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**Land *Title* to the Tiller
Why it's not enough and how it's sometimes worse**

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List of acronyms

AO	Administrative Order
ARB	Agrarian Reform Beneficiary
CA	Compulsory Acquisition
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CARPER	Comprehensive Agrarian Reform Program with Extension and Reforms
CLOA	Certificate of Land Ownership Award
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DOE	Department of Energy
DOJ	Department of Justice
EP	Emancipation Patent
FGD	Focus Group Discussion
JAO	Joint Administrative Order
MALR	Market Assisted Land Reform
MARO	Municipal Agrarian Reform Officer
PARO	Provincial Agrarian Reform Officer
VLT	Voluntary Land Transfer
VOS	Voluntary Offer to Sell

Abstract

Mainstream adherence to land titling as a strategy to address rural poverty has gained even more sway against the backdrop of the contemporary phenomenon of large-scale farmland acquisitions, known to some as “global land grabbing”. The orthodox narrative, embraced *in toto* by organisations such as the World Bank, is that formal property rights mitigate the risks of these land acquisitions and allow the poor to access the benefits of these acquisitions. This paper attempts to critically investigate this narrative by problematising the land titling–land grabbing nexus under the lens of adverse incorporation. Situating the study in a bio-ethanol plantation in Isabela province, Philippines, the research compared two groups of small-holder farmers: one group with titles and another without titles. Initial findings show, *firstly*, that land titles do not neutralise the risks of adverse incorporation for farmers in highly-asymmetrical agrarian societies or protect against the market pressures that bear upon these farmers and *secondly*, that titles may, in fact, have a *lubricating* rather than *insulating* function—drawing title-holders into the global value chain and compromising their prospects for more equitable, pro-poor outcomes. In conclusion, the paper proposes a recasting of the land titling paradigm: viewing land titles not as apparatuses with invariant outcomes, but as contested tools for truly meaningful rights assertions.

Keywords

Land grabbing, land titling, Philippines, bio-fuels, adverse incorporation.

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1 Introduction

The image is always a visually-arresting one: that of a weatherbeaten farmer, face bronzed by the punishing sun and etched with the tell-tale lines of a hard life, holding in her hands a title with her name. A title formally recognizing in law what her truths had always known. No longer invisible. No longer excluded.

However, the entire gamut of outcomes and experiences in agrarian societies all over the world (see for example, Ho and Spoor, 2006; Thorpe, 1997), tends to demonstrate that the narrative embedded in that image is a simplistic one. In truth, the populist discourse that has framed land titling programs for small-holder farmers has impeded more robust debates on the degree to which these titling schemes have led to truly meaningful outcomes for the rural poor. The onslaught of “global land grabbing”, a phenomenon defined as the “acquisition or long term lease of large areas of land by investors” (De Schutter, 2011: 249), rather than create space for the interrogation and investigation of the land titling agenda, has only given neo-liberal policy practitioners more leverage to push it with greater urgency.

Concededly, titles are crucial in cases where the threat of physical dispossession is imminent. This would include for example, the farmers expelled in India's Special Economic Zones (Levien, 2011) where the state expropriated untitled but occupied lands to meet the land-related needs of new investors, the rural settlers across Africa where the absence of formal *de jure* tenure has excluded them from consultations over large-scale land deals (Vermeulen and Cotula, 2010: 899); even the urban dwellers of Boeung Kak, Cambodia, where an arbitrary denial of land title applications preceded expropriation (Bugalski and Pred, 2010). It would seem plausible in these clear-cut dichotomies – title keeps you in, absence of title kicks you out -- that formal property rights provide at least some degree of protection.

These black and white dichotomies however, obscure the many tones of gray in between.

An underanalysed problem would be cases where the threat is not of physical expulsion from the land in the name of capital, but emanates from a complex web of market-driven pressures that increase vulnerability and compromise long-term well-being. These are cases where capital is backed, not by the iron fist of a dictatorial state, but by the soft economic blackmail of a cynical one. Whilst titles may appear to work against these cases of capital-initiated, state-backed outright dispossession, casually applying that logic to the breadth and span of property regimes across the world may prove to be a little more tricky and dangerous. Under more complex landscapes, assertions in favour of land titling as automatic solutions must be carefully re-examined.

Philip Hirsch in 2011 has problematised “the ways in which assertions are made on behalf of land titling, critiques are constructed against formalised title

in land, and debates are framed in the context of land grabbing (p. 1)” and surfaced the “set of conundrums” that underlie the processes of land grabbing and land titling through a bird’s eye view of land titling experiences in selected countries in South East Asia. Whilst intellectually rich and ideologically-moored, the conversations on these processes may benefit from grounding in field-based evidence.

This paper is an attempt to use empirical evidence to engage the analytical contours of the correspondence between formal property rights and land-grabbing to which Hirsch and other scholars have contributed. Through the use of primary data obtained from an active bio-ethanol case study, I aim to critically interrogate the assertion that formal property rights *in themselves* insulate against the risks of land grabbing and the unstated implication that, when given to the rural poor in class-asymmetrical societies, have a “compensatory effect” that bridges power discrepancies and leads to favourable development outcomes.

1.1 Research question

The main research question that guides the empirical work in this paper is as follows:

To what extent do formal property rights (i.e. land titles) determine and reconfigure development outcomes for small-holder farmers confronting the market-driven pressures of large-scale farmland investment or global land grabbing?

1.2 Scope and limitations

As already emphasised, the focus of this paper is agrarian settings where the threat emanates from a battery of market-driven pressures that create compulsions for farmers to incorporate into the value chain under prejudicial and exploitative terms. As such, I focus my research on the Philippines, a country whose farmers are no strangers to market-driven pressures (see for example, *Borras, et al.*, 2000) and who, like many of its neighbours in Southeast Asia, as well as other countries in the Global South, has been at the receiving end of land titling programs imposed by neo-liberal institutions like the World Bank and the Asian Development Bank.

These programs find ideological root in Hernando De Soto, who argued that the developing world has been left out of capitalism because of ineffective property regimes. The poor, De Soto claimed, “have houses but not titles, crops but not deeds, businesses but not statutes of incorporation.” (De Soto, 2000:7). The titles given under the De Soto framework are normally blind to conflicting claims and have no redistributive or corrective agenda.

However, titles have also been given to small-holder farmers under the more redistributive framework of agrarian reform which, in the Philippines, is embodied in the Comprehensive Agrarian Reform Program (CARP). This program became law in 1988 and was amended in 2008, with notable reforms. Titles under CARP are called Certificates of Land Ownership Awards (CLOA).

Its immediate progenitor is the Emancipation Patent (EP), which was issued during the more limited agrarian reform program implemented by Ferdinand Marcos.

My research subsumes both the De Soto conception and the redistributive CLOA/EP conception under the overarching concept of “formal property rights”.

Whilst the land grabbing phenomenon can encompass fuel, food or feed production, the empirical data of offshore farmland investment in the Philippines appears to suggest that the primary purpose of the investment is bio-fuel production. As such, for context-driven reasons, this paper will be limited to that.

Research for this paper was conducted during the period of June-August 2011. It is important to qualify that since the project is only at its preliminary phase, findings and conclusions made do not attempt to make predictions about how the project will turn out and the welfare impacts of the project in its later stages.

1.3 Methodology

My methodology involves a case study analysis of an area in the northern part of the Philippines, where 15,000 has. of sugarcane lands are targeted for bio-ethanol production. This selection is informed by the five criteria for case selection suggested by Smelser (1976: 4) as quoted by de la Porta (2008: 198) to wit: “(1) appropriate to the kind of theoretical posed by the investigator... (2) relevant to the phenomenon being studied... (3) empirically invariant with respect to their classificatory criterion... (4) reflect the degree of availability of data referring to this unit... and (5) decisions to select and classify units of analysis should be based on standardised and repeatable procedures.

Isabela Province in the Philippines is an interesting study not only because it is poised to be the biggest bio-ethanol feedstock site in the Philippines but also because the landholding to be developed is occupied by farmers under various tenurial arrangements. Specifically, the landholding has groups of farmers with titles (CLOA, EP) and groups of farmers that do not have titles. These two groups shall compose my research sets.

The purpose of the case study analysis therefore, is to examine how the introduction of the new variable -- in this case the overseas investment for bio-fuel production—impact on the two groups. That the two groups are in the same landholding reduces the variance in factors such as topography, crop choice, susceptibility to climate change, and land valuation.

This however is not to suggest that this paper is to undertake a “variable-oriented” research rather than a “case oriented” research. While some comparisons will be made between the farmers with titles and the farmers without the titles, crucial to this research is looking at the case as an analytical whole—indeed, also asking why some farmers have titles and some do not, and what are the differentiations and processes within the landholding, what are the embedded relationships among and within groups.

My research methods shall be interviews, documentary analysis and observation.

1.4 Organization of the paper

The main body of this paper will take on three parts. Firstly, I provide a context and overview of the Philippine regulatory framework and land policy. I examine how rules and policies relating to land investment and land tenure are mediated by state actors in the national and local level and explore the extent to which security of tenure (attended by effective control and supervision of the landholding) of small farmers is protected under a policy structure designed to protect the market.

Secondly, I compare two groups of farmers with lands leased to a bio-ethanol plant in the Philippines for the preliminary phase of bio-ethanol production, and prove that there is no demonstrable evidence at present to support the conclusion that farmers with titles enjoy more protections and reap more benefits. I argue that the empirical evidence refutes the contention that land titling mitigates the risks of land grabbing and that providing land titles to farmers automatically lead to more beneficial outcomes.

Thirdly, I explore the notion of titling as a conduit to capital, grounding my analysis in the strategic value of small-holder title to the seamless operation of the market, as demonstrated by empirical evidence in my field study. I argue that the asymmetries in relations between lessor farmers and lessee corporations create defective market conditions that imperil the former. Against this backdrop, land titling may exacerbate rather than cures inequality and marginalisation.

2 Theoretical framework

The orthodox neo-liberal formulation claims that overseas investment in farmland can yield benefits and provide opportunities to alleviate rural property—indeed, a rising tide raises all ships. Within that school of thought is the new institutional economics framework, rejecting the purism of neo-classical thought but retaining its investment-centric paradigm. Proponents hold that for as long as an enabling legal framework is in place to ensure that the risks are adequately contained and managed, there is much to be gained and little to be feared. The Principles for Responsible Agro-Investment (RAI Principles, hereinafter) laid down by the World Bank (2010: x) leads this narrative. An essential part of this legal framework is the existence of *clear and formal property rights*.

The United Nations, through the Commission on the Legal Empowerment of the Poor (CLEP), has long thrown its explicit support behind formal property rights as an indispensable principle of poverty alleviation and tenure security. To quote:

In economic terms, to be fully productive, assets need to be formally recognized by a legal property rights system. Embodying them in standard records, titles and

contracts in accordance to the law, gives households and businesses secure tenure that protects them from involuntary removal.

To a certain extent, there is persuasive value to this statement because title does compel a buyer or a leasee to transact with the owner and thus can provide an extra layer of protection against evictions. But the CLEP goes further and argues that titling invigorates property and credit markets in a manner that serves the interests of the poor. It argues that a “comprehensive and functional property and business system allows land, houses, moveable property, equity shares and ideas to be transformed into assets that can be leveraged, bought and sold, at rates determined by market forces in a transferable and accountable way.” (ibid, at page 67.)

Bundling together both the support for “responsible farmland investment” and for formal property rights, what we get is a policy prescription for the distribution of land titles to rural communities targeted for large-scale transnational investment. By virtue of these formal property rights, farmers can allegedly reap the purported benefits of the investments and positive outcomes can be had by all the stakeholders. Land titling facilitates the transactional potential of land in the market in order to produce capital, which will then lead to Western-style poverty alleviation, if not prosperity. It would be, as the Food and Agriculture Organization (2009) puts it: a “win-win” scenario. The unstated conclusion is that it would have the effect of making up for the discrepancies in asymmetrical relationships by giving the farmers more leverage for negotiations.

To illustrate with a very simple equation, if the orthodox formulation is correct,

low property rights → *high* risks under land grabbing

ergo:

high property rights → *low* risks under land grabbing

If this simple equation were true, then the following suppositions are likewise true:

1. The differential in property rights results in different outcomes for small-holder farmers similarly exposed to land grabbing.
2. Farmers with titles are less exposed to the risks of land grabbing and may even benefit from the same;
3. Farmers without titles are more exposed to the risks of land grabbing and do not benefit from the same.
4. Land grabbers prefer vast swathes of untitled lands over titled lands because the former is easier to wrest away than the latter.

Likewise, if the equation was corroborated by empirical evidence, then it renders legitimate the massive land titling projects prescribed and embarked upon by organizations such as the World Bank and the Asian Development Bank, and frames the problematic to be about improving the titling system by expanding coverage, ensuring participatory processes, integrating “good governance” strategies. More importantly, it also renders legitimate the land

grabbing project itself – because if the risks can be effectively mitigated and the gains achievable, then resistance to it is invalid.

2.1 Political economy approach as theoretical framework

In investigating the orthodox formulation discussed above, this paper draws heavily from the Agrarian Political Economy approach that questions the reliance on the sterile, perfect logic of the market in chief by arguing that the formulation thus proffered ignores the class fault lines that underlie agrarian relations and systematically obscure that power asymmetries that affect capacities to transact and negotiate. Bernstein (2010) reminds us of the four key questions of political economy: “Who owns what? Who does what? Who gets what? What do they do with it?” (page 22). Bernstein explains further:

These four key questions can be usefully applied across different sites and scales of economic activity, from households to “communities” to regional, national and global economic formations. They can also be applied to different types of societies at different historical moments. There is also an implicit sequence in the four questions: social relations of property shape social divisions of labour, which shape social distributions of income, which in turn shape the uses of the social product for consumption and reproduction – which, in the case of capitalism, includes accumulation.

The heterodox narrative that undergirds agrarian political economy traces itself to the long-standing debates on capitalism and market efficiency. In diametric opposition to de Soto’s claim that it was the birth of capitalism (and the ability to produce capital) that was the turning point in the West and what freed its people from poverty, heterodox scholars such as Ellen Meiksins Wood paints a grim picture of the beginnings of formal property rights and privatization, tracing it to 16th century rural England where “enclosure” meant “the extinction (with or without a physical fencing of land) of common and customary use rights on which many people depended for livelihood”. (2002:8)

And while the orthodox/World Bank frame traces the roots of poverty to the existence of barriers to the market exchange of land and resources, the counter-frame questions the logic of this commodification and exposes the flaws of an unfettered market exchange. Karl Polanyi has famously stated that

“(t)o allow the market mechanism to be the sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society... Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed.” (1944: 73).

The dominant paradigm’s agnosticism to issues of class stratifications becomes even clearer when we see how there is an apparent conflation between securing the rights of the rural poor to land and granting titles to them, suggesting as it were that the mere expedient of registering land in their names activates the breadth of rights to which they are entitled and therefore provides irrefutable benefits. Dekker (2003: 83), for example, has stated that “property rights that provide longer-term security will increase the demand for

long-term investment and thereby establish the basis for an increase in farmers' assets", and then he proceeds to argue for land titling and property registration.

Deep suspicions on these formulations surface, when analysed from an agrarian political economy perspective. This lens of analysis looks at how the organized forces of capital operate to create a complex hybrid of pressures designed to conscript rural communities into serving its interests. Akram Lodhi introduces us to the concept of "neo-liberal enclosures". To quote:

Neoliberal enclosure can be differentiated from previous enclosures in that its objective is not to establish capitalist social property relations but rather to deepen the already prevailing set of capitalist social property relations by diminishing the relative power of peasants and workers in favour of dominant classes. This is achieved principally through the use of market-based processes supplemented by the direct action of the State. (2007: 1437).

The process of neo-liberal enclosure is characterized by the creation of "bifurcated structures" (ibid) – two different productive sub-sectors existing side by side, with the former driven by the need to maximise competitive profitability "within an increased globalised circuit of capital" (ibid), producing for markets "primarily but not exclusively located in the North (ibid), and the latter subsector whose terms of incorporation are dependent on labour-power provided, and whose linkage into the logic of the market is heavily regulated by the dominant class (ibid). Here, it is not difficult to see that the first sub-sector might be the corporation, whilst the latter subsector might be the peasant farmers and farm workers, conscripted to offer their labour power at prejudicial terms. Against this backdrop and using a lens of analysis that highlights rather than downplays these asymmetries, we now come to our core problematic: do land titles neutralize these asymmetries and grant leverage to the farmers, as the orthodox formulation suggests, or are there processes and politics that come into play and complicate the correspondence, such that "legal security of tenure" does not always lead to "economic security of tenure" (Hirsch, 2011: 8)?

2.2 *Adverse incorporation as analytic lens*

It now therefore begs the question: how then is economic security to be measured? Through what analytic lens do we measure whether or not land titling has enhanced or compromised economic security?

This paper will use the lens of adverse incorporation to investigate the proposition that land titling can mitigate the risks that visit small-holder farmers as a result of large-scale farmland investment. The adverse incorporation discourse is central to this paper because the orthodox argument is in fact that land titling is a *solution* to exclusion, and is a means by which the poor can be included in global economic activity, and thus benefit from such inclusion. It is precisely this logic that pervades the dominant discourse of global land grabbing and informs policy responses of institutions like the World Bank and the organizations that support it.

This logic presupposes that it is the exclusion from the market that has created current conditions of inequality—reminiscent of the "social exclusion"

discourse that has undergirded poverty debates (see for example, de Haan, 1999), and that has provided a framework upon which to understand the multidimensional aspects of deprivation. Critiques against this framework, however, argued that the popularity of the social exclusion discourse “was immediately conducive to legitimizing an approach to poverty based on the extension of market forces.” (Phillips, 2011: 390). The critique gave rise to the notion of adverse incorporation, which proposes that it is not the exclusion, but rather the terms upon which peoples and groups are incorporated into the market that gives rise to conditions of poverty and vulnerability. Quoting Hickey and du Toit (2007: 4), the concept of adverse incorporation “captures the ways in which localised livelihood strategies are enabled and constrained by economic, social and political relations over both time and space, in that they operate over lengthy periods and within cycles, and at multiple spatial levels, from local to global.” This is further understood by looking at the differences between the “relational” and “residual” nations of poverty, as usefully explained by Hickey and du Toit (2007: 5):

The residual approach views poverty as a consequence of being left out of development processes, and contains the assumption that development brings growth and that what is required is to integrate people into markets. Relational approaches emphasise the extent to which ‘development’, growth and the workings of markets can also produce poverty.

Emergent literature on land grabbing has begun to discuss adverse incorporation as a consequence of land grabbing, and not just the markedly more dramatic cases of dispossession and dislocation. John McCarthy, for example, looked with particularity on oil palm driven economic development in Indonesia, arguing that “individuals who find themselves incorporated into oil palm under unfavorable conditions will not only remain poor but may even face deeper poverty.” (2010: 826).

By what standards then can one determine that incorporation has been adverse? We find useful a definition given by Geoff Wood (2000: 19) who states that adverse incorporation refers to situations wherein:

“In contexts of highly imperfect markets, corrupt state practices, and patriarchal norms, poor people (especially women and children) face a problematic search for security in income flows and stable access to stocks and services. They are obliged to manage this vulnerability through investing in and maintaining forms of social capital which produce desirable short-term, immediate outcomes and practical needs while postponing and putting at permanent risk more desirable forms of social capital which offer the strategic prospect of supporting needs and maintaining rights in the longer term” (Wood, 2000: 18-19).

Central to the definition posited by Wood is the notion of sacrificing long-term, strategic, sustainable outcomes for stop-gap alleviation of immediate infirmities. What are these long-term outcomes possibly sacrificed under adverse incorporation? The most obvious would be effective control over assets.

One of these assets is labour. According to Phillips (2011: 392), systematic violations of workers’ rights leads to “the loss of control and heightened vulnerability that defines adverse incorporation.” Phillips proceeds

to explain that “the vulnerability associated with this loss of control can work to the advantage of capital in its creation and/or appropriation of a large pool of surplus, often informal and easily exploited labour, and the terms of incorporation into these labour markets in turn reinforce the loss of control that defines patterns of chronic poverty.” (ibid.)

For the rural poor, an important asset is land, and loss of control may be contemplated in two ways: firstly, loss of control over the terms of transfer of the land itself—i.e., terms of sale, terms of lease rental, if manifestly prejudicial to the seller or lessor as determined by fair market values; secondly, loss of control over cultivation and management of the landholding, where such loss was not contemplated and consent to it not freely given, or was the result of a complex combination of social, economic and political pressures bearing down upon only one group. In addition, it is likewise posited that adverse incorporation is premised on asymmetrical relations, hence, asymmetrical or uneven relations must attend the loss of effective control of assets for a case of adverse incorporation to be made. This entails looking at discrepancies in bargaining power, economic standing, social and political influence, and the like. In research set in an agrarian-based setting, the asymmetrical relations between the lessee corporation and the small-holder farmers perhaps requires no further elaboration.

2.3 Land titling and land grabbing: emergent conversations on a complex nexus

Tentative reflections on land titling in the context of land grabbing have already surfaced suspicions on the capacity of land titling to mitigate the risks of land grabbing. Cotula and Vermeulen (2010: 912-913), writing in the context of Africa, concede that improved land rights (land titles), even when “combined with enhanced ability to exert these rights” are necessary but not sufficient to protect the rights of farmers against the onslaught of corporate aggression and help them maximise the benefits of investment. Cotula likewise concedes that “the balance of power is skewed strongly towards the investor, particularly in the case of foreign investors with access to international legal advice and arbitration mechanisms” (913) and proposed more inclusive consultation processes that widens political spaces for the rural poor. The article, however, stops short of questioning the entire paradigm of land grabbing and is agnostic to the complicity of land titling in the exploitative tendencies of long-term farmland acquisitions.

Borras and Franco, critically appraising this “necessary but not sufficient” framing of the problematic, underscored that not only should formal property rights be accompanied by genuine consultation processes, tendencies to slap it on as an automatic – if not complete – solution, should be checked. According to them, an “inductive approach is needed that is based on a deep understanding of the societies where intervention is targeted and makes socially legitimate occupation and use rights, as they are currently held and practiced, the point of departure for both their recognition in law and for the design of

institutional frameworks for mediating competing claims and administering land.” (2010: 518).

Indeed, without this deep understanding, disputes that arose out of these tensions had been attempted to be solved in ways that locals felt “undermined the existing social systems in place for resolving such disputes”. (Hutchinson, 2008: 336). This, of course, is not a new concept. It was James Scott who first introduced the notion of “legibility”— the practice of statecraft that reduces to “legible” form (1998:33) customary practices and customary tenure, such legibility imposing upon and obscuring the complex cultural permutations and relations that animate local life and structures. The tensions that arise out of this imposition are multiple and difficult to ignore. At the heart of the dissonance is the perception of locals that “titling schemes in a number of instances amount to a privatization of what were previously communal lands, on which groups relying for their livelihoods on the commons – pastoralists, fishers or indigenous peoples depending on access to the forests for hunting and gathering purposes—depend.” (De Schutter, 2011: 269). In the end, it compromises “the wider social-political relations and cultural meanings that inhabit land, shaping individual and group claims to it in the real world.” Franco, et al. (2010: 674)

Whilst these are recurring themes that reflect capitalism’s most bothersome anomalies, the onset of global land grabbing has given new complexion to these issues because of the intensified assault on farmland by market imperatives. In the current scan of the literature on land grabbing, dispossession still remains a prominent theme. Richardson (2011: 934) examined how the rhetoric of ethanol failed to deliver the goods for Zambia and argued that a rural development framework that does not explicitly target the rural poor can only lead to further dispossession. Mishra (2011: 12) challenges the “dispossession for development” paradigm that characterizes the poverty-stricken village of Orissa, India—demonstrating how this has led to “violent disruptions of livelihoods” and the forcible separation of producers from the means of their production. Ojeda points out an interesting emerging phenomenon: the “greening” of land grabbing (2011: 1), wherein ecotourism is a driver of dispossession, resulting in the massive number of Colombian *campesinos* expelled out of traditional indigenous territories to make way for a National Park. In most, if not all of these cases, the state played a coercive role in the dispossession, using the breadth of its powers to exact acquiescence.

Less discussed is global land grabbing in another sense of the word “grab”—there is no physical grabbing or dispossession, but rather, what takes place is what I call a *constructive expulsion* as a result of adverse incorporation. They are expelled from the welfare-enhancing features of asset ownership because of prejudicial integration into the value chain, or adverse incorporation as previously discussed. An important contribution that looks at land grabbing from an adverse incorporation point of view is the work of Tanya Li (2011). Li looked at the nexus between land grabbing and labour, providing a scathing critique of the World Bank’s fixation with the notion that land grabbing provides gainful employment to the local population because it integrates them into the labour market, where otherwise they would not have been able to

integrate. She says that “in most cases, land acquisition takes the form of an investment by a corporate actor bearing capital and seeking profit. Such an investor operates in a competitive context that compels it to seek maximum profit on the capital it deploys... Production might succeed, but poverty reduction through employment or compensation for land is not an investor’s concern.” (282-283).

But perhaps the most pointed engagement of the themes of land titling and land grabbing, which is hinged on similar doubts as Li on the capacity of market forces to produce equitable outcomes, comes from Hirsch (2011: 15):

The conundrum is that, while most farmers and other landholders are pleased to obtain formal title over plots of land that they hold individually under more weakly demarcated and state-recognised arrangements, the process of land titling in some areas can weaken security in others and can entrench, sharpen and exacerbate existing inequalities in access to land.

This paper pursues this trajectory and situates itself in the conversations by offering empirical evidence to aid in the understanding of land titling vis a vis land grabbing.

2.4 Current conversations within the case study context: land titling, land grabbing, adverse incorporation in the Philippines

The literature on Philippine land policy in general—the contextual backdrop on which we examine the relationship between land titling and land grabbing is analytically rich and insightful. Tracing it historically would show the uneven development of capitalism in the agriculture sector (Borras, 2007: 83) and the “complex agrarian structure” that it has created. Acute inequality (*see for example*, Putzel, 1992) and rural poverty have long been givens in this developing economy, but so has land-based wealth amongst the political elite and policymakers—rendering land policy at any given conjuncture always a contentious issue. Demands to correct skewed land ownership emanating from below did not result in immediate, decisive reforms. The struggle for redistribution was—and continues to be—a long protracted process, where contestations have to be made at every turn (*see for example*, Kerkvliet, 1990). State action is not a fossilized ‘done deal’, but rather, to borrow from Fox (1993), outcomes of “the interaction between state and society, the institutions that mediate such interaction, and the factors that account for how those institutions are in turn transformed”. Franco’s (2005) observation likewise provides a helpful peg:

Making law is not a uniform process spread evenly across national territories, but rather one that varies over time and space. What kind of law is authoritative in a given space and time is contingent upon ‘the interactions between actors in society and the state over the setting, interpreting, and complying with authoritative rules’ (Houtzager and Franco 2003). To the extent that the interactions vary, so does societally authoritative law (5).

The land titling paradigm is an outcome of these interactions, and its various corners are reflective of the variances in such. The distribution of titles to small-holder farmers as a consequence of redistribution can be said to be a product of mass movement struggles; the bias towards using these titles towards market integration, the product of a pervasive neo-liberal framework dominant in the state bureaucracy. At present, there has yet to be any explicit analysis of Philippine land titling and land registration schemes in the context of the new phenomenon of land grabbing. Among scholars, policymakers and peasant workers focused on the Philippines, a more common debate is emerging between those who advocate facilitating greater market integration for small farmers and those suspicious of such market-led interventions. Those espousing greater market integration emphasize belief in and support for small family farmers, while at the same time promoting market incorporation for them. According to Rene Ofreneo (2008), the two main priorities are: “(first), how to transform the ARBs and small farmers into modern agribusiness farmers and leaders of an agribusiness revolution in the Philippines, (and second), how to develop value-adding and beneficial linkages between the ARBs/small farmers and the agri-processing corporations.” There are cleavages even among the market incorporation supporters. Neo-classical purists advocate wide-open markets, under the theory that in one way or another, unqualified support for investment will redound to the benefit of the rural poor. Increasingly, policy makers in government populate this school of thought. Then there are those that support market integration, but stop short of advocating the lifting of restrictions on land transfers of redistributed land, fearing a re/consolidation of land in the hands on corporate interests or the landed elite. Many non-government organizations congregate around this formulation.

Counterpoised to these viewpoints are scholars whose suspicions on the viability of integration into the market are in truth questions about the fundamental assumptions of neo-classical economic theory. We look for example at Borras’ critique:

...the opportunities-centred arguments are founded on assumptions about the workings of the forces of the “free market”: vibrant land markets, free trade, perfect market information and perfect competition, a level playing field and the like. On most occasions and in most developing countries, contrary to textbook predictions, these conditions are not present... (2007: 63).

Of more recent vintage are land grabbing discourses context-set in the Philippines— at present a small collection. Some themes have emerged, adding the Philippine narrative to the global spread of land grabbing narratives. Borras, Franco, Carranza and Alano (2011) have surfaced the myth of “marginal lands”—wherein lands have been denominated as marginal to expedite acquisition, despite clear evidence of prior rights and productivity. Another emerging theme is the politics and dynamics in agrarian communities targeted for investment as well as the ambivalent responses of small-farmers— an angle explored by Salerno (2011) in her paper investigating farm investment in the Philippine South. Finally, Franco, Carranza and Fernandez (2011) recently published a paper on the Isabela case, focusing mainly on community

impacts and flagging the dangers wrought on local peoples by the coercive combination of authoritarian local politics and “corporate-controlled industrial agriculture” aggressively pushing the bio-ethanol project.

3 An overview of the policy context

This chapter provides an overview of the policy context and the research area—describing the Philippines and its land titling system, its policy regime on land investment, and the case study itself: the bio-ethanol project in Isabela. It proceeds from the theory that investigating the correspondence between land titling and large-scale farmland investment cannot be done in a vacuum: it must take into account the contextual backdrop on which it is foisted and the politics and processes that are implicated when policy directions are set and implemented. By public policy, I adopt the definition of Grindle (1980: 5), who sees it as an “ongoing process of decision making by a variety of actors, the ultimate outcome of which is determined by the content of the program being pursued and by the interaction of the decision makers within a given political administrative context.” Houtzager and Franco (2003) further provide a useful handle when they stated that land laws and land policies “are neither self-implementing nor self-interpreting”, but are outcomes of and shaped by interactions and frictions among different actors, at specific junctures.

3.1 The constitution Giveth, the market Taketh away: the schizophrenia of Philippine land policy

To understand the dynamics of land titling and land grabbing in the Philippines, it is important to first understand that Philippine land policy is a schizophrenic animal. On the one hand, its main and official vehicle for smallholder title generation is the Comprehensive Agrarian Reform Program or CARP (main and official, because this is the vehicle that appears in the Constitution and enshrined as official state policy) an agrarian reform program that manifests an explicit bias for marginal farmers and contemplates a transfer of “effective control” (Borras and Franco, 2008: 2) of land resources from the dominant classes to the working people. On the other hand, surrounding this averred ‘official state policy’ is an almost air-tight policy regime characterized by (1) a central belief in the inerrant logic of the market, (2) an aversion to State interference, except when its coercive power is necessary to set up the legal structures that will allow the unimpeded movement of capital, (3) a depoliticised approach, where power and class are expunged from the equation.

We begin by looking at CARP as the official policy for small-holder title distribution. A provision in the Philippine Constitution of 1987 expressly reads:

Article XIII. Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State

shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

It was in line with the mandate of the Philippine Constitution that the Comprehensive Agrarian Reform Law was passed in 1988, after the bloodless revolution of 1986 that topped a dictator and presented fresh opportunities for democracy and human rights. In 2008, funding for land acquisition and distribution was set to expire, and while the original Comprehensive Agrarian Reform Law did not come with an expiration date, termination of funding to compensate landowners effectively meant that no new acquisitions could be made. The balance of undistributed landholdings—1.3 million hectares, in total—presented a serious problem, especially when many of these landholdings were in agrarian hotspots and distribution was stymied because of fierce landowner resistance.

After a contentious legislative process, R.A. 9700 was signed into law by then President Gloria Macapagal Arroyo. It gave agrarian reform fresh funding for a new five-year term, extended the mandate for acquisition and distribution, and incorporated a panoply of reforms, including the indefeasibility of the Certificate of Land Ownership Awards (also known as CLOAs or land titles given under to agrarian reform beneficiaries), the elimination of the Voluntary Land Transfer method, which has often been used by landowners to retain ownership of the land via dummy beneficiaries, the granting of usufructuary rights to potential farmer-beneficiaries, as well as gender-related provisions that recognize the rights of female farmers. Despite the bureaucratic weaknesses that plague its implementation and despite (or perhaps because of) the structural difficulties of land redistribution in a system with entrenched elite interests, CARP is still widely considered to be a social justice legislation and the primary vehicle for title generation for the rural poor.

The schizophrenia becomes apparent when one examines the web of policies and regulations that surround this central policy and the various dissonances and contradictions embedded within it.

Under the current policy paradigm in the Philippines, adherence to the dominant neo-liberal frame has unequivocally produced a network of regulations with a pro-market bias, reducing the social justice invocations of agrarian reform to becoming the proverbial “elephant in the room”. Consistent with the neo-liberal strategy to cut down spending and push for greater liberalization and privatization, the Philippines has embarked on an investment-hungry blitzkrieg. With agricultural land being the current

investment target of choice, like its neighbours in Southeast Asia¹, the country has amended its existing laws and created new ones in order to further entice new investment to come in.

Perhaps the clearest example of this is Joint Administrative Order No. 2008-1, Series of 2008—or the Guidelines Governing the Bio-fuel Feedstocks Production and Bio-fuels and Bio-fuel Blends Production, Distribution and Sale under RA 9367—which was enacted by the Departments of Energy, Agrarian Reform, Agriculture, Environment and Natural Resources, Finance, Labour and Employment, Science and Technology, Trade and Industry, Transportation and Communication, the National Commission on Indigenous Peoples, the Philippine Coconut Authority, the Sugar Regulatory Administration and the National Bio-fuels Board in support of the bio-fuel and bio-ethanol trend.

Apart from expanding the scope of coverage of lands that may be converted², JAO 2008-1 exempts from Department of Agriculture certification landowners whose “effective area is twenty five (25) hectares or less.” This means that all landowners with 25 hectares or less can arbitrarily and unilaterally decide to convert their landholdings to a bio-fuel production site. The DAR estimates that 1.3 hectares of land are undistributed. If these hectares of lands are made up of landholdings bigger than the retention limit of five hectares but less than 25 hectares, then they may immediately be converted into bio-fuel sites, no questions asked and no certification process required—presumably, even if the lands are tenanted.

¹ Lao PDR law of 2004 explicitly encourages foreign direct investment in its land and natural resources, including “(a)ctivities relating to agriculture or forestry, and agricultural, forestry and handicraft processing activities” as among its “promoted activities” in its Law on Foreign Investment (Article 16, Law on the Promotion of Foreign Investment). In December 2005, Cambodia passed a sub-decree to its Land Law of 2001, which would allow the state to issue Economic Land Concessions – defined as a “mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation” (Sub-Decree No. 46. Chapter 1, Article 1.)

² The Rules on Land Conversion sets as non-negotiable for conversion all agricultural lands with irrigation facilities. This means that for as long as the land in question is agricultural in nature and has facilities for irrigation, its use should remain devoted to the planting of crops and may not be converted to any other use. However, Section 4.1D of JAO 2008-1 does not include this exemption in its list of agricultural areas that shall not be utilized for bio-fuel feedstock production, and exempts practically only those lands where the irrigation facilities are government-funded, covered by irrigation projects with firm funding commitments and are utilized for rice and corn. Effectively, agricultural lands with irrigation facilities that do not fall under any of the categories mentioned above are fair game for bio-fuel production. Moreover, the Land Conversion Rules contains an entire category of lands highly-restricted from conversion such as lands with the potential of growing semi-temperate or high value crops, and irrigable lands not covered by irrigation projects with firm funding commitment. This category of highly-restricted lands is eliminated completely from JAO 2008-1.

The regulation effectively removes the protections afforded to tenants in the investment areas. This includes the requirement for applicants to accomplish an affidavit stating the “number and names of the farmers, agricultural lessees, share tenants, farmworkers, actual tillers and/or occupants” in the landholding, and stating under oath that they have paid disturbance compensation to the farmers about to be dislocated. No such requirements are in the JAO 2008-1. It makes no mention of the safeguards to be afforded them, or the protections to which they are entitled³. It may also be noted that while a Land Use Conversion Certificate ⁴is required before the Department of Energy (DOE) issues a *Certification of Registration with Notice to Proceed*, such DOE certification is also not a precondition to be a Bio-fuels Livestock Producer so in fact, the Land Use Conversion Certificate has no material value.

This aggressive promotion of bio-fuel investment through the relaxation of regulatory rules meant to protect farmers and land resources have raised alarm bells for activists, signifying a clear breaking point from the agrarian reform and social justice invocations reposed in State law. This becomes even more apparent when we look at the full throttle of administrative pronouncements, studies and reports churned out by the administrative agencies, revealing a vertical dissonance wherein administrative policies and practices conflict with the formal redistributive agenda reposed in official legislation

In December of 2010, the Policy, Planning and External Affairs Office of the Department of Agrarian Reform released a document entitled “*Bio-fuel Policy Studies: Simplification of Guidelines on Land Use Conversion for Bio-fuel Production and Agribusiness Ventures and Promoting Bio-fuel Investment in Agrarian Reform Communities in the Philippines.*” This was a study funded by the Department of Energy.

In its Background, the document stated:

As the project title indicates, the first output on simplified guidelines on land use conversion for bio-fuel production is a timely and necessary response by the DOE to unfavourable feedbacks from bio-fuel investors on the currently lengthy and cumbersome procedures on land use reclassification and conversion. In order to create a conducive and facilitating application environment, it is imperative that the land use reclassification and conversion processes be simplified and enhanced to transform it into a customized and bio-fuel investor-friendly tool. (2010: page 1, emphasis original)

³ Admittedly, JAO 2008-1 adopts “in all aspect not inconsistent therewith” DAR AO 1 Series of 2002, the regulation that carries these requirements; however, considering that compliance with the latter is not made a requirement in the application for bio-fuel feedstock producer, agrarian reform lawyers say that the rights of the farmers in the area still remain precarious and vulnerable.

⁴ A Land Use Conversion Certificate essentially states that a land can be more optimally used as an industrial or agro-industrial site rather than an agricultural or food production site.

The document is an example of what is beginning to be an explicit and unapologetic bias by government agencies towards investment: using the win-win framework as rallying call and arguing that more investment automatically translates to an enhancement in the welfare of small farmers, but in truth, standing on the side of investment when it comes down to a choice between protecting small-holder farmers and protecting investment prospects.

The document was in fact curiously silent on the issue of land rights and rural livelihoods—a marked departure from previous policy documents that at least paid lip service to the small-holder farmers. What makes it especially problematic in this case was that while the study was funded by the Department of Energy, the study was done wholly under the management and supervision of the Department of Agrarian Reform—the department with the primary mandate of securing and guaranteeing small-holder land rights. As one of the stated objectives of the project, it aims to “identify and examine the ‘choke points’ which investors find cumbersome when applying for land use conversion for bio-fuel production purposes.” (ibid.)

The formulation is interesting, because in fact one of the major “chokepoints” to land conversion is resistance from the ground, and the gamut of restrictions in existing law meant to protect the rights of small tillers in the lands sought to be converted. In an interview with the DAR representative, he did identify one of the chokepoints as “noisy opposition from those who do not understand the issue.” This theme of “choke point to investors” is repeated many times over, by different policy actors at the national and local levels. In Isabela, this theme was particularly sharp. In an interview with Cora Pua, the community affairs officer of the Office of the Mayor, she stated:

“People who complain do not know what they are talking about. If you want progress, you need to make sacrifices⁵”

There also appears to be a contradiction between the law and its implementation on the ground. In an interview with Gomer Tumbali⁶, the Deputy National Program Director and head of the Agribusiness Entrepreneurship Development Program of the DAR, he insisted that a check on possible abuses by the investor on the agrarian reform beneficiary (ARB) is the rule that lease contracts need to be approved first by the DAR and hence,

⁵ Personal Interview with Cora Pua on 12 July 2011 at the Office of the Municipal Mayor of San Mariano, Isabela (hereinafter, *Pua* interview)

⁶ Personal Interview with Gomer Tumbali on 5 July 2011 at the Department of Agriculture National Office (hereinafter, *Tumbali* interview).

these contracts are reviewed for their legality and compliance with regulation⁷ before the arrangement can proceed.

An interview however with the Provincial Agrarian Reform Officer in Isabela, Virgilio Acasili⁸, yields the express concession that he has never seen a single lease contract between ECOFUEL and an agrarian reform beneficiary. When pressed to answer if there were lawyers working for the DAR or contracted by the DAR to review the lease contract as stipulated by the administrative order, he then candidly shares that he has a directive from the DAR Secretary himself, stating that he and his office may consult or discuss with business experts so that maximum economic efficiency is ensured, but “not with lawyers”.⁹ The important thing, he said, is that the investment follows through and the farmers benefit. This was a sentiment echoed by the other key informants.

“When hired as farmworkers, at least they have money at the end of the day,” - Mariz Agbon¹⁰, head of the PADCC.

“The social problems have decreased, because the farmers are now productive,” - Cora Pua¹¹, Community Affairs Officer in Isabela.

“At least, now they are being taught technical expertise,” – Virgilio Acasili¹², Provincial Agrarian Reform Officer.

The above example demonstrates two things: first, the trivialisation of the regulatory process, and second, a naked belief that the benefits of increased investment will “trickle down” to the farmers and that welfare enhancement should be measured by comparing the situation now with what it was before, rather than what it should be under more equitable conditions. It is against this background that the relationship between land titles and land grabbing is to be examined.

⁷ DAR Administrative Order No. 9 requires a lease contract between an ARB and an investor to contain the following minimum requirements: “(a) minimum amount rental – and the factors to arrive at that value; (b) mandatory inputs from the investor, including an item on the investor’s assumption of the risk of loss of agricultural operations, to include crop failure due to natural calamities or *force majeure* (where the lessee—ARB is still assured of the payment of the lease rental); (c) specifics of tax payments; (d) priority to qualified and willing ARBs and their dependents for employment in the enterprise; (d) interim nature of the lease agreement—i.e. that the same shall only be intended to enable the ARBs or their organization to develop skills necessary to assume general control and management of the farm.”

⁸ Personal Interview with PARO Virgilio Acasili, 15 July 2011, at DAR Provincial Office, Isabela (hereinafter *Acasili* interview).

⁹ The author was furnished a copy of the document entitled “Highlights of Major Agreements and Directives, Isabela Province, 18 March 2010).

¹⁰ Personal Interview with PADCC Chair Mariz Agbon, 5 July 2011 at the DA National Office (hereinafter *Agbon* interview).

¹¹ *Pua* interview.

¹² *Acasili* interview.

3.2 Overview of the project

The bio-ethanol project in Isabela, described by the PADCC as the “only active bio-fuel case in the Philippines at present” (Agbon, Interview, 2011), involves the development of 11,000 has. of land in Isabela for the purpose of the cultivation of sugarcane that will in turn be used to produce 54 million liters of anhydrous ethanol per year. Isabela, a province located in the northern part of the Philippines, is the second largest rice production area in the Philippines, next to its neighbour province Nueva Ecija. The feedstock production sites are spread out over the municipalities of San Mariano, Benito Soliven, Naguilan, Ilagan, Camu and Cauayan City, while the site of the bio-ethanol plant – under construction at the moment – shall be at San Mariano. Currently, 6,000 has. of the 11,000 has. has already been developed.

Prior to the lease of the lands to ECOFUEL, farmers had been using the lands to plant a variety of crops for consumption and for sale. “An assortment of vegetables”, was how one of the farmers put it. According to the farmers, some of these lands are planted with rice and corn, even though Provincial Agriculturist Virgilio Acasili¹³ strenuously insisted that rice and corn lands were off-limits to the project. Prior to the project, they were not receiving any subsidies from the government for food crop production.

Engineer John Tampo¹⁴, the Vice President of ECOFUEL Land Development Inc. (hereafter, ECOFUEL) explained to me in an interview that the mother corporation is Green Future Innovations (hereafter, Green Future), a Japanese and Taiwanese owned company involved in bio-fuel production. ECOFUEL on the other hand, is a 100% Philippine owned corporation that, by virtue of a feedstock supply agreement with Green Future, is tasked with land development and land preparation in order to supply the sugarcane needed for bio-ethanol production. ECOFUEL targets the hiring of more than 2,000 farm workers to cultivate the feedstock production sites and 200 workers for the plant itself.

In its brochure, ECOFUEL claims to offer two schemes to farmers interested in participating in the bio-ethanol project. The first is a land lease, described in its brochure as consisting of a –

“Lease period of six (6) years at PhP3,000.00-PhP10,000.00 per hectare per year depending on distance, access road, soil fertility, water source and must be tractorable”. ECOFUEL will pay lump sum of three (3) years upon processing of the documents and a signing bonus of PhP500.00/ hectare,

as well as Contract Growing Arrangement, described as follows:

¹³ *Acasili* interview

¹⁴ Personal Interview with Engineer John Tampo, Vice President of ECOFUEL, 13 July 2011 at ECOFUEL Plant, Ilagan, Isabela.

“ECOFUEL will provide all inputs, farm labour from planting to harvesting and tractor services. There is no charge on the advances, just minimal service charges. The farmer contract grower will be trained on sugarcane farming for free and an ECOFUEL technician will assist the contract grower during the growing period. A signing bonus of PhP500.00/hectare will be given plus upfront of PhP10,000.00/ ha. (1000) upon signing/processing of documents, PhP 5,000.00 upon planting and the PhP4,000.00 2 months after the planting) for areas within the 30-km radius from the plant site.

To date, however, 90% of the participating farmers are still under land lease arrangement.

The project gained the full support of the local government from its initial phases in 2009 with the Office of the Mayor of San Mariano bannering the project as the flagship project of his administration. In an interview Mayor Edgar Go¹⁵, he enumerates the benefits to the community as follows:

“infrastructure development, livelihood, upliftment of living conditions, revenue generation for local government units for through tax collection, environmental protection.”

The official policy statement of ECOFUEL, shared by the Office of the Mayor, is that the project only targets “idle lands, grass lands and marginal lands”—thus supposedly refuting allegations made by some quarters that bio-ethanol production compromises rice production and food security. Provincial Agriculturist Danilo Tumanao¹⁶ describes sugarcane as an “upland crop” that does not require irrigation and will not compete with rice, which is a “lowland crop” that requires irrigation.

Whilst emphasising that the project was initially conceptualised as one to be developed on unutilized/underutilized public lands of the sort described above, Tumanao¹⁷ concedes that at present, private lands are being used as well “upon the consent of the landowner” but disavows any knowledge of rice lands being used for bio-ethanol production.

The table below describes the local actors and their roles in the bio-ethanol project, as well as their relationships to each other:

¹⁵ Phone interview with Mayor Edgar Go, 13 July 2011 (hereinafter, *Go* interview).

¹⁶ Personal interview with Provincial Agriculturist Danilo Tumanao, 14 July 2011 at the Department of Agriculture Provincial Office (hereinafter, *Tumanao* interview).

¹⁷ *Ibid.*

TABLE 1
Actors

ACTOR	NATURE	ROLE
Green Futures, Inc.	Private corporation based in Metro Manila	Exports and markets bio-ethanol
ECOFUEL	Private corporation based in Isabela, Philippines; 100% Filipino owned	By virtue of feedstock supply agreement, exclusively supplies sugarcane to Green Futures, Inc. THROUGH and development and preparation ----- Enters into lease and contract growership arrangements with farmer-landowners ----- Selects and supervises farm-workers and plantworkers
Office of the Provincial Agriculturist	Government	Assists in the selection of lands to be developed for bioethanol production ----- Official point person of the Convergence Initiative in Isabela
Office of the Mayor	Government	Levies taxes on the private corporations ----- Ensures that San Mariano residents are given "priority hiring" by ECOFUELS. (Issues recommendation letters to residents who want to work as farm workers of ECOFUEL.)
Provincial Agrarian Reform Officer	Government	Point person for agrarian reform lands leased to ECOFUEL ----- Regulates lease contracts between ECOFUEL and farmers
Farmer	Private	Leases land or provides contract growing service to ECOFUEL ----- In lease arrangements, have the option of being hired by ECOFUEL for planting, weeding, pesticide spraying, etc.

4 Titled but not entitled: reexamining the welfare-enhancing potential of formal property rights

Deininger has said:

Where smallholders already cultivate land, large investments do not have to result in the conversion of small-scale agriculture to large-scale agriculture. To the contrary, institutional arrangements such as land rental and contract farming can help combine investors' assets (capital, technology, markets) with those of local communities and small holders (land, labour and local knowledge). As long as property rights to land and, where necessary, water, are well-defined (not necessarily on an individualized basis) and a proper regulatory framework to prevent externalities is in place, productivity- and welfare-enhancing transactions can occur without the need for active intervention by the state... If rights are well defined, if land markets are not monopolized, and if information is accessible to all, voluntary transactions where land is valued at market prices should ensure that a mutually satisfying outcome is achieved. (2011: 235-236).

This formulation begs the question: how about in cases where titled lands are precisely the ones preferentially “grabbed” through one-sided lease arrangements, under terms prejudicial to the seller? Or cases where titled and non-titled lands are equally rendered vulnerable and there is no apparent differential in the vulnerabilities that attend exposure to the risks of overseas farmland investment? How are these permutations to be explained by the “unfaltering” logic of the free market and private property? How does the orthodox formulation deal with evidence of a less-than-perfect correspondence between land titling and land grabbing, given that it is this correspondence that is relied upon to legitimise the land grabbing project?

We now look at the outcomes of the field research conducted in the bio-ethanol plantation in Isabela where I conducted focus group discussions on two sets of farmers in Barangay Alibadabad—one group of farmers with titles (well-defined property rights) and another group of farmers without titles (ill-defined property rights). Reference will also be made to a document entitled “Area Turnover Summary” in which ECOFUEL Land Development Inc. lists the names of the farmers who leased their lands for bio-ethanol production.

The first group (hereinafter, “titled group”) was composed of twelve (12) farmers, ten of whom hold Certificate of Land Ownership Awards (CLOA) in their own capacities, and two of whom were daughters of CLOA holders. The youngest respondent was 39 years old, the oldest was 71 years old. By circumstance and not by design, the group was divided equally between men and women. The sizes of the landholding range from 0.4 hectares to 2.5 hectares. The turnover dates to ECOFUEL were all between the period of 2009-2011. Prior to the lease, the landholding was devoted to the cultivation of palay/ rice or corn and vegetables. All were paid PhP5,000.00 (approximately 82.03 EUR) per hectare per year. Their respective lease contracts stipulate a six-year-term, except for two respondents with a three-year term and a four-year term in their lease contracts. In all cases, the respondents were paid upfront the total lease rental for the specified term (for example, the respondent with a six-year-term was paid PhP30,000.00, or 492.18 EUR).

Of the ten respondents in the group composed of non-title holders, seven were male and three were female. The youngest was 31 and the oldest was 58. The smallest size of the landholding was 0.6 has. And the largest was 9 has. They all leased their property to ECOFUEL between the periods of 2009-2011. To evidence ownership or a claim of ownership that the corporation deemed sufficient to consider them a party to the lease agreement, six presented a tax declaration¹⁸, three presented a barangay certificate¹⁹ and one presented a certificate issued under the Socialized Industrial Forestry Management Program or SIFMA²⁰. All but one of the respondents had granted lease terms of 5-6 years, with one respondent's lease having only a three-year duration.

Table 2 shows the basic data of the first group:

TABLE 2
"Titled" respondents

Respondents	Basis of possession	Land size (has.)	Rate of rental (per has. per yr)	Term of lease	Location (aprox)	Soil type
HM.	CLOA	0.8	5,000.00	6 years	500 m fr road	Clay soil
RA	CLOA	1.2	5,000.00	6 years	500 m fr road	Clay soil
NG	CLOA	2.4	5,000.00	5 years	500 m fr road	Clay soil
LB	CLOA	3	5,000.00	6 years	400 m fr road	Clay soil
LBa	CLOA	0.5	5,000.00	5 years	500 m fr road	Clay soil
SP	CLOA	0.5	5,000.00	6 years	600 m fr road	Clay soil
RT	CLOA	1.0	5,000.00	6 years	500 m fr road	Clay soil
MM	CLOA	1.5	5,000.00	6 years	Away from road	Clay soil

¹⁸ A tax declaration certifies that the individual stated therein has paid real estate taxes for the property specified. The Philippine Supreme Court has had occasion to rule several times that while a tax declaration may serve as basis to infer *possession*, it is not a sufficient proof of *ownership*.

¹⁹ A certification issued by the Barangay chairman (a barangay is the smallest unit of local government) certifying that the person named in the certificate is in possession of the specified landholding. It is not sufficient proof of ownership.

²⁰ A SIFMA is an agreement entered into between the Department of Environment and Natural Resources and an individual person whereby the former grants the latter rights to utilize and manage a small tract of forestland in a manner that will satisfy both the individual's livelihood needs and the government's sustainable development objectives.

Table 3 shows the basic data for the second group, the group without titles.

TABLE 3
“Untitled” respondents

Respondents	Basis of possession	Land size (has.)	Rate of rental (per has. per yr)	Term of lease	Location	Soil type
RM	Bgy. certificate	1.2	5,000.00	6 years	400 m fr road	Clay soil
RG	Bgy. certificate	0.9	10,000.00	6 years	400 m fr road	Clay soil
SD	Tax declaration	9.0	5,000.00	5 years	500 m fr road	Clay soil
DD	Tax declaration	2.6	10,000.00	6 years	Along road	Clay soil
RC	Tax declaration	3.2	5,000.00	5 years	200 m fr road	Silt loam
SP	Bgy. certificate	1.5	10,000.00	6 years	Along road	Clay soil
EB	Tax declaration	5.9	10,000.00	3 years	Along road	Clay soil
MD	SIFMA	1.3	10,000.00	6 years	Along road	Clay soil
MP	Tax declaration	1.7	10,000.00	6 years	Along road	Clay soil
PA	Tax declaration	0.6	5,000.00	6 years	500 m fr road	Clay soil

All of the respondents explained that they had been convinced to enter the project when representatives of the Department of Agriculture, representatives of the local government, as well as a representative of ECOFUEL gathered groups of farmers together to convince them to lease their lands the company. They were also told that they would be hired as farmworkers to do land preparation activities such as weeding, cutting of sugarcane, pesticide spraying and plowing. Ten out of twelve of the respondents currently work as farmworkers, the remaining two have daughters who are farmworkers.

A perusal of the above data yields the following conclusions.

4.1 No “premium” for title holders in terms of rate of lease rental

As evidenced by a comparison of the tables, possession of titles is not made a basis for determining the rate of lease rental. In fact, none of the respondents in the first group were given a lease rental rate of more than Php5,000.00, whilst in the second group six out ten were given Php10,000.00, even if their

only proof of possession/ownership was a tax declaration, barangay certificate or SIFMA.

The tables also demonstrate that the primary basis used by the ECOFUEL in pegging the rate of lease rental is accessibility. All of the respondents who were paid Php10,000.00 have landholdings located “along the road” whilst those who were paid Php5,000.00 were farther away, and this is regardless of their claim of ownership. This was confirmed by ECOFUEL itself, through Engr. Tampo, who said in the interview that “if the landholding is far, I ask for a discount.”²¹

Moreover, respondents from both groups felt that they were being shortchanged by the lease amount paid to them but could do nothing because it was better than not having money at all. To quote a respondent with a CLOA who was paid a lease rental rate of Php5,000.00:

Alam naming na malaki ang kita sa bio-ethanol pag binenta na sa ibang bansa. Milyon milyon daw, abot pa ng bilyon na dolyar. Hindi piso, dolyar. Parang butil butil lang bayad sa amin, pero sanay naman kami sa butil butil, kaysa wala.

(We know that bio-ethanol rakes in big profits in the world market. Millions, if not billions of dollars. Not pesos, but dollars. We know that we are only paid crumbs, but then we are used to crumbs. It is better than nothing.)

All of them had already spent or allocated the lease rentals paid to them. Majority said that they had used it to pay off loans from loan sharks. They relayed how loan sharks had descended on the area upon hearing news that there was new cash to be had. Instant demands were made on old debts, with penalties and interest charges. “*Naamoy nila ang pera* (they smelled the cash)”, one of them said wryly.

A number said that the money went to non-farm activities such as paying the recruitment fee to send a member of the family overseas to work , some used it to buy a sewing machine and to set up a small tailoring business, yet others to make repairs on the house.

4.2 No premium for title holders with respect to employment as farmworkers

Regardless of land title status, they are all entitled to work as farm workers on the landholding, subject to their obtaining a “recommendation letter”²² from the Office of the Mayor of San Mariano. The non-CLOA respondents said they were convinced by the same groups that convinced the CLOA respondents to lease their lands to ECOFUEL. They said that they were immediately assured that a title was not necessary to enter into a lease contract, only that they would be able to prove their ownership or possession of the

²¹ *Tampo*, interview

²² In the interview with the Mayor, it was learned that the “recommendation letter” requirement is to implement the “San Mariano First policy”—a mechanism that ensures that San Mariano residents would be given priority in hiring.

land against other possible conflicting claims. They were assured that a title would not be used as the basis of determining lease rentals or of hiring as farmworkers. Indeed, the respondents were all hired by ECOFUEL under the same terms and arrangement as the CLOA group.

The arrangement was described as follows: ECOFUEL would pay PhP 1800.00 to PhP 2000.00 (approximately 30 EUR to 35 EUR) as labour fee for one hectare. Farmworkers would then group together to be able to finish the work. A group of fifteen farmworkers working from 6:00 am to 6:00 pm would normally be able to finish the weeding of one hectare of land in one day. They would then split the costs amongst themselves, thus earning for an individual farm worker the best possible rate of PhP133.33 (approximately 2.20 EUR) a day. Current minimum wage rates in Isabela (the minimum allowable amount to be paid by an employer to an employee without breaking Philippine law) as of February 16, 2011, according to the Department of Labour and Employment is PhP 233.00²³.

The respondents in the titled group say that they do not always get the PhP133.00 and on many days get less than PhP100.00. One female respondent in the first group whose son is a farm worker shares that there were days when her son received only PhP 23.00. The non-titled group likewise stated that there are days when they get less than PhP100.00 a day for weeding, cutting of sugarcane, pesticide spraying and plowing. More than half stated that even though this is small, this signifies a marked improvement in their livelihoods because they were accustomed to getting nothing in the past and receiving scant local government support. However, all expressed dissatisfaction over the wages being received.

They also complained about the back-breaking work. According to one of the respondents in the second group:

Para makakuha ka ng higit 100, kailangan mo magkayod-kalabaw. Magigising ka ng alas sais at dire-diretsong trabaho. Kailangan namin matapos para mas malaki ang kita. (If you want to earn more than PhP100.00, you have to work like a carabao. You wake up at 6:00 am and do non-stop work. We have to finish it if we want to earn more.)

ECOFUEL through Tampo admits that there are lapses with regard to wages and labour standards, but attributes this to its being a young company. “We admit there are lapses, we admit that there are problems with wages, but these are the birth pains of starting out. I will look into this.”²⁴ To date, however, there remains no marked improvement in the wages received by the farm workers, or the labour standards and policies. When interviewed, the Mayor stated that his office can only specify who to recommend for hiring, but it cannot interfere in the determination of the wages²⁵.

²³ For agricultural workers. PhP 218.00 (basic wage) + PhP 15.00 (Cost of Living Allowance, under Wage Order No. RTWPB-II-10.) = PhP 233.00. For non-agricultural workers, it is PhP 245.00. Source: *National Wages and Productivity Commission*, Department of Labour and Employment.

²⁴ *Tampo*, interview

²⁵ *Go*, interview

4.3 No difference in assessment of well-being improvement between the titled group and the non-titled group

When asked whether or not there was an improvement in their lives as a result of the bio-ethanol project, all of them answered in the affirmative but said by way of qualification that this was because in the past, they were used to not getting anything at all. All of them—titled and untitled—had experienced hunger during the past five years. There were variances in the degree to which they felt their lives had improved. One respondent, a farm guard, expressed enthusiasm about the project and said that his life had improved “very much” (*malaki ang ginhawa*). This respondent had also been hired as a farm guard by the corporation, and was acting as an interim “supervisor” over the other farm workers. His landholding is untitled. He is the only one who can speak directly to the corporation and has access to the corporation’s offices in the province.

It is interesting to compare this with the respondent who expressed the least enthusiasm about the project and expressed uncertainty about the long-term sustainability of the project—“there was a small improvement, but I am not sure how long this will last”. She owns a CLOA and is the mother with the son who had experienced earning Php23.00.

Respondents in both groups noticed an improvement in infrastructure and believe this to be beneficial to the barangay in the long run. They also put stock in the commitment of the corporation to provide them with health and death benefits, although at the time of the interview, none of them had availed (or had cause to avail) of such benefits either for themselves or for next of kin. Most are optimistic about the presence of ECOFUEL in their community and the development prospects it will bring. Some reasons given are (1) they see the tremendous support of the local government as compared to when they were planting rice and corn, (2) they believe that ECOFUEL will increase their wages as soon as the plant becomes operational and profits come in for the corporation, and (3) they believe that ECOFUEL will bring in other investors to Isabela, which will increase development possibilities of the region.

Four expressed a fear that they may never get control of their land back, interestingly three of those came from the titled group. When prodded to explain the basis of such fears considering that the transaction is only a lease agreement, they found it difficult to give concrete answers. One presents an interesting fear: he worries that there may be no more farmworkers for him to hire for his rice and corn lands (that were not leased to ECOFUEL) in the province because working in the bio-ethanol farms present more lucrative opportunities.

In sum, however, it can be said that there is no marked disparity between the respondent group with secure titles and the respondent group without secure titles with respect to their perception of well-being improvement as a result of the bio-ethanol plant.

4.4 Synthesis of findings

To summarise, findings from the field appear to suggest that there is no causal relation between secure property rights and increased well-being (and perception of well-being). In this case, there is equal exposure to the consequences of land grabbing and no marked disparity between groups with secure property rights and groups with no secure property rights in terms of rate of lease rental, likelihood of employment as farm workers, and perceptions of improvement in well-being.

It is not difficult to see that the lease rental rate of PhP5,000.00 – PhP10,000.00 per has. per year is inequitable, and this rate is nothing if not the outcome of power asymmetries between the farmer and the corporation. It is well below the fair market value, and it is an unconscionable fractional percentage of the profits that ECOFUEL stands to gain from selling the bio-ethanol in the world market. Likewise, it is not difficult to see that a daily wage of less than two euros, well below the regional minimum wage, is unfair as well as illegal.

The findings tell us that contrary to the orthodox perception, secure property rights do not necessarily provide a buffer against the inequities described above and do not lessen the vulnerabilities that farmers face as a result of the onslaught of commercial pressures on land. Capital will find a way to seek out and obtain lands that are “relevant” to its purposes—titled or untitled—and consequently, will ignore lands that are of no use to it—titled or untitled. A supposition is ventured that where relations between the parties are asymmetrical, the presence or absence of secure property rights held by the weaker party in the asymmetry can possibly alter the manner of obtaining, but it cannot—as a sole variable and with no other intervention—automatically buffer the consequences of the obtaining.

5 Titling in the service of capital

The previous chapter has shown that in Isabela there is no correspondence between secure property rights of small farmers and the degree to which they are exposed to the risks and vulnerabilities brought about by land grabbing. This chapter looks at how, in landscapes with stark asymmetrical faultlines, not only does land titling *not* buffer the consequences of land grabbing, it operates to create a complex hybrid of pressures designed to conscript rural communities into serving the interests of capital.

5.1 Corporation-backed land titling

With this framework of understanding, we proceed to look into the relations between ECOFUEL Corporation and the lessor farmers. Earlier in the paper, it was discussed that if the equation was correct (i.e., low property rights lead to higher exposure to land grabbing risks, high property rights lead to lower exposure to land grabbing risks), then corporate land grabbers would favour a situation wherein the lands targeted for investment have no titles and the

settlers have no formal claims. But what if the corporation itself is aggressively pushing for land titling? How is this phenomenon to be understood using a political economy framework?

Indeed, a fascinating point that was raised in the discussion during the second FGD (non-holders of title) is that one of their primary motivations for leasing the land to ECOFUEL is because ECOFUEL has committed to assist them in securing their permanent titles to the property. When asked to describe the nature of ECOFUEL's assistance in title generation, they answered that ECOFUEL provides free lawyers and private surveyors ("*libreng paabugado, at libreng pasurvey*"). This service is free for as long as one decides to lease his or her land to ECOFUEL. To quote one of the respondents:

"Mapapadali na ang papasok ng lupa naming sa ECOFUEL at mapaparkila na namin ito, Pag walang sabit ang title, mas maayos ang relasyon naming sa kanila. (Giving us titles will make it easier for us to rent our lands to ECOFUEL. It will make our relationship with them easier.)"

To provide perspective, the acceptance fee of a local lawyer in Isabela is somewhere around PhP10,000.00, a conservative amount that can go even higher depending on the experience and reputation of the lawyer and the degree of difficulty of the case. This does not include the payment for the work that comes after, like writing pleadings and filing documents. As the table in the prior chapter demonstrates, for some of the respondents, the amount of PhP10,000.00 is even higher than the lease rental of 1 hectare of land for one year.

As one of the respondents put it, "*ang ilan sa amin, hindi pa nakakakita ng abugado, tapos eto ang ECOFUEL, inalukan kami ng libreng abugadong tutulong sa amin.* (many of us have not even seen a lawyer in real life, and then here comes ECOFUEL, offering free legal services just like that)". When asked to give examples of the kinds of disputes for which legal services are provided, the farmers cite the example of boundary disputes and even family disputes where, for example, a conflict of claims arises between two heirs of the original landholder. "*Kabit away pamilya pinapasok ng ECOFUEL,* (even family feuds are not exempt from ECOFUEL's intervention)", says one of the respondents.

This was confirmed by John Tampo himself, speaking for ECOFUEL. In a response written to address the contentions of an International Fact Finding Report, it was stated that:

In cases where families lack documented proof of land ownership, ECOFUEL is in fact helping them in these documentation requirements, always careful that we are helping only those who have rightful claims to the land they own.

In the interview, this was discussed in greater depth. "We want to give them a stronger hold on their claims, because this helps the company as well²⁶." He confirms that legal services are indeed being provided, but nothing by way of full-blown litigation. Services often include notarization of

²⁶ Tampo, interview.

documents, legal consultation on technical points, as well as coordination with the Department of Agrarian Reform to expedite claims.

In an interview, the Provincial Agrarian Reform Officer (PARO), Virgilio Acasili, said that he sees nothing wrong with that.

They (the corporation) help speed things up. Don't we want farmers to own land? Of course, if ECOFUEL is pushing for the titling and they help make sure the farmers have the proper documents and have legal representation to address the bottlenecks, then the lands that ECOFUEL helps are more easily titled. Do we not want that?²⁷

5.2 Titling as “reward” for incorporation

While seemingly innocuous, there are intrinsic and fundamental problems embedded within this framework of corporate-mediated and -assisted land titling generation.

First, it incentivizes lease arrangements, and makes title security a “reward” for allowing one’s agricultural property to be the subject of a corporate lease; conversely it is a disincentive to owner-cultivation, control and management. As one of the respondents put it:

Para magkaroon kami ng titulo sa lupa na maipapamana naming sa aming mga anak, ipapaupa na muna namin yung lupa sa ECOFUEL. (So we can make sure that we have titles to pass on to our children, we will first lease our lands to ECOFUEL).

This effectively reworks the entire policy paradigm of agrarian reform in the Philippines—a policy paradigm that puts primacy on effective control and management by the agrarian reform beneficiary of his or her landholding and therefore considers lease arrangements to be a “last resort”.²⁸ The rationale of agrarian reform is to free farmers from the yoke of tenancy that attaches him or her to the landowner and to allow a full exercise of agency to correct historical inequities and patterns of marginalization. Using title security as an incentive to lease one’s land to the bio-ethanol corporation undermines that rationale and re-establishes that same yoke—albeit under a different modality and to a different principal. It effectively leads to a deepening of the inequality in social property relations.

The danger of having this practice legitimized and normalized is that, as Danny Carranza²⁹, Secretary General of *Katarungan*, a national federation of farmers puts it, “it might lead to the day when the state acts on demands for agrarian reform only when these demands are made in the glossy language of designer lawyers and with the surgical efficiency of corporations.” But beyond

²⁷ *Acasili*, interview.

²⁸ Actual phraseology in Republic Act 7905, otherwise known as “An Act to Strengthen the Comprehensive Agrarian Reform Law in the Philippines”, February 23, 1995.

²⁹ Personal interview with Danilo Carranza, Secretary General of *Katarungan*, 20 July 2011 (hereinafter, *Carranza*, interview).

that, it will lead to an invariable reframing of small-holder titles: instead of being seen as outcomes of redistributive justice, claimed as a matter of right and not as a matter of “reward”, it becomes the consequence of acquiescence to capital and subservience to the market.

5.3 The corporation as “biased mediator” of land disputes

While it is the state through the Department of Agrarian Reform that resolves land disputes, the inability of the parties to access legal counsel makes whoever can provide legal assistance a *de facto* mediator to the dispute—essentially, the party that wins the dispute is the party that has the benefit of legal counsel, ergo, the entity that chooses who to give the legal counsel to is effectively the entity that mediates the dispute.

Therefore it is the corporation that is, for all intents and purposes, the mediator of land disputes, and because it has a material interest in the resolution of the dispute (it will subsequently lease the land from the legitimate title holder) it is a “biased mediator”, biased in favour of the party seeking to have the land titled.

In the words of one of the respondents, to which the rest of the respondents agreed, “*kung may away sa lupa, ipasok mo nalang sa ECOFUEL para maayos ang gulo at magkakaroon ka ng titulo, libre.*” (in cases of disputes over ownership, the solution is to lease the land to ECOFUEL and the mess will be sorted out for free.) Foremost in their minds which they enthusiastically shared is the story of one Nora Rapio, a former resident in Barangay Alibadabad who was having an altercation with her neighbour on who has a rightful claim to the property. Nora sought the assistance of ECOFUEL. ECOFUEL assisted her and afterwards, when she had secured ownership of the land, she leased the land to them.

Carranza raised an interesting question:

What happens when there are two parties in dispute over a property – one party wants to enter into a contract to produce bio-ethanol and another wants to plant corn? If the issue is brought to ECOFUEL to facilitate a solution and generate title to one, who do you think will be given the title? What happens when it turns out that the corn planter has a stronger claim?³⁰

John Tampo’s answer to this question when posed to him was unequivocal. “The one with the stronger claim will get the title. We do not deliberately facilitate titles and lease lands of those with weak claims.³¹” To support this, he recounted the story of a landholding in the middle of a dispute between the descendants of the second marriage of the original title holder and the brother of the deceased spouse of the first marriage. According to Tampo, “ECOFUEL proceeded to uproot every single one of the sugarcane crops planted on the 2.9 has. property.”³²

³⁰ Ibid.

³¹ Tampo, interview.

³² Ibid.

While it may be a stretch to imagine that ECOFUEL, by deliberate design, would knowingly facilitate the titling of a claim it knows to be weak so that it may lease the property and convert it to a feedstock site, the mere provision of lawyers and assistance of surveyors alone privileges the land claim that it assists, especially when in contrast, the adverse claim has virtually no resources from which it may draw support. It becomes even more problematic when one considers that the government agency tasked to implement agrarian reform and distribute titles has unequivocally thrown its support behind the bio-ethanol program.

5.4 Titling, “legibility” and the language of the market

As a last point of this chapter, we turn to and borrow from James Scott the notion of “legibility”—the practice of statecraft that reduces to “legible” shorthand (1998:33) the complex, illegible scripts that underlie and define relationships, politics and structures at the level of the community. We extend this argument to look at land titling as yet another articulation of this compulsive desire for legibility—but serving not only the interests of statecraft but far more profoundly, the interests of capital.

It was Tampo himself who said that “ECOFUEL assists in titling so it knows what it can get and what it cannot³³”—a seemingly straightforward and innocuous statement that becomes less so when one considers the implications attached to it in the context of the rural countryside.

“Land ownership and land classification in Isabela make a messy and complicated picture,” says Jan van der Ploeg³⁴, a researcher from the University of Leiden who has conducted extensive research spanning over a decade in the province of Isabela. “What it says on paper is not how it is on the ground. Titles have been issued on the basis of fraudulent claims. Arbitrary delineations and classifications have been made that do not reflect actual land use.”

Against this problematic backdrop we look at the interventions undertaken by the bio-ethanol corporation to “assist” farmers secure private titles to their land. At its essence is not only the reduction of land to a commodifiable asset, but also the reduction of *everything* related to land – the messy and convoluted relations of the people that work it and define their lives by it, the visible and invisible processes that determine who does what, why, and to whom, the rules that determine how ownership and possession are negotiated and asserted, whether or not this reflects the rules of the state – to the only language that the market understands. Everything is reduced to the relationship of buyer and seller, all other relations are negated and invisibleized.

Tampo explained in his interview that ECOFUEL embarks on land titling assistance so the land can be appropriated for lease without threat of future claims. He disclosed that ECOFUEL is currently engaged in a dispute with the National Council on Indigenous Peoples (NCIP) because the government

³³ Ibid.

³⁴ Personal interview with Prof. Jan Van der Ploeg, University of Leiden, 22 June 2011.

agency is claiming 40,000 has. of land as ancestral domain of two indigenous groups: the *Agtas* and *Kalingas*. Tampo then quoted himself as saying in a meeting the NCIP Provincial Officer, “If at all we have encroached upon ancestral domain, show us your CADT.³⁵” A CADT is a Certificate of Ancestral Domain Title, evidencing that a parcel of land is considered ancestral domain belonging to an indigenous community. In such a circumstance, the corporation—if bent on investing in the area—would also have to secure the community’s Free Prior and Informed Consent or FPIC.

The statement “show us your CADT” is an interesting one, revelatory of the orthodox propensity to look at titles as the exclusive and conclusive determinant of a landholding’s ownership. Indeed, titles are indicative of a landholding’s legal ownership, but in the complex rubric of Isabela, it obscures an entire amalgam of claims, competing rights and contested arenas. Too, and less theoretically, it obscures the easily verifiable fact that *Agtas* and *Kalingas* had in fact been residing in the area claimed since, to use the legal jargon, time immemorial. For communities such as these, there is reason to fear that the title-generating frenzy already being started—with the assistance and pocketbook of ECOFUEL—will permanently silence all other just claims that are not necessarily protected by the veneer of formal legality.

That titles serve as conduit to capital, that they reduce the complex transcripts of agrarian societies to the lexicon of the market where only economic efficiency is privileged, may be precisely Hernando de Soto’s notion of what development entails. But the variegated outcomes of this “development”, its differential effects on different classes of people, indeed the enclosures that they create, as manifest in the narrative of the bio-ethanol farmers of Isabela, are perhaps what de Soto and his supporters steadfastly refuse to see.

6 When formal rights don’t translate to lived realities: analysis and reflections

This study has aimed to contribute to the present land grabbing discourse by looking at the nexus or relationship between land titling and land grabbing under conditions where there is no outright dispossession or physical expulsion, but rather, small-holder farmers’ integration into the market economy under terms that exploit their structural disadvantages. The orthodox formulation appears to suggest that titles have a curative function in class-asymmetric societies – they narrow the gap between the powerful and the powerless by providing an extra tool for the latter. Using empirical evidence gathered from Isabela, Northern Philippines, as well as interviews with Philippine policy makers, my investigation has rendered the following conclusions.

Firstly, there appears to be no correspondence between the possession or acquisition of formal property rights (titles) and the degree to which small-

³⁵ *Tampo*, interview.

holder farmers are incorporated into the market system, in that farmers with titles and farmers without titles are similarly exposed to adverse incorporation. The determination that the incorporation is adverse is based on the indicators identified in Chapter 3. The rate of the lease rental, normally PhP5,000.00 per ha. per year is unconscionable and oppressive. Even the head of the PADCC Mariz Agbon expressed his disbelief when informed that the farmers were getting only that amount³⁶. Upon hiring as farm workers, they are paid far lower than the minimum wage, at rates that offer no prospects for security or accumulation. (Phillips, 390). Whilst cognizant of the fact that they are getting the raw end of the deal, and while they may be losing out on more sustainable outcomes in the future, they latch onto these one-sided options which Wood had called “desirable short-term and immediate outcomes” (2000:19). More importantly, they had no opportunity or leverage to negotiate these terms with the corporation because of the asymmetries in power relationships.

Secondly, it is not the farmers confronting land grabbing who necessarily benefit from land titling, a populist notion central to the neo-liberal land titling advocacy. Neither is it always true that investor corporations seek out untitled landholdings. On the contrary, field work has shown that it is the bio-ethanol company aggressively pushing for titling – primarily so that its investment and capital can be adequately protected. In the preceding chapter, have I tried to identify the many possible problems with this kind of arrangement: the incentivization of lease agreements at the expense of owner-cultivatorship and control, the agenda-driven and biased mediation of the corporation of titling disputes, and also, the reduction of complex agrarian relations into the lexicon of the market.

But why is this so? What processes and policies are responsible for these outcomes? I began by looking into the policy framework in the Philippines, arguing that this framework provides narrow opportunities for titling to provide truly equitable outcomes for the rural poor. I argued that the current and legal and policy regime surrounding foreign investment in agriculture, fundamentally premised on the neo-classical formulation that economic efficiency should determine where and how assets and resources ought to be utilized – only deepens adverse incorporation and makes farmers more vulnerable to the threats of global land grabbing. This is in contrast to the dominant viewpoint that an enabling regulatory framework and adherence to the rule of law can yield development possibilities from the farmland investment. I attempted to demonstrate that it is not only the existence of the regulatory framework that is required, but the direction toward which it is tilted and the class to which it is biased.

The neat and uncluttered logic that land titling mitigates the risks of land grabbing and allows title-holders to reap the benefits of farmland investment will not hold against the messy and cluttered relationships and processes that define and characterize the Philippine rural countryside. The key variable that neo-liberal land titling proponents forget – and in fact that the entire neo-classical movement forgets—are the asymmetries in power relations, the extent

³⁶ *Agbon*, interview.

to which players can negotiate the terms with which they are incorporated into the market. To quote Cousins (2009: 898), this version of reality assumes that “there are no classes with opposed interests who engage in struggles over the distribution of income, the organization of production, or conditions of work”.

We look at the typology below to facilitate understanding:

TABLE 3
Typology

T1. Title, Symmetrical	T2. Without title, Asymmetrical
T3. Without Title, Symmetrical	T4. Title, Asymmetrical

T1 obviously benefits the most from any investment deal, and in fact from any relationship involving his or her property. T1 contemplates a regular landowner, perhaps with assets aside from land, imbued with social, political and economic capital. To expedite discussion, we leave T1 out of the discussion and center analysis on T2, T3 and T4.

If the orthodox narrative is correct, T4 is placed at a greater advantage over T2 and T3, because he has the title and T2 and T3 do not. But the research on the round demonstrate the flaw of this logic. T4 and T2 were more or less on the same bargaining plane with respect to the corporation. In fact, there were instances wherein T2 received higher in terms of lease rentals than T4 because other factors were used to determine the rate of lease rental, such as access to road, soil quality, and the like. T3 is particularly interesting: we remember once more the farm guard and “interim supervisor” who had said that his life had improved tremendously after the ECOFUEL project. He had no title over the landholding he had leased to the company. He received high income and was not subjected to the uncertainties in income of the farm workers. He also enjoyed direct access to the corporation and its provincial office. He enjoyed these privileges not because of titling (indeed, he had none) but because he was valuable to the corporation and there was reduced asymmetry between himself and the corporation.

In fine, if the research findings are any indication to go by, T1 and T3 are more privileged, and T2 and T4 are more prejudiced – disputing the orthodox formulation that would have T1 and T4 as more privileged, and T2 and T3 as more prejudiced.

Asking the question why land titling is so aggressively pushed to mitigate the risks of land grabbing and cause farmers to benefit from the investment then leads to investigation of the master narrative of the dominant framework—the mitigation of risk, maximization of gain. If land titling does not mitigate risk for the farmer (though it certainly mitigates risk for the investor), then why is it peddled under the populist wagon?

In the end, land titling cannot mitigate risk, because the risks cannot be mitigated whilst keeping intact the exploitative processes that have characterised relations between the capitalist productive sub-sector and the peasant productive sub-sector. The “mitigation of risk” logic that underlies the land titling agenda is ultimately the ‘legitimisation’ of an inherently unjust and inequitable process through the use of the neo-classical lexicon of “risk-benefit” whilst obscuring the reality that the vulnerability accruing to local communities by global land grabbing is an *essential feature* that feeds and sustains what is primarily a project of the global capitalist enterprise.

7 Conclusion

I began my research by asking this question:

To what extent do formal property rights (i.e. land titles) determine and reconfigure development outcomes for small-holder farmers confronting the market-driven pressures of large-scale farmland investment or global land grabbing?

My answer is this. The extent to which formal property rights determine and reconfigure development outcomes for small-holder is invariably mediated by the class relationships in a particular agrarian setting. In a setting defined by asymmetrical power relations, i.e., where there is a peasant small-holder subsector and there is a capitalist sub-sector, there is basis to critique the orthodox formulation that land titles, *always and in themselves*, provide some degree of leverage to farmers across all property regimes.

If favourable developmental outcomes for small-holder farmers are sought, the empirical findings show that formal titles in the hands of the peasants cannot neutralise that market-driven pressures that bear upon them. The extent to which land titles can reconfigure outcomes and protect from adverse incorporation is minimal.

If, on the other hand, what one seeks to ferret out are unfavourable outcomes, the empirical findings show that titles can be instrumentalised to facilitate and expedite incorporation – compromising long-term welfare-enhancing prospects for small-holder farmers.

Indeed, taking these two key findings together, not only do titles not *insulate*, they might also *lubricate*—removing the barriers and chokepoints that block capital’s “hydroelectric plant³⁷” thereby making the incorporation of farmers into the value chain more efficient and capital’s vise-like grip on their assets and resources more entrenched.

After attempting to demonstrate that in cases of adverse incorporation, land titling does not necessarily mitigate the risks of land grabbing, and in some cases, achieves the opposite effect, a crucial point of reflection is this:

³⁷ "the formal property system is capital's hydroelectric plant ... the place where capital is born" (De Soto, 2000: 10).

Do land titling outcomes shape and recast agrarian relations, or do agrarian relations shape and recast land titling outcomes?

Acceding to the first proposition means viewing land titles as magic wands, curing class discrepancies and historical iniquities by the mere expedient of delivering a small piece of paper to a small-holder farmer. On the other hand, acceding to the second proposition ignores all evidence of the ameliorative effects of land titling across property regimes.

The objective of this paper in trying to frame and problematise the nexus between land titling and land grabbing is not so much to cast land titling into two unmalleable, inflexible extremes but to demonstrate the vast room for variance in outcomes and the politics and processes implicated in these variances. The Isabela example on land grabbing is just one of several possible permutations of the titling-grabbing nexus. Given the frenetic pace of contemporary farmland investments, there will be many more permutations in the years to come. The point is that these permutations do not take place by happenstance, nor are they the product of random variables in the environment. These are the result of asymmetries and incongruities in power relations, reinforced over time and reproduced in multiple ways. Quoting Hall (2003: 36), “rights cannot be enforced so long as the fundamental inequalities in which social relations in the countryside are grounded remain intact.” Land titles confer a right, but do not guarantee its effective exercise.

To this end, there is merit perhaps in recasting the land titling discourse and changing the way we view land title: from one that views it as an end to one that views it as a *means*; from one that views it as a *culmination of struggle*, to one that views it as a *platform of struggle*. Its malleability has made it of convenient use to Capital—deployed in order to tighten its hold on resources and to deepen the enclosure regimes that it has managed to create. However, it is precisely this malleability that can also make it a site of contestation: “weapons of the weak” (to paraphrase Scott) rather than rewards to the weak. Land titles alone cannot ipso facto mitigate the risks of land grabbing—but active, organized rural communities can wield them strategically not only to mitigate the risks of land grabbing, but to resist it altogether, in the end translating the legal empowerment that titles provide to empowerment that permeates their felt realities.

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