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ACCESS TO LAND IN THE PHILIPPINES

**CAPITALISATION OF HEKS/EPER
EXPERIENCES**

Abstract

This working paper elaborates two case studies of land rights engagement of HEKS/EPER in the Philippines and draws recommendations and conclusions. First, an overview of the national land right issue is provided including the work of HEKS/EPER. Then two case studies are presented. The first case is the story of a peacefully negotiated solution and compromise of indigenous peoples in Dagumbaan, in the Bukidnon Province. The second case, reflects on a humanitarian aid intervention following the typhoon Haiyan and includes a successful land rights campaign as part of the rehabilitation project.

The working paper reflects on three HEKS/EPER hypotheses and recommends that (i) the access to land concept should not be confined to land but also include other resources such as forests and water, (ii) for responsible land tenure, governments need to take into account the delicate interdependencies between formal, informal and customary rights, and (iii) access to land should not only be considered through the perspective of food security but also include the human capital to enhance the potential for wage employment.

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1. Introduction – Land issues in the Philippines and HEKS/EPER related work¹

The American purchase of the Philippine Islands from the Spanish monarchy in December 1898 served as the marker from where American colonial land laws were derived.² The sale by Spain and purchase by the Americans was presumptive of the so-called Regalian Doctrine by which the Spanish monarchy, by divine right, held sovereign claim over the Philippine Islands. This has been the pillar for the development of the legal framework of property rights in the Philippines and the same pillar that has neglected customary laws in land ownership and allocation practices by the native population in pre-colonial times.

Human rights advocacy during Martial Law³ did not explicitly carry out advocacy work for land rights. During this period, the dominant call from grassroots organisations was the Communist Party of the Philippines' (CPP's) battle cry against feudalism and promotion of an agrarian revolution. Land issues such as tenancy, monopoly and abuses against farm workers were lumped under the banner of feudalism. At the other end, the Martial Law regime reacted with a 'lip service' land reform focusing on lands for rice cultivation that did not threaten the economic power of big landlords and corporate monopolies.

During Martial Law, development initiatives were focused on human rights and democratisation. There was little open space for other streams such as the churches attempting to frame development action towards just, participatory and sustainable development. In the 1970s through the late 1980s, an important civil society actor was the National Federation of Labour (NFL). The NFL was a social movement focusing on advocacy for collective bargaining rights in agricultural plantations. In the absence of a legislation on democratisation of plantation lands, the NFL focused on improvements of working conditions and wages.

Since the 1990s' HEKS/EPER's accompanied a critical reflection of several land rights initiatives of local partners; from the post-Marcos asset reform

programs, specifically Aquino administration's Comprehensive Agrarian Reform Law of 1987 (CARL) and the Comprehensive Agrarian Reform Program of 1988 (CARP), the community based forestry policy of the DENR in 1995 and the Indigenous Peoples' Rights Act of 1997.

The post-Marcos asset reform laws and policies are an offshoot of the long years of national human rights and democratisation struggles during the Martial Law period. Since the 1970s through the 1990s, HEKS/EPER supported social movements for labour rights in agricultural plantations such as the sugarcane workers in Negros Occidental and workers in pineapple, oil palm and rubber plantations in Mindanao. Later, HEKS/EPER formed part of a coalition of funding partners that worked with the National Council of Churches in the Philippines (NCCP).⁴

In the wake of the implementation of CARP, the NFL shifted its agenda towards acquisition and ownership of the plantations. In Mindanao, the NFL facilitated the transfer of ownership of around 300,000 hectares of pineapple, oil palm and rubber plantations to local farmer families.⁵ Alongside the transformation of farm workers into new owners of land, the NFL also transformed itself into an NGO called Kasanyangan Foundation Inc. (KFI) and continued the partnership with HEKS/EPER on land tenure improvement until early 2000.

In early 2000, the NGO Task Force Mapalad (TFM) spurred the shift of the social movement in Negros Occidental from labour rights of sugarcane workers towards acquisition of the haciendas. By mid-2000, 17 haciendas covering 500 hectares changed hands in favour of former farm workers.⁶ Similar successes had been achieved in large landed estates in Mindanao, particularly Davao Oriental and Bukidnon. Since 2007, HEKS/EPER had been supporting TFM's work with agrarian reform beneficiaries and indigenous peoples

¹ This publication is highly based upon the capitalization of experiences of 40 years of HEKS/EPER engagement in the Philippines (Quitariano E. 2016: Forty years of HEKS in the Philippines: Capitalisation on the development experience).

² The December 10, 1898 Treaty of Paris formalized Spain's relinquishment of claim of sovereignty and ceding of Cuba, Puerto Rico, Guam and the Philippine Islands to the United States; the latter for a payment of US\$ 20 million.

³ Martial Law refers to several intermittent periods in Philippine history where in the Philippine head of state proclaims that an area is placed under the control of the Armed Forces of the Philippines.

⁴ Interviews: Bamba Salazar, 16 March 2016; Atty. Ibarra "Bong" Malonzo, 17 April 2016.

⁵ Ibid.

⁶ Source: Karen Tuason, TFM.

in Mindanao on advocacy work for land rights and land tenure improvement.

In the legal language of CARP, land rights of farmers and farm workers are collectively described as land tenure improvement (LTI). The duty-bearing mandate of the Department of Agrarian Reform (DAR) is described as land acquisition and distribution (LAD) and program beneficiary development (PBD).

The rights of indigenous peoples (IPs) are enshrined in the Indigenous Peoples Rights Act of 1997 (IPRA). What donors and NGOs may describe as land rights of IPs pertaining to their ancestral domain are constructs that have deeper meanings to IPs. For them, the ancestral domain is not just a physical asset. The ancestral domain land is an inclusive notion that embodies culture, customs and traditions.

Agrarian reform law binds rights holders to certain boundaries such as prohibition of sale or transfer within 10 years and, thereafter, permission to sell or transfer only by hereditary succession and/or sale back to the government. The IPRA is constructed differently. The law presumes IP ownership of the ancestral domain 'since time immemorial' and guaranteed ownership of the IP's future generations. But IP rights are also bounded by other laws such as the recognition of private rights that have been vested prior to the enactment of the law and recognition of state ownership of timber, minerals and other natural assets below and above ground. In this light, the Department of Environment and Natural Resources (DENR) is the regulatory authority over access to and use of timber and minerals found in ancestral domains. This authority includes issuance of time-bound control of territory such as areas assigned to people's organisations managing community forests under the Community-Based Forest Management Agreement (CBFMA). Small-scale mining areas are assigned to registered individuals or groups of miners and mining areas assigned to large-scale mining companies.

The implementation of the agrarian reform law and the IPRA has been accompanied by tensions between rights holders and duty bearers especially when the latter also had to respond to competing claims. Most often, the issues were about efficiency, transparency and accountability of duty bearers especially in cases where competing claimants have greater access to power and resources. Within ancestral domains and agrarian arrangements such as the collective Certificate of Land Ownership Award (CLOA), the tensions are between individuals and groups of owners competing for space. The tensions are exacerbated when individuals or groups within a collective property independently negotiate with outsiders for informal transfer of rights or financing arrangements.

The third amendment of the agrarian reform law – RA 9700 or the CARPER Law – expired in June 2014. There is little interest in the national legislative Congress to further amend the law and provide budget for dealing with unfinished tasks of the DAR. With increasing demand for land, investments in mining, timber, energy and commercial crops are flowing into ancestral domain areas that impact on the still-unfinished delineation of CADT claims.

In the ancestral domain arena, the National Commission on Indigenous Peoples (NCIP) is still grappling with unfinished tasks for CADT delineation and recognition and revision of about 110 Ancestral Domain Sustainable Development and Protection Plans (ADSPPs) that need revision and updating. As of 2010, the NCIP had completed the delineation and recognition of 4.25 million hectares of ancestral domains in favour of about 1 million indigenous peoples from its mandate of 7 million hectares. Given the estimated 14 million IPs in the Philippines, there is less than 3 million hectares for allocation to 13 million IPs.

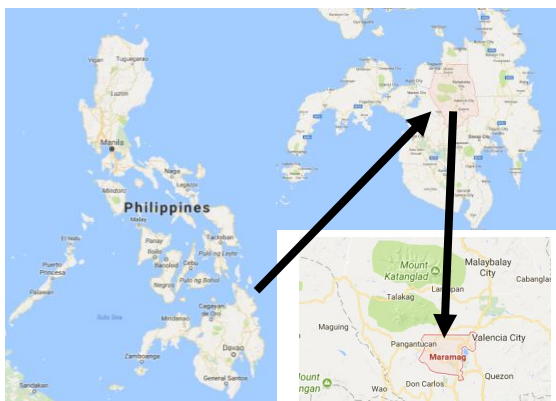
2. Case studies

In the following, two selected cases that represent present day challenges in land rights struggles and transformation of newly acquired lands in the Philippines are presented. These cases are at the crossroads of the unfinished tracks of the land reform processes mentioned in the previous section: (a) constraints in redistribution of remaining private agricultural lands (PALs) covered by CARP; (b) difficulties of completing the delineation and recognition of ancestral domain claims. The two cases examine the following hypotheses:

- Access to land is a prerequisite for improving the lives of the rural poor but the cost of extending the reach and stretching the capacity of newly-tenured producers to occupy the processing and marketing nodes of value chain system based on the claimed land rights far outweigh the benefits;
- The availability of critical mass of land rights advocates, engaged local communities and a qualified technical / legal team is essential to success land rights campaigns; and,
- The implementation of land rights struggles within a humanitarian aid project is feasible but at a significant cost to humanitarian aid management.

Case 1. Peacefully Negotiated Solutions and Compromises: Indigenous Peoples' Experience in Dagumbaan, Bukidnon Province

Maramag is a landlocked municipality in Bukidnon Province with a population of about 90,000 people. Civil political structures prescribed by the American colonial administration emerged in the early 1900s when Bukidnon transitioned from a sub-province of Agusan to become a full-pledged province in 1914. By then, colonial land laws have induced resettlements in the province and new arrangements with regards to land tenure. The once mainly indigenous population co-existed with new settlers.



Presently, large investments have spurred economic development and changes in economic arrangements in Maramag. It boasts of the presence of Crystal Sugar Corporation that supports the processing needs of 5,000 planters cultivating 40,000 ha of sugarcane plantations, the 255 MW Pulangi IV Hydroelectric Power Plant, and an expanding pineapple plantation of Dole Philippines.

On the northeast side of the municipality is Barangay Dagumbaan on the foothills of the Kalatungan Mountain Range. The barangay is home to indigenous peoples from the Talaandig ethnic group, which is one of seven ethnic groups in the province. With less access to power and resources, the Talaandig community was lost out in negotiated land tenure rearrangements and lacks legal recognition. Better-off settlers accumulated more lands by buying properties from others and securing legal access to vast tracts presumed to be public and owned by government and neglecting customary allocation to indigenous peoples.

IP Survival without Land Rights

Two families – the Villalon and Baclig families – dominated the landscape of Dagumbaan with the establishment of cattle ranches in the late 1960s, each controlling more than 400 hectares. In the early 1970s, the two ranches were covered with legal tenure under the Forest Land Grazing Management Agreement (FLGMA) and the expanse was justified by the requirement that each cow needs five hectares of grazing area. The IPs looked at the two families in two ways: one is bad and is prone to violence; the other is good and IPs were hired as ‘cowboys’ and caretakers of the ranch. While some IPs were displaced from the Villalon ranch, the others were hired in the Baclig ranch.

There was no violent and organised resistance from the IPs since the late 1960s. Elders accepted and coped with the reality. Those displaced returned to Dagumbaan in 1979 to set up homes and small plots to farm in the periphery of the ranches. At the height of the communist insurgency in the province in 1983, many rural and forested areas were declared as ‘no man’s land’ and the IPs moved to the centre of the barangay for safety reasons. They remained there until 2004 when new IP leaders emerged and set their sights on the ranches.

Struggle for Land

The Indigenous People’s Rights Act (IPRA) was passed in 1997 but the IPs in Dagumbaan hardly knew about it. The FLGMA’s of Villalon and Baclig had expired but it did not signal the end of the ranches. In 2004, some new and younger IP leaders related by blood to barangay officials

started a claim process but were dissuaded by the town Mayor and the NCIP itself. By then, the NCIP Regional Director was a friend and neighbour of the Villalons.⁷

Villalon had no plan to give up the ranch and used every means possible to dissuade IPs from claiming the land under IPRA. The Baclig family gave up and sold the ranch to the town Mayor who then sold the same to a businessman who planned to convert the ranch into a pineapple plantation.

There were two groups of IPs aiming to gain access and control of the two ranches when, with HEKS/EPER support, Task Force Mapalad came in in 2007: the Panalsalan-Dagumbaan Talaandig Association (PADATA⁸) poised against the Villalon Ranch; and, the Baclig Farm Workers' Association (BACFA) poised against the Baclig Ranch. The two have an aggregate membership of 700 individuals. The partnership between TFM and the two organisations were facing the following facts:

- The Villalon family was seeking renewal of the FLGMA but needed a Free and Prior Informed Consent (FPIC) certificate by virtue of the IPRA. They managed to come to such a consent by cultivating a pro-Villalon IP group allied to barangay officials and their personal relationship with the NCIP Regional Director.
- The Baclig Ranch had transferred ownership three times and the new owner wanted to convert the land into a pineapple plantation. Similarly, he needed an FPIC.
- PADATA and BACFA leaders are young but have legitimacy because of blood links to recognized elders. The new chairperson of PADATA herself is the daughter of the head Chieftain and head claimant of the ancestral domain.

Changing Contexts, Strategy Shifts

The political economy of Dagumbaan began to change in 2007. The Governor and the new Mayor expressed support for the legitimate claims of the IPs and opted for a negotiated settlement. However, there was a need to address the legal hurdles. There were internal hurdles within PADATA and BACFA especially in the areas of strategizing, organisational management and knowledge of laws, guidelines and procedures. The following actions characterised the dynamics of this period:

Table 1. Action and Reaction: 2007-2014 Land Rights Dynamics in Maramag

Stakeholders	Intentions and Actions
TFM, PADATA and BACFA	<ul style="list-style-type: none"> • Strategic aim is to claim the ranches as ancestral domain covering 1,000 hectares • Tactical aim is to secure land tenure with DENR through community forest management agreement (CBFMA) • 2007: legal registration of PADATA and BACFA; trainings • 2008-2010: lobby with the DENR in Manila; protest against spurious FPIC and renewal of the FLGMA of Villalon; land occupation of the Baclig Ranch; coordination with local authorities and other government agencies; filed criminal and non-bailable cases (of arson) against the goons of Villalon • 2010: BACFA secured 128 hectare CBFMA with DENR • 2014: agreed to the compromise deal 264 hectares of the Villalon ranch, which has other claimants; secured 130 hectares under CARP from within the 264 hectares
IP Group Allied with Villalon	<ul style="list-style-type: none"> • Dissuaded from claiming the Villalon ranch as ancestral domain and opted to believe in the Villalon promise to give them 46 hectares • 2008: participated in the spurious FPIC process
Villalon Ranch	<ul style="list-style-type: none"> • 2008: through private goons - harassment of IP claimants, destruction of houses and crops and theft of pigs; alliance with another IP group and NCIP to process FPIC • 2010: gained renewal of FLGMA based on a spurious FPIC
Baclig Ranch	<ul style="list-style-type: none"> • Transfer of ownership (third transfer)

⁷ FGD with PADATA and BACFA leaders, Davao City, 18 April 2016.

⁸ The previous name was Panalsalan-Dagumbaan Tribal Association (PADATA).

	<ul style="list-style-type: none"> • New owner working on land conversion to pave way for pineapple plantation
DENR	<ul style="list-style-type: none"> • 2009: cancelled the FLGMA of Baclig Ranch • 2010: renewed the FLGMA of Villalon; offered 128 ha as CBFMA of BACFA in the Baclig Ranch • 2012: upon cancellation of the FPIC for the Villalon Ranch, DENR Secretary issues status quo order; initiated Alternative Dispute Resolution (ADR) proceedings • 2012 DENR ADR results: 200 ha for Villalon and 264 ha as CBFM of PADATA • 2014: contested CARP coverage of the ranches by the DAR on the argument that the land is classified as timberland
NCIP	<ul style="list-style-type: none"> • 2010: approved the FPIC of Villalon • 2012: revoked the FPIC of Villalon; NCIP Regional Director resigned
DILG	<ul style="list-style-type: none"> • Mobilized the Philippine National Police (PNP) to main security and order during the BACFA land occupation of the Baclig Ranch and harassment of the Villalon camp in the other ranch
DAR	<ul style="list-style-type: none"> • 2014: entry into the dynamics and announced CARP coverage of portions of the ranches, the lands being part of the Marcos regime's Kilusang Kabuhayan at Kaunlaran (KKK) Program.⁹ • Announced coverage of portions of the 264-hectare potential CBFMA for PADATA and issued CLOAs lands in the Villalon Ranch; Villalon and his allies also received CLOAs

Provincial Governor	<ul style="list-style-type: none"> • Supported dialogues and negotiated settlement of the land issue
Mayor	<ul style="list-style-type: none"> • Aligned support with the Provincial Governor but independently persuaded PADATA to step back and withdraw claim on the Villalon Ranch.

Source: FGD with BACFA and PADATA leaders, Davao City, 19 April 2016.

A new context developed since 2014. BACFA secured a 128-hectare CBFMA but is navigating the intervention of the DAR, which is offering another land tenure arrangement. PADATA secured a 264-hectare commitment from DENR but is still formalising the land tenure arrangement through CBFMA and navigating the intervention of the DAR. Both organisations have secured contracts with the DENR under the National Greening Program (NGP).¹⁰ The Negros Island Savings Cooperative (NISCO), which is partly owned by TFM, has provided crop loans for sugarcane (20 beneficiaries) and corn (23 beneficiaries) production. The IP community is now facing a new challenge – how to secure control of land through investments in production.

Success and Lessons Learned

Struggles for land are multi-sided struggles where conflict dynamics evolve and breed new conflicts. The expansion of the conflict terrain largely depends on the actions of the concerned stakeholders. The Dagumbaan IP experience also demonstrates the clash of institutions – between the customary rights of IPs to the ancestral domain, the legal rights of the ranchers under the FLGMA guidelines of the DENR and the legal rights of farmers and farm workers under agrarian reform. Stakeholders have the option of benefiting from various legal opportunities under conditions of multiplicity of institutions or taking the strategic but uncertain winner-take-all route.

The IPs of Dagumbaan took the practical route, to accept cumulative gains while not surrendering the strategic aim of claiming ownership of the ancestral domain. For them, success means securing tenure to 128 hectares for BACFA and 108 hectares for PADATA. The tenurial gain is about 1/5th of the ancestral domain claim but it is enough to rebuild livelihoods away from the precipice of violence. Both organisations have proceeded to make

⁹ The KKK is a product of Executive Order No. 734 issued by then President Marcos in 1981. Under the supervision of the National Livelihood Council (NLC), it targeted 657,843 hectares nationwide to promote viable and

productive enterprises. Under the CARP, KKK lands were targeted for redistribution by the DAR.

¹⁰ Under NGP, PADATA is reforesting and maintaining 109 hectares with a budget of PHP 3,000 per hectare.

the land productive by planting pineapple, rubber, fruit trees, sugarcane and corn.

What do we learn from the experience?

For more than 30 years since the late 1960s, the IPs had been powerless against big economic and political actors who have displaced and denied them space for securing their livelihoods. Their low position of power remained despite the implementation of agrarian reform as early as 1988 and the enactment of IPRA as early as 1997. The change of this situation between 2007 and 2014 could be attributed to the following factors:

- **Agency role of an NGO.** TFM intervened as a facilitating and change agent and mediated the dynamics between BACFA and PADATA, on the one hand, and the landowners and concerned government agencies, on the other. The facilitation also supplied common information (e.g. provisions of the law, policies and guidelines) as reference for the conflict parties to act accordingly.
- **Local communities' capacity for collective action.** Capacity development inputs enabled BACFA and PADATA to navigate the legal terrain, create pressure for duty bearers to respond and ability to enter into bargains;
- **Government response to pressure.** The collective action influenced changes in the behaviour of the NCIP, which corrected its mistake by revoking the FPIC and DENR, which offered a compromise solution.
- **Managing security and other risks.** TFM calibrated its actions based on strategic "risk-return" assessments of each case and flexibly used various modes such as dialogues, mass mobilisations and 'land occupation' within acceptable risks. Adding to the pressure were voices from the media, church and allies within government based on the legitimacy of the claim. In extreme cases where landlord opposition is forceful and violent (e.g. land occupation cases in Negros Occidental), TFM, farmers and the DAR had to seek support from the Department of Interior and Local Government (DILG) and the Philippine National Police (PNP).
- **Peaceful resolution of the land conflict as incentive to local governments.** The local authorities of Bukidnon and Maramag had a common interest to create favourable conditions for economic investments to raise productivity of agricultural lands.

The result is a mutually agreeable solution where competing rights claimants come out as winners through peaceful negotiations. Also from a learning perspective, it is important to understand the internal practice and what kind of interplay between technical, political, economic and social processes occurred during the 2007-2014 period:

- **Technical Processes.** TFM, PADATA and BACFA did their homework in understanding the provisions and guidelines of IPRA, CBFM and CARP as well as justiciable issues like harassment and destruction of houses, crops and livestock. Internally, TFM assisted in strengthening the organisation, inclusive of securing legal registration and leadership formation. The knowledge and skills acquired enabled BACFA and PADATA to sharpen strategies and calibrate actions accordingly.
- **Political Processes.** At least two major decisions were undertaken: one, the older and ageing leadership giving way to the mostly-women younger leadership; and, two, the younger leadership entering into bargains in order to gain interim success in securing access and control of 128 and 108 hectares, respectively. The bargain was a calculation based on the force field and the opportunities presented.
- **Social Processes.** The IP tradition in Bukidnon is that of men-headed political leadership. But during the hard times when husbands had to find wage income away from the village, women were at the forefront of engaging TFM and acquiring knowledge and skills. This earned women the merit of assuming their political leadership and pursuing land rights claims.
- **Economic Processes.** The IPs of Maramag had long abandoned nomadic existence. But without access to land, they could not plan the establishment of permanent shelters and production of food crops. They relied on pockets of farm plots in the periphery of the ranches. With the acquisition of a total of 236 hectares, the IPs could develop plans for permanent shelter and crop production. They are also in a position to leverage their assets for government support (such as NGP of the DENR) or secure crop loans from NISCO. Yet, there is not enough data to assess the success or failure of economic recovery and crop production.

Case 2. Land Rights Struggles within a Humanitarian Aid Intervention Project: TFM Experience in Capiz and Iloilo

In disaster situations, victims suffer losses in lives, properties and opportunities. They fall below preceding levels of incomes and capacities. Aid agencies use guidelines and apply standards for measuring the direct economic costs of the disaster. However, there are so-called 'higher order' losses that are difficult to measure because they go beyond the replacement value of lost assets (Hallegatte and Pryzluski, 2010).

Support for advocacy and struggles for land rights normally belong to the field of development cooperation rather than humanitarian aid. They form part of strategic aspirations for food security and access to food and income sources in rural areas. They also require capacity development in support of long-term development strategies.

From the outside, humanitarian response moves from relief, early recovery on to rehabilitation. The United Nations-led humanitarian effort in response to typhoon Haiyan of 2013 officially closed the Strategic Response Plan (SRP) in August 2014, declaring that the rehabilitation phase would now be in the hands of the government. In its final periodic monitoring report for November 2013 to August 2014, the Inter-cluster Coordination Group for the UN Humanitarian Country Team (UNHCT) cited the risk of using capacity development as indicator for emergency response plans for food security and agriculture.

The following questions related to this context are in the forefront: Is it possible to pursue land rights advocacy work when people are still recovering from disasters? Is it possible to shorten and/or bridge the gap between humanitarian aid and development aid? Conventional thinking suggests that one should not attempt to undertake conventional development initiatives alongside or within a humanitarian initiative. The two initiatives would normally have different sets of indicators of success, criteria for targeting, guidelines and standards for reporting and ways of working.

The Story

Since 1972 until December 2013, the Department of Agrarian Reform (DAR) had administered the redistribution of 5.2 million hectares of agricultural land to 2.7 million farmer-beneficiaries (FBs). In Capiz, during the same period, the agency had redistributed 63,493 hectares to 36,235 FBs. This accomplishment represents 83% of the 76,827-hectare coverage, of which 39,582

hectares comprise private agricultural lands and another 22,809 hectares are classified as non-private agricultural lands. Records at the Provincial Agrarian Reform Office (PARO) in Capiz show that the total coverage is actually 79,000 hectares with 12,400 hectares (1,239 landholdings) still up for redistribution.¹¹ Out of this balance, the DAR considers 11,000 hectares as 'problematic' or difficult to redistribute.¹² The DAR considers only 888 hectares in 88 landholdings (7% of landholdings) workable.

The implementation of CARP in Panay had slowed down after the expiration of CARPER in June 2014. The disaster caused by Typhoon Haiyan was also a convenient excuse for the slowdown. In Iloilo, only 438 hectares were distributed in 2015 from an annual target of 5,000 hectares. In Capiz, only 448 hectares were distributed during the year compared to the annual target of 3,800 hectares.

What appears on accomplishment records may not necessarily reflect the reality on the ground. There are big areas that are supposed to have been redistributed based on records at the agency but actually remain under the control of the original landowners. In the course of implementing the Typhoon Haiyan Emergency Food and Shelter Intervention from November 2013 to August 2014, TFM discovered 45 big landholdings in San Dionisio and Carles (Iloilo) and Pilar, Pontevedra and Dao (Capiz) where typhoon victims had no access. These landholdings encompass 1,850 hectares. If farmers were to recover from the disaster, they would have a better chance if they had full access to this land.

In seven (7) of the 45 landholdings, 160 farmers were not aware that they had been awarded with CLOAs and Emancipation Patents (EPs) covering 246 hectares. While the DAR had reported the CLOAs and EPs as accomplishment, it had not informed the beneficiaries. In another nine (9) of the 45 landholdings, 245 farmer-beneficiaries (FBs) to 274 hectares, were making redundant payments for amortisation (to the Land Bank) and rentals (to former landowners) due to lack of guidance and information from the DAR.

Success and Lessons Learned

The field level outcome of the land rights component if the intervention reaffirms the existing hypothesis that the success of land rights struggles is influenced by the following factors:

- Availability of an NGO dedicated to land rights advocacy and with acquired competence and

¹¹ Interview: Felix Servida, Provincial Agrarian Reform Officer (PARO), Capiz, 16 April 2016.

¹² Ibid.

- access to technical and legal expertise as well as to the DAR central and lower level offices;
- Improved ‘duty-bearing capacity’ of the DAR. New PARO of Capiz who had long-standing cooperation with TFM in Negros Occidental
- Empowered local communities where the demand for government action is enhanced by the necessity of access to land in order to plan livelihood recovery. For marginalised communities, access to land is quintessential in post-disaster livelihood recovery and basic protection such as shelter.

However, the external success has a backroom story – the negative impact on the management of the different phases of a humanitarian intervention project. The inclusion of the land rights component to the humanitarian aid package came during the development of a livelihood project. In dialogue with the Humanitarian Aid Delegate and Humanitarian Desk Officer of HEKS/EPER, TFM and the local HEKS/EPER office negotiated for the land rights component.¹³ Most of the areas targeted were also the same target sites for the livelihood component.

Support for land rights struggles is what TFM knows and does best. Most of its community organisers (COs) also come from rural communities that have been through hard struggles. They accumulated knowledge and experience from previous work in Negros Occidental and in Mindanao. The downside: they have little experience in humanitarian aid, specifically, familiarity with humanitarian aid standards and capacities in logistics and financial management at the scale of the project.

The inclusion of the land rights component, which requires different methods of work and quality of staff logically impacts on the overall handle of a humanitarian aid project. Purposive targeting of agrarian reform beneficiaries impacts on the universal targeting of humanitarian aid. Protocols guiding the work of humanitarian aid workers clash with the community immersion approach of community organising for land rights. Based on experience, land rights interventions would give premium to relationship building with communities to engender collective action. However, this would be perceived as detrimental to humanitarian principles of universal targeting and avoidance of conflicts of interest.¹⁴

The experience puts the spotlight on the thin border between livelihood recovery and resiliency where land is essential to the immediacy of the former and the longer-term requirements of the latter. It is a microcosm

of the whole question on how to address the intersection of humanitarian aid and development cooperation in rural settings where land stands as the core asset for the marginalised poor.

Despite the extended humanitarian situation and difficulty in adjusting to the humanitarian aid-land rights continuum, TFM had could facilitate the transfer of 285 hectares (in 15 landholdings) to 305 beneficiaries. In Brgy. Sinamungan (Pilar), 67 beneficiaries form part of the 305 who have been liberated from the bondage of tenancy and/or land rents. They (and 66 more in the pipeline) have a stronger starting point in planning the livelihood recovery support from HEKS-TFM.

Processes

Although social justice has been the rallying call in the politics of agrarian reform, the strongest incentive urging landless farmers and farm workers to claim land rights is economic. Resistance of landlords is also built around economic interests that in many cases establish the ladder for gaining political power. Farmer-claimants start with very low economic power such that they rely on mediated funding support from NGO allies. From the contest over an economic resource, landowners and farmer-claimants undergo the dynamics of transforming arrangements according to prescribed guidelines and procedures. However, since the mandated agency – the duty bearer – does not automatically favour the poor and the landless, social and political processes intersect with the legal and technical processes. In cases where farmers are not informed that landholdings have already been distributed on paper, they and the allied NGO map out their own technical processes starting off from actual conditions on the ground and on paper.

The following matrix illustrates the interplay of the technical, political, economic and social processes.

Table 2. Matrix of Processes in the Land Rights Component

Processes	Steps
Technical	<ul style="list-style-type: none"> ▪ Inventory and examination of status of landholdings covered by CARP ▪ Capacity building ▪ Provision of legal and paralegal support ▪ Multi-level and inter-agency lobby (local and national offices of the DAR and other concerned government agencies)

¹³ Personal input from HEKS/EPER’s former country director.

¹⁴ Interview: Karen Tuason, Project Team Manager, 6 April 2016.

	<ul style="list-style-type: none"> ▪ Pursuit of CLOA processing until release of the CLOA ▪ Installation of FBs
Political	<ul style="list-style-type: none"> ▪ Consultations with FBs and the DAR ▪ Organizing of FBs ▪ Dialogues with landowners ▪ Land occupation is necessary and is based on strategic risk-return assessments. Although the risk level of this action is higher than dialogues, the return is higher. The level of certainty is based on availability of favourable conditions such as multi-stakeholder support to the legitimate claim. ▪ Legal acquisition of the land. This is a political decision that includes ownership of corresponding legal and moral obligations.
Economic	<ul style="list-style-type: none"> ▪ In disaster affected areas, the NGO shoulders initial budget requirements for mobilisation ▪ FB's provide equity resources in terms of volunteered time and contributions in-kind during meetings ▪ Some FBs acquire loans from relatives to pay for the cost of legal procedures
Social	<ul style="list-style-type: none"> ▪ In collective CLOAs, the People's Organisation (PO) facilitates fair re-allocation of land to individual members ▪ At the family level, husband and wife negotiates who gives time for PO meetings and mobilisations and who takes charge of livelihood and family ▪ After land acquisition, FBs reach out to former landowners to restore relations

Sources: FGD with land rights beneficiaries in Sinamungan, Pilar (Capiz), 5 April 2016; Interviews – Felix Servida, DAR Provincial Officer, Capiz, 6 April 2016; Karen Tuason, TFM Project Team Manager, 6 April 2016.

3. Conclusions and recommendations

The conducted study was guided by three overall hypotheses with regards to access to land:

1. After obtaining physical access to land, communities succumb to considerable pressure and lose control of land to former landlords and the like through selling, leaseback or rental agreements.
2. Access to land (and resources in general) is prerequisite for improving the livelihood the rural poor or communities. However, measures must be taken to secure the use and control of land and its resources if it is to be maintained in the long run.
3. A critical mass of dedicated land rights advocates, communities, and technical/legal team is essential in building up a movement for a successful campaign on access to land in a country

The experience capitalisation validates two hypotheses, contributes a new hypothesis and finds counter-intuitive evidence on the hypothesis that local communities and farmer families lose control of land due to external pressure. The following table summarises these findings.

Table 4. Comparative Matrix: Hypotheses of the CAPEX TORs and Actual Hypotheses derived from the Study

Underlying hypotheses	Results based on the experiences of selected cases
<ul style="list-style-type: none"> • After obtaining physical access to land, POOCs succumb to considerable pressure and lose control of land to former landlords and the like through selling, leaseback or rental agreements. 	<ul style="list-style-type: none"> • Narratives of participants did not indicate this phenomenon. Counter-intuitively, the experience of sugarcane farmers in 17 haciendas (500 ha.) in Negros Occidental suggest that for 10 years now they have maintained control of land.)
<ul style="list-style-type: none"> • Access to land (and resources in general) is a prerequisite for improving the livelihood the rural poor and communities. However, measures must be taken to secure the use and control of land and its resources if it is 	<ul style="list-style-type: none"> • Access to land is a prerequisite for improving the lives of the rural poor and communities but the cost of extending the reach and stretching the capacity of newly-tenured producers to occupy the processing and marketing nodes of

to be maintained in the long run.	corresponding value chains does so far not deliver the expected return on equities and investments.
<ul style="list-style-type: none"> • A critical mass of dedicated land rights advocates, communities, and technical/legal team is essential in building up a movement for a successful campaign on access to land in a country 	<ul style="list-style-type: none"> • The availability of critical mass of land rights advocates, communities and technical/legal team is essential to success land rights campaigns;
	<ul style="list-style-type: none"> • Pursuing land rights claims within a humanitarian aid project is feasible but at a significant cost to humanitarian aid management.

Recommendations

Based on the findings, the experience capitalisation puts forward the following major recommendations.

The land reform successes have been framed within rights claims as provided by law. The Philippine legal framework on land may not be the same in other countries. Moreover, despite the existing legal frameworks guiding democratisation of ownership, the relevant laws still clash with customary rights and modern-day informal arrangements that are no longer regulated by law. With the finiteness of land against increasing population and investments and land management requirements for disaster risk reduction and climate change adaptation, struggles for land are getting more complex. The following measures seem appropriate to counter this development:

- Broaden the concept of land to include forest and water management dimensions in relation to disaster risk reduction and climate change adaptation.
- Promote responsible governance that takes into account the legitimacy not only of formal rights (as provided by law) but also customary and informal rights. HEKS/EPER's support for access to land could be framed within the global proposition on the Voluntary Guidelines on Responsible Governance of Tenure of Land, Forest and Fisheries (VGGT).

- Guard against the tendency to promote access to land as sole precondition for food security and livelihoods of the rural poor. With population growth and land requirements for infrastructure, housing and other needs, there will never be enough land for all people. Support for land rights struggles should therefore be accompanied by strategies for developing the human capital of the rural poor as platform for generating wage incomes. Also, rural communities need to have appropriate land use plans that include housing and settlement and other infrastructures.

Annex

Land rights within HEKS/EPER strategy of the Philippines

The HEKS policy framework on land rights is contained in its 2013-2017 Strategy:

“We promote the development of rural communities by supporting them in their non-violent struggle for fertile land. On the strength of our extensive expertise and practical knowledge we are striving for leadership on the issue of land. Furthermore, we are contributing to improved agricultural production, processing and marketing of agricultural produce and hence to higher incomes.”

The 2013-2017 strategy also explicitly suggests that access to land and other natural resources is a key requirement for securing the livelihoods of the large part of the rural population. HEKS/EPER also recognizes the tension between modern land legislation and customary laws where there is a need to find mutually agreed solutions. This echoes the purpose of the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) that promotes responsible governance of tenure of land, fisheries and forests with respect to all forms of tenure whether public, private, communal, indigenous, customary and informal.

HEKS/EPER’s support for land rights in the Philippines is contained in the 2006-2009 programme document called “Land, Security Towards Empowerment and Development” or LEAD. The topic on land rights is contained within the food security and livelihoods theme, specifically, access to land through agrarian reform (under CARP) and ancestral domain claiming (under IPRA) and support for production to improve land tenure. The main target groups are small farmers, farm workers, indigenous peoples and agrarian reform beneficiaries. From HEKS/EPER perspective, the objective was to promote human rights, specifically, economic, social and cultural rights (ESCR).

Access to Land Projects Funded by HEKS/EPER in the Philippines

Projects	Name of NGO partner responsible for the project
Sustainable Agriculture: Toward Food Crop Diversity and Self-Reliance (1993 – 2003)	Likas-Kayang Kaunlaran Foundation Philippines, Inc. (LKKFPI)
Community-Based Resource Management Toward Food Security and Sustainable Communities	Broad for Negros Development (BIND)

in Negros, Philippines (2003 – 2008)	
Land Tenure Improvement and Productivity Development Support in Large Estates in Davao Oriental and Bukidnon (2007 – 2009)	Task Force Mapalad, Inc. (TFM)
A Proposal to Develop a Comprehensive Support Program for the Indigenous Peoples of Mindanao (2008 – 2009)	Task Force Mapalad, Inc (TFM)
Land Tenure Improvement and Productivity Development Support for Large Estates in Davao Oriental and Bukidnon – Phase II (2010 – 2012)	Task Force Mapalad, Inc. (TFM)
Resource Tenure Improvement and Productivity Development Support for Indigenous Peoples in Mindanao (2010 – 2012)	Task Force Mapalad, Inc. (TFM)
Strengthening the Economic Resiliency of Agrarian Reform Beneficiaries in Selected Reformed Large Estate in Mindanao (2013 – 2015)	Task Force Mapalad, Inc (TFM)

- **WORKING PAPER N° 1, 12/2012:** ACCESS TO LAND – LAYING THE GROUNDWORK FOR DEVELOPMENT, ZÜRICH, DECEMBER 2012.
- **WORKING PAPER N° 2, 02/2015:** ASSESS & ENHANCE LAND TENURE SECURITY, HEKS ANALYTICAL FRAMEWORK, ZÜRICH, FEBRUARY 2015.
- **WORKING PAPER N° 3, 07/2017:** ACCESS TO LAND IN THE PHILIPPINES – CAPITALISATION OF HEKS/EPER EXPERIENCES, JULY 2017.

HEKS/EPER – Swiss Church Aid

Headquarter
Seminarstrasse 28
Postfach
8042 Zürich

phone +41 44 360 88 00
fax +41 44 360 88 01
email info@heks.ch
web www.heks.ch



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actalliance