, they might not have many choices to sell the FBB. The industry's pricing practices in the Philippines, for which Agumil seems to be representative, lead to a buyer-driven value chain, in which oil palm growers do not have a lot of bargaining space (Hambloch 2018: 10).

The crop itself and the way an investment is set up, therefore, influences the power relations in the bargaining situation between local smallholders and companies. In consequence, it makes sense to include characteristics of investment projects and their respective industries as another indicator for the concept of receptivity.

One possible additional condition was the missing unity of local actors in the case of the Agumil investment. This was demonstrated by the differentiated reactions of the cooperatives to the take-out deal. Even though it is difficult to prove, I suspect that this dissonance makes it more difficult for individual cooperatives to achieve their goals. If all 14 cooperatives would make common demands and act in a unified matter, they would probably be able to achieve more. In the case of GFII, this unity was created through

the existing farmers' organization, which claimed to represent the farmer's in San Mariano. Even though the representativeness of the organization to speak for all farmers can be questioned⁷³, DAGAMI has a clear leadership, which could negotiate with the company in a unified way. I will further discuss this additional condition on a more abstract level in the next chapter.

In addition to the conditions, two additional issues came up in the case studies and need to be discussed from a comparative standpoint.

The first issue of violent action appeared in the case of GFII. The attack of the NPA probably helped local farmers to create more pressure for authorities to act, but bore certain risks for the farmers themselves. Interestingly, the investment of Agumil seems to have triggered a violent response from the NPA as well. In July 2016, two trucks owned by the Provincial Government and a warehouse with fertilizer owned by Agumil were set on fire by armed persons (Sanchez Palatino 7/14/2016). The attack was later claimed by a regional command of the NPA, who reportedly left behind a letter: "Stated in the letter is the armed group's protest against Agumil Philippines Incorporation" (Sanchez Palatino 7/14/2016). During my interviews, nobody brought up the incidence, so its consequences are unclear. Nonetheless, there seem to have been attempts by NPA members to contact communities affected by the investment (Larsen et al. 2014: 33). Similarly to Isabela, Palawan has high mountain ranges that seem to serve as space for the rebel group to operate. As described earlier, attacks on companies are not unusual for the NPA, who also levy taxes in that way. The attacks on GFII and Agumil fit the pattern of similar incidences in Negros or Mindanao (International Crisis Group 2011), however, the effect of these attacks for smallholders is not always clear. Local farmers might be able to use these attacks to their advantage as they do have credible means to threaten the disruption of local peace and get attention from politicians and authorities. Yet, the NPA is not always on the side of local smallholders. Moderate farmer leaders who work with government agencies to achieve their interests are at times themselves the target of the NPA:

"For the underground communists, the only genuine land reform is their own, and is to be implemented after they seize national state power. The guerrillas harass, intimidate, and sometimes assassinate

73 DAGAMI seems to be strong in certain parts of San Mariano and not all over the large municipality. Furthermore, their ideological orientation does not seem to resonate with all farmers (interview PH47).

leaders of these [moderate] autonomous peasant movements.” (Franco/Borras 2007: 70)

In other instances, the rebel group is known to work with traditional landowning families if it is in their economic interest (Franco 2008a: 1003). Furthermore, the presence of the NPA in a region can lead to further militarization as companies seek military protection relying on regular and paramilitary forces (International Crisis Group 2011: 19). The involvement of the NPA can, therefore, be both beneficial and risky for local farmers.

Another issue that came up in the analysis of the Agumil case is the difficulty of implementing rules for agribusiness venture agreements in the country. Despite the DAR Administrative Order No. 9, which formulates specific rules for AVAs as well as far-reaching oversight competences for the DAR, the cooperatives entered into an agreement with Agumil without any support. This seems to be reflective of AVAs more generally in the Philippines. A study conducted by the FAO focusing on Mindanao came to the following conclusion:

“The study has revealed that while AVAs have been in existence in the Philippines for 26 years, there are still very few examples of successful agribusiness arrangements between ARBs and investor-companies. The study found out that most ARBs are not aware of their obligations and entitlements under their contracts, for most of these provisions are written in a language that they do not understand.” (FAO 2016: x)

The study concludes that lawyers who can explain the contracts to smallholders entering into an agreement with the company would be helpful (FAO 2016: 12). This is certainly in line with my findings from the Agumil case. The GFII case provides somewhat of a contrast to this. As discussed, the sugar cane project allowed for farmers to enter into three-year contracts, which provided them with the necessary flexibility and the possibility to react to price changes of the commodities but also of inputs. The short-term contracts by GFII, therefore, present a viable alternative option. Furthermore, farmers who wanted to participate in the investment project did not have to take up a loan, helping them to avoid the debt traps that Agumil cooperatives are in now. These findings tie back in with my considerations on the relevance of different crops and the set up of investment projects.

Overall, my findings from the Philippines show the difficulties local smallholders face in the large-scale land investments even when the national legal opportunity structure is relatively favorable. State laws and regula-

tions have to be implemented and farmers need to push their rights to be protected. A strong civil society network, which can garner political attention, is needed to create this necessary push. In addition, missing unity among local actors can undermine the effectiveness of mobilization efforts and should be considered as an additional condition.

6.5.3 Summary of findings from the Philippines

In this final chapter, I will summarize the analytical chapter on the Philippines before I formulate my central findings in a configurational language. I will furthermore discuss the possible additional condition of unity among local actors in an abstract manner.

I started the analytical chapter on the Philippines with some context information. Large-scale land deals in the country have to be regarded against the background of the agrarian reform, which tried to redistribute large landholdings to small-scale farmers. Yet, certain government policies focusing on green economy and the promotion of bioethanol production created a new momentum for foreign investment in agriculture in the country. Civil society mobilization regarding large-scale land deals follows existing patterns and networks from agrarian reform struggles. There has been and still is considerable civil society activity in the country around land rights issues.

The effect of past mobilizations is a progressive stance by the Philippine Constitution, which demands land redistribution as a means to achieve social justice and sets limits for foreign investment in the land. More detailed regulations on large-scale land deals mostly focus on agrarian reform beneficiaries, which are supposed to be protected from unfair contracts with foreign investors. In consequence, the national legal opportunity structure can be described as relatively favorable for local smallholders even though ARBs are protected more than other farmers.

The two case studies then focused on how local actors tried to use this favorable NLOS to their advantage. The case of Green Future Innovations presents a success case; however, apart from legal mobilization through Congress and the Provincial Governor, the radical left network also undertook protests and factfinding missions. In addition, the NPA attacked company equipment. It is, therefore, difficult to ascribe the success to the legal arguments only; rather, it was likely the mix of strategies.

The case of Agumil, presents an example of contract growing agreements, which put the disproportionate risk of the investment on the shoul-

ders of smallholder cooperatives. The cooperatives did not have legal support when signing the agreements and only started to mobilize years later. While they achieved a congressional inquiry, they were not yet able to achieve their goals.

Simplifying my findings, I can create the following empirical truth table for the Philippines.

Table 16 Empirical truth table Philippines

	national LOS	network support	company	Outcome
GFII	favorable	strong	-	success
Agumil	favorable	weak	unreceptive	failure

Apart from the pre-identified condition, my findings from the Agumil case identified a possible additional condition: The degree of unity among local actors. This condition can be formulated on an abstract level and it seems likely that it plays a role in other cases as well. If company managers are faced with a myriad of different demands, they might simply ignore them or only answer to the ones that are least costly for the company. Furthermore, companies might exploit disunity among local actors:

“Conflicting attitudes within a community towards the benefits of industrial development allow corporations to focus on those people willing to cooperate, and to dismiss or ignore more confrontational views.” (Garvey/Newell 2005: 400)

In the case of Agumil, some cooperatives were happy to opt into the take-out deal, leaving those who aimed for another outcome in a difficult position. Acting together would have improved the bargaining situation of local actors. It becomes clear that internal mobilization for collective action is, therefore, an important component for successful legal mobilization. At the same time, the relationship with the condition of the support network needs to be discussed. Fundamentally, the question is how internal and external social mobilization are related. Can a group, which is divided internally, receive external support? Missing unity can certainly be a challenge to outside actors such as NGOs, as they might not be clear to whom and how they should provide support. Yet, there is also the option that outside civil society organizations help to create unity by providing a common frame or encouraging local mobilization.

In summary, it became clear that a favorable national opportunity structure in the Philippines creates a situation for local smallholders in which they can protect their rights through legal mobilization. However, they are dependent on strong support networks, which help them pressure the administrative system and companies. Apart from the outside support network, internal unity appeared as another possible condition, which relevance has to be tested in future research.