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# **Political arenas around access to land:** a diagnosis of property rights practices in the Nicaraguan interior

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## ABSTRACT

Land property issues remain firmly on the agenda in Nicaragua. Revolutionary land reform, followed by additional land redistribution and overnight liberalisation of land markets, are assumed to have caused severe insecurity of land tenure. Dominant received wisdom is that only significant state intervention through full-scale legal titling cum registration can put an end to the ongoing struggles that cause insecurity as well as injustices against poor agrarian reform beneficiaries. This view, inspired by economic and legal engineering perspectives on land rights, has however successfully been challenged in other development contexts, particularly Africa, where a legal pluralist view turned out to be more adequate to describe the complex social processes that define land rights. This view argues for a need to understand the detailed land right practices where legitimacy (and thus security) of land access and tenure is socially constructed by calling upon state as well as non-state sources of land rights. Policy conclusions do not call upon state intervention to remedy allegedly chaotic and unjust informal land practices, but rather calls for an institutional re-organisation that contributes to a greater synergy between different sources of rights, thereby reducing insecurities and injustices due to prevailing incompatibilities. Inspired by the legal pluralism view, our paper provides an attempt at interpretation of the real world land rights practices in an agricultural frontier region in Nicaragua.

## RESUMEN

El tema de la propiedad de la tierra se mantiene firme en la agenda en Nicaragua. La reforma agraria Sandinista, una redistribución adicional de tierra con el proceso de paz y una liberalización brusca y radical del mercado de tierra parecen haber contribuido a una inseguridad marcada del acceso y la propiedad de la tierra. La visión dominante mantiene que solo una intervención estatal significativa a través de una titulación legal y un registro comprehensivo sea capaz de meter un punto final a las luchas permanentes que causan inseguridad al igual que injusticias en contra de los beneficiarios pobres de la reforma agraria. Sin embargo, esta visión, inspirada desde la teoría económica o desde perspectivas de ingeniería legal, ha sido contestada exitosamente en otros contextos de desarrollo, en particular la África, donde una perspectiva de pluralismo legal comprobaba ser mucho más adecuada para describir y entender los procesos sociales complejos que definen los derechos de propiedad. Esta visión argumenta por una necesidad de entender finamente las prácticas alrededor de los derechos a la tierra en las cuales la legitimidad (y entonces la seguridad) del derecho a la tierra se construye socialmente haciendo referencia a fuentes de derecho tanto estatales como no-estatales. Las conclusiones en términos de políticas apuntan a una reorganización institucional que trata de generar más sinergia entre estas diferentes fuentes de derechos dentro de las arenas políticas de la tierra en vez de tratar de remediar un supuesto caos informal desde una legalidad estatal impuesta. Inspirado por una perspectiva de 'pluralismo legal', este cuaderno trata de hacer una interpretación de las prácticas sociales alrededor de la tierra en una región de la vieja frontera agrícola en Nicaragua.

## RÉSUMÉ

Au Nicaragua, le problème de la réforme agraire est résolument à l'ordre du jour. Une réforme agraire révolutionnaire suivie d'une redistribution additionnelle des terres et d'une libéralisation hâtive des marchés des terres est supposée avoir créé une grande instabilité du régime foncier. Selon l'avis autorisé reçu, seule une intervention significative de l'état par le biais d'un enregistrement complet à grande échelle des titres de propriété, peut mettre fin aux disputes incessantes qui engendrent l'insécurité autant que l'injustice contre les pauvres bénéficiaires de la réforme agraire. Cet avis, inspirée des perspectives économiques et légales organisant les droits fonciers, a cependant été remis en question avec succès dans d'autres contextes de développement, particulièrement l'Afrique, où une approche légale se révéla être plus adaptée à décrire les processus sociaux complexes qui définissent les droits fonciers.

Cette approche plaide pour la nécessité d'appréhender les pratiques foncières détaillées là où la légitimité (et donc la sécurité) de l'accès à la terre et le régime foncier sont construits socialement, en faisant appel aux sources du droit foncier aussi bien étatiques que non-étatiques. Les conclusions politiques ne font pas appel à une intervention de l'état pour remédier aux pratiques agraires informelles soi-disant chaotiques et injustes, mais préconisent plutôt une réorganisation institutionnelle qui contribue à une plus grande synergie entre différentes sources de droit, réduisant de la sorte les insécurités et les injustices dues aux incompatibilités dominantes.

En s'inspirant de l'approche pluraliste légale, notre article constitue un essai d'interprétation des pratiques foncières réelles dans une région agricole frontalière au Nicaragua.





## 1. INTRODUCTION

Land property issues remain firmly on the development agenda in Nicaragua. A decade of revolutionary land reform, followed by additional land redistribution and overnight liberalisation of land markets in the aftermath of the Sandinista revolutionary regime, have created a substantial institutional turmoil which is assumed to have caused severe conflict and insecurity of land tenancy. Dominant received wisdom (e.g. de Janvry & Sadoulet, 2000) is that only full-scale land titling with comprehensive registration can solve these problems by creating clear-cut definitive property rights, independently and transparently guaranteed by the state legal system.

The analysis of this paper has grown out of increasing doubts about this received wisdom, partly inspired by the theoretical debate about tenure security and legal pluralism that casts doubts about simplistic legal solutions to property rights issues (Berry, 1993; Lavigne Delville, 1998, 2000; Meinzen-Dick & Pradhan, 2002) and partly confirmed by field observation that a great many peasants, with quite precarious legal rights over their land, did not seem to perceive tenure insecurity as a real problem.

Such also seemed to be the case in the region of Terrabuena<sup>2</sup>, where we have undertaken our research. Being both an (old) agricultural frontier with a highly dynamic land market and an area significantly affected by the contra-revolutionary rebellion and Sandinista counter-insurgency war in the 1980s, it is a region that has suffered from substantial institutional shocks where one would expect severe problems related to land. A recent field survey based on a sample of 1234 landowners, realised by the NGO Actuar (see below), found out that only about a third of the local land has some kind of public title: 12% have full publicly registered titles, 9% have the provisional 'supplementary title' (see further) and 10% have collective and thus often problematic land reform titles. The rest of the land has no (15%) or only non-state private (48%) sales-purchase documents. According to the dominant perspective on land rights in Nicaragua, the largely non-state, informal status of local land property rights confirms an urgent need for state intervention in order to create legal clarity about tenure. Yet, as our study of land rights practices in Terrabuena will show, it might be warranted to adopt an alternative, legal pluralistic frame of analysis which does not a priori declare this need to replace socially negotiated (insecure?) non-state property rights by allegedly neutral (secure?) state-guaranteed legal tenure.

<sup>1</sup> This paper was significantly improved after the incorporation of valuable comments and suggestions of the reviewers: Rikke Broegaard, PhD researcher of the Roskilde University Center and the Danish Institute for International Studies, and Filip Reyntjens, professor at the Institute of Development Policy and Management (IOB), University of Antwerp.

<sup>2</sup> To guarantee anonymity we intentionally changed the names of regions, villages and local development organizations.

## 2. FRAMEWORK OF ANALYSIS

The theoretical approach adopted in this paper starts from Amartya Sen's general understanding of poverty and development (Sen, 1999). Sen views development as the enhancement of individual freedoms, which are linked to concrete capabilities that enable human beings to develop livelihood strategies that shape life as they value it. Poverty then needs to be understood as deprivation, i.e. the lack of these capabilities. In turn, *capabilities* are linked to *entitlements* that determine the access to resources, the map of exchange opportunities (to convert resources into other valuable goods and services) and the opportunities to participate in relevant social processes. In rural societies, like the region of Terrabuena, the rules of access to land, of course, constitute one of the crucial entitlements of the rural population. As we have developed elsewhere (Bastiaensen, et al., 2002, 2005), it is crucial to understand that entitlements are generated through a variety of social processes in the local institutional environment, depending on the prevailing 'rules of the game' as they apply to a given actor's social position and identities. Individual entitlements and ensuing capabilities are thus to a large degree institutionally predetermined.

However, it is important to see that the institutional environment itself is permanently shaped and reshaped through the aggregated actions of individual actors (Long, 2001). There is thus a very important feedback-loop from individual action to the enabling and constraining institutional environment, whereby actors renegotiate their social position and the rules of entitlement that apply to them. This renegotiation takes place in a variety of 'political arenas'<sup>3</sup> around available resources either in the form of explicit renegotiation of the 'rules of the game' (e.g. renegotiating property rights to land after the war in a village peace commission) or through less tangible bargaining at the margin over the interpretation and re-enactment of prevailing rules in concrete instances (e.g. informal confirmation of land rights, gradual encroachment of a richer onto a poorer farmers' land, changing rules as applying to cattle ranchers' and farmers' rights and obligations; terms of sharecropping arrangements, ...).

The ensuing institutional organisation of access to resources and exchange opportunities will have an effect on both the 'size' and the 'distribution' of rural welfare. In the case of access to land rights, institutional arrangements will

<sup>3</sup> This concept is taken from Bierschenk and Olivier de Sardhan (1998:240), who defined "political arena" as "a place of concrete confrontation between social actors interacting on common issues". They coined the concept to underline that bargaining processes do not only take place within 'political' bodies, like parliaments or village councils, but in every 'real' meeting place of actors around resources or opportunities.

determine (in)security of land tenure and thereby influence the (in)efficiency of land use and thus the size of rural income. At the same time, it will play a crucial role as a major determinant of the distribution of rural income and income security. The ongoing, explicit and implicit, bargaining over (the re-enactment of) entitlements also explains why the distribution of the 'entitlements to participate' are such an important characteristic of the prevailing institutional environment. Indeed, poverty can often be related to the deficient participation-capabilities of the poor that constrain their voice and bargaining power. Ultimately, this brings us to define 'the poor' as "*essentially those human beings who, for one reason or another, almost systematically end up at the losing end of the multiple bargains that are struck around available resources and opportunities*" (Bastiaensen et al, 2005: 981). As a consequence, poverty reduction ultimately has to do with changing "*the existing structures of power... to improve opportunities for participation and voice and engaging the hitherto disadvantaged or disenfranchised in the political process*" (Bardhan, 2002: 202).

The research in this paper focuses on the local institutional processes around the conditions and security of access to land in Terrabuena, Nicaragua. As in many other developing countries, we assume that the local institutional context should be considered as a kind of 'institutional landscape', which is complex, locally specific, and pluriform or polycephalous in nature as it is the product of different historical periods and referring to varying meaning systems, rules and actors (Bierschenk, et al, 2000: 10). It is one of these developing regions where "*many ballgames may be played simultaneously*", and "*numerous systems of justice operate simultaneously*" (Migdal, 1998: 39). As we illustrate below, one can indeed discern the presence of competing and/or complementing *social fields* with differential capacities to function as sources of social legitimation of land rights. In peasant regions like Terrabuena, Migdal's "*many ballgames*" obviously also refer to the specific and relatively autonomous characteristics of local peasant societies. It is not by accident that Migdal opens his book with a quote from a daily prayer from seventeenth-century French peasants: "*Deliver us from all evil and from justice.*" (Migdal, 1998: xiii, emphasis added) The peasant's rejection of the intrusion of the national legal system in their affairs, which is expressed in this verse, clearly illustrates the historically difficult and often antagonistic relations between the developing nation-states and local 'peasant societies'. The latter can be characterised as '*part societies with part cultures*' (Shanin, 1987: 358), indicating

their ambiguous status as belonging to the broader dominant society, while at the same time maintaining (and defending) a relative self-reliance and autonomy.

Since the Terrabuena region, as an agricultural frontier area, historically has been one of the strongholds of peasant resistance<sup>4</sup> as well as a region of practical escape from the dominant, estate-dominated rural economy, antagonism and resistance to the intruding Nicaraguan state is clearly one of the defining lines of its local history. Any reflection on the institutional processes that shape and reshape property relations to land therefore has to take this antagonism seriously. Especially in this historical context, it would be a critical error to assume (or claim) that the state has (or should have) a monopoly as sole norm provider and is (or should be) capable to use the law as an instrument of social engineering.<sup>5</sup> In this paper, we therefore follow Sally Moore's lead on the restricted capacity of the state to define rights and exercise effective coercion (Moore, 1978). The state is rather to be considered as one of the possible providers of norms and coercion, besides other "*semi-autonomous social fields*" with the capacity to generate rules-cum-enforcement and (to some extent) "*to dictate the mode of compliance or non-compliance to state-made legal rules*" (Moore, 1978: 57).

This brings us to the acknowledgement of a situation of 'legal pluralism', i.e. "*the co-existence and interaction of multiple legal orders within a social setting.*" (Meinzen-Dick & Pradhan, 2002: 4). Law provided by legal or administrative systems (state law), functions side by side with non-state law,<sup>6</sup> i.e. rules and norms that are generated by social fields outside the state. Important in legal pluralism is the recognition of interaction and mutual interference between the rule-making systems (Moore, 1978: 55-56). According to Chauveau who quotes Berry and Bailey, "*we witness a 'proliferation of institutions' (Berry), which results in a 'diversity of arenas of confrontation-negotiation' (Bailey) corresponding to levels (local, regional, national) and specific regulation norms issued from actors' interrelations*" (Chauveau, 1998b: 73, own translation). This view is in line with Migdal's above-mentioned description of the polycephalous institutional landscape in which 'many ballgames' are played simultaneously and in interaction with each other.

Given this presence of legal pluralism, how are property rights to land obtained and once obtained, how can they be secured with sufficient certainty? A first point to be made

4 The region of Terrabuena formed an important breeding-ground for US-sponsored peasant contra-revolutionary guerrillas of the 1980s.

5 This vision corresponds to a hierarchical approach to the legal sphere, which claims a 'natural' supremacy for the state as the ultimate source and guarantor of the rule of law. It also assumes a direct causal link between the injection of law in a given system and corresponding changes of human behaviour, ignoring the possibility of the informal (re)processing of rules during the interpretation and implementation phase. (see Moore, 1978: 54-5)

6 Other terms can be used to designate non-state law. Some speak of customary law (Moore, 1978), indigenous legal system (Uwazie, 1994) or traditional law (Von Benda-Beckmann, 1995).

here is that land rights always need to be actively claimed and (re)performed by social actors (users, owners). The rules of entitlement to land are constantly renegotiated and reformed in ‘political arenas’, where actors need to mobilise legitimacy and support from other actors in order to be able to defend their claims. In order to be able to do so, their claims need to be grounded in certain rules of entitlement, which are the true origin of the acquired right and its legitimacy (Chaveau, 1998b). Claims of property rights need to be substantiated with references to underlying principles and rules of entitlement associated with one or more relevant social fields, which themselves can be and are subject of constant renegotiation (Chaveau, 1998b: 73).<sup>7</sup> In a context of legal pluralism, actors trying to acquire or secure property rights to land, can and do make use of more than one rule system to legitimate their land claims. What is important to acknowledge here is that they have to devise discursive and other strategies to corroborate and make relevant others respect their claims, especially in cases where their rights may be at risk. *“Which specific repertoire, in which specific case, people will orient themselves to, will mostly be a matter of expediency, of local knowledge, perceived context of interaction, and power relations.”* (Spiertz, quoted in Meinen-Dick & Pradhan, 2002: 5) In this context, Lund (2001) and Meinen-Dick & Pradhan (2002: 5), in line with von Benda-Beckmann (1995), point at the possibility of ‘forum shopping’ where actors try to justify claims and generate or avoid enforcement by mobilising different sources of legitimacy and enforcement mechanisms that suit them best.

Therefore, in the everyday life of communities one finds a complex and ever changing mixture of several normative orders, linked to an underlying process of explicit or implicit negotiation over access rights to land. In the final analysis, it will be people’s quality of participation in local arenas that will to a large extent define the rules that they can mobilise to legitimate their claims or not. Their capacity to exercise claims is therefore *“closely linked to membership in social networks and participation in both formal and informal political processes”* (Berry, 1993: 104). Or put in other terms, it is to a large extent the *entitlements and capabilities of participation*, i.e. the power and capacity to exert socio-political influence, which will determine the *entitlements to land*.

Especially from a traditional economics or juridical point of view, such a dynamic view of continuously renegotiated property rights could appear to entail permanent insecurity of

<sup>7</sup> Unlike most of the literature on property rights, this view also brings Chaveau to develop a positive appreciation of conflicts over land: *“(C)onflicts are not seen as a default of the regulation system but rather as the lively part of the system”* (Chaveau, 1998: 73)

land tenure – and for a real outsider it might indeed be. However, as Lavigne Delville (1998:77) underlines, security of tenure is never absolute and even when locally negotiated property rights might not be guaranteed for eternity, they are neither radically unstable. Therefore they often provide more than sufficient tenure security in order not to hamper (long term) investment (Lavigne Delville, 1998: 264-292). Furthermore and perhaps most importantly, one should neither automatically suppose that state-defined property rights manage to secure rights better, unless there would be a clearly demonstrated capacity of the state to impose and enforce its rule of law – something which is far from evident in general and even less so in agricultural frontier regions like Terrabuena.

If we look in more practical terms to the processes that create property rights in Terrabuena or elsewhere, there are two broad ways to acquire access rights to land. The first way is to acquire rights through locally sanctioned institutional processes that refer to the underlying principles and rules of entitlement in the agricultural frontier. In practice, these will refer to the original process of colonisation and to subsequent inheritance or purchases/sales of land and improvements (see § 3.1 for further elaboration). Those are the rights that are “*ratified by the neighbourhood and are anchored in the local social capital*” (de Janvry & Sadoulet, 2000: 17). The second way is the so-called ‘administrative way’ resulting from state recognition or (re-)definition through laws or administrative decisions.

As de Janvry and Sadoulet (2000: 17) indicate, referring to the underlying studies made by IRAM (2000a, b) for the case of Nicaragua, informal use rights (*derechos de posesión*) vested in ‘local social capital’ tend to show significantly less conflicts and thus more security of tenure than most of the state-defined property rights, including rights that do not refer to the more problematic agrarian reform problem. Despite unequivocal suggestions to the contrary in the IRAM-study, for these authors this does however not contradict the necessity to engage in comprehensive state-led land titling, since they implicitly suppose that only state-organised titling is able to solve the problem of contested property rights (de Janvry & Sadoulet, 2000: 17), while they further believe that also for the nowadays non-contested properties state-law will gradually substitute informal processes “*as time passes by*” (de Janvry & Sadoulet, 2000: 19). This view, which inspires much of present-day land titling policies,<sup>8</sup> is possibly an indication of an economist’s approach to the property right issue. As Meinzen-Dick & Pradhan

8 The study by IRAM and de Janvry & Sadoulet was one of the important inputs in the preparation of the national land titling policy, co-financed by the World Bank.

(2000: 14) observed “economists seek to reduce pluralism and consolidate all under a unitary rule of (state) law”.

Following our analysis above, the legal recognition and cadastral registration approach argued for by de Janvry and Sadoulet (2000), and subsequently implemented under the PRODEP nation-wide titling project, is highly overoptimistic about the capacity of the (Nicaraguan) state’s capacity to define and permanently safeguard clear land property titles.<sup>9</sup> In fact, state-defined property rights will be in need of local non-state ‘revisiting’ and reprocessing in order to become fully accepted, so it is not quite clear how they would have a superior capacity to put a ‘final end’ to property rights conflicts. Indeed, it is quite probable that “as time passes by” non-state institutional processes also have a significant potential to solve property rights conflicts. Furthermore, a possibility exists that precisely the intrusion of the state in these informal processes might exacerbate, rather than reduce property rights conflicts and insecurity. *“In some contexts of social and political change, legal pluralism can increase uncertainty for resource users. This is especially so when statutory law does not recognize customary rights, and those with greater political connections, knowledge of state law, or access to the courts use state law to override customary rights, in order to capture resources”* (Meinzen-Dick & Pradhan, 2002: 13). All these observations cast some doubts on the effectiveness of the policy conclusion that comprehensive state-led land titling is necessary and able to put a final end to land tenure insecurity in Nicaragua, and especially in the more remote peasant communities of the ‘Interior’.

This paper does not try to give a final answer to this fundamental question about land policy in Nicaragua. Our point of departure is rather that there is a great need for further and more detailed studies about everyday practices of land rights creation and management in Nicaraguan rural communities. As observed by de Laiglesia (2003: 7), these processes are not yet well documented in the Nicaraguan and Latin American context (as compared with the African context). A better understanding of local practices might shed new light on the policy issues, especially in view of the unavoidable limitations of the real world Nicaraguan state apparatus and the social negotiation processes surrounding its operations. In what follows, we will present a tentative interpretation of the local land right practices in a sample of villages belonging to the municipality of Terrabuena. It is important to stress that we do not claim to say the final word on the political arenas around land in Ter-

<sup>9</sup> de Janvry & Sadoulet (2000: 20) are extremely optimistic about the administrative capacity of the Nicaraguan state. This becomes very clear when they discuss IRAM’s recommendation that the complexity and superposition of different property and use rights on the same plots of land should be recognised. In fact, they fully embrace this recommendation and accept that the usual land titling process often creates problems since it ignores this complexity and superposition by giving a ‘total’ title to one of the owners. Their conclusion is however not that such issues can best be managed through flexible locally negotiated processes, as e.g. Chaveau (1998) recommends. In contrast, they conclude that the state-led comprehensive land titling process should take due account of these different rights and recognise them in a fine-tuned land registry (which as we know should be permanently updated). This conclusion however sounds rather surrealistic when compared with actual practice. We were told, for example, that peasants in a village of Somotillo complained (and were indeed quite worried) that they weren’t even present when the surveyors of the state titling project, PRODEP, came by to measure their plots.

rabuena, since with each step we took in the deciphering of the complexity of the land right practices we discovered new complexities and further questions emerging.

The information underlying this paper has been gathered in a number of field trips of relatively short duration, undertaken by the authors during the period 2001-2006, adding up to some 12 weeks of local presence in total. We adopted an exploratory, qualitative research approach, focused on field observations as well as open and semi-structured interviews with key actors and common (peasant) stakeholders. To the extent possible, information thus obtained was triangulated with that of other informants as well as the scarcely available documental resources. Additional insights were obtained from interviews with Miguel Alemán and Lea Montes of the Instituto Nitlapán in Nicaragua. The former has undertaken substantial field research in the region (part of it together with the authors) and the latter is a notary and director of the land property rights program of Nitlapán, and thus quite acquainted with especially the legal issues involved. The choice of the study region was not made in view of representativity. In fact, the decision to study land rights arenas followed previous research focused on policy interests related to rural finance.<sup>10</sup> We do however not claim any representativity and a fuller and 'less interpretative' account of the issues that will be raised would certainly require a much longer-term, intense field research than we could do in this context. Therefore, our paper modestly restricts its ambitions to providing an attempt to illustrate the potential of an – at least in Nicaragua- uncommon way of looking at the issues surrounding land property rights.

<sup>10</sup> We are convinced, however, that the region is quite representative for the strongly war-affected agricultural frontier areas where one would expect a lot of disarray in land rights.



### 3. A GENERAL INTERPRETATION OF LAND RIGHTS PROCESSES IN TERRABUENA

Before the presentation of the case-studies, it is necessary to further specify the general perspectives on land right practices in a context of legal pluralism as they apply to the specific agricultural frontier context of Terrabuena. Therefore, we first try to develop a general reading of some of *the rules of entitlement to land* as they present themselves in relation to the different – state and non-state – sources of property rights. We frame our analysis – even though this is certainly an unwarranted simplification of a more complex reality – by considering two ‘semi-autonomous social fields’: the state and the peasant society of the Nicaraguan agricultural frontier. The case-studies will then describe how different actors in the specific context of the villages develop their strategies to access land and secure their property rights by moving back and forth between the different repertoires of both types of sources of rights and legitimacy.

#### 3.1. In search of the principles of entitlement to land in the agricultural frontier

Even though Terrabuena belongs to the old agricultural frontier (Marchetti & Maldidier, 1996), initially being colonised during the first decades of the 19th century, the migration/colonization logic and related peasant worldviews and ideologies still remain an important reference in everyday life. As we have already indicated above, this is among others exemplified by its ancient and recent history of peasant resistance to the intruding nation state. Even though a recently initiated process of decentralisation brought state authorities somewhat closer to local societies, we can still assume that Terrabuena maintains much of its agricultural frontier character as an “*institutional barrier quite far from established country infrastructure (...) in which there is little state presence*” (Baumeister & Fernandez, 2005: 80).

In the Nicaraguan agrarian frontier region several socially accepted “routines” can be identified that have the potential to create and/or maintain locally legitimated land ownership. Being an area of colonization, a first source of entitlement to a specific plot of land is the act of – if nowadays often imaginary – colonization itself: the conquering of the savage and unproductive forest land in order to make it suitable for agricultural/cattle production. The ensuing entitlement to land

is strongly related to the concept of ‘improvements’ (‘mejoras’), which are precisely those ‘investments’ in the (forest) land that allow the virgin land to be put to a productive use. Even when a peasant would turn out not to have the right to continue exploiting a certain piece of land, e.g. because it belongs to a natural reservation area, he nevertheless always remains owner of the ‘improvements’ and thus entitled to receive compensation should he be ‘expropriated’.<sup>11</sup>

There are also indications that the initial ‘improvements’ do not lead to a permanent and complete property right over the land. The latter remains conditional upon the continuing *productive use* of the underlying resource. Indeed, today most of the land in the area has been cleared decades ago, but it still requires substantial labour-intensive maintenance to keep it productive, especially for agricultural purposes (weed removal, fertility maintenance). The capacity to demonstrate the ability as a productive farmer constitutes a second principle of entitlement to land. The ideology of the mestizo-peasants is linked to a strong work ethic, which cherishes personal work effort as the basis of individual success and advancement, and where additional advantage or disadvantage is held to be granted by ‘divine justice’ only (Ciera, 1989: 297). In this perspective, the “finqueros” constitute a clear role-model for all peasants in the agricultural frontier. Finqueros are peasants who, thanks to their hard work and initial capital, could accumulate land and develop productive, well-stocked farms. Rather than being a source of envy, triggering the contestation of their rights to land, it is precisely their economic success that sustains their claims to the land.<sup>12</sup> The principle of the capacity to make the land produce as a source of claims to land is also illustrated by the difficulties to assimilate the concept of ‘land rental’. In fact, beyond share-cropping, which is a temporary joint venture to cultivate the land in which the owner continues to assume some responsibility to work the land, land rental is problematic since the tenant undermines the owners’ right to land by demonstrating his capacity to cultivate it, especially if the rental is long-term and the tenant begins to undertake land-improving investments.

The legitimization of land property rights not only relates to the capacity to use the land resources productively, but also to the ability of the more successful local actors (initially finqueros) to assume responsibility – as a patron – for their poorer peasant neighbours/constituency. In the past, finqueros were providing ‘their’ smaller peasants with opportuni-

<sup>11</sup> This agricultural frontier logic is quite at odds with the logic of conservationists who see peasant migrants as encroaching upon and destroying the – in their eyes – valuable tropical forest. Viewed from a certain urban “social field” with its ‘green values’, compensating peasants for destruction of nature is of course a bizarre idea.

<sup>12</sup> This is one of the main areas of contradiction between the Sandinista class logic, with its suspicion of richer peasants (finqueros), and the peasant logic of the agricultural frontier.

ties for casual labour, access to additional land (sharecropping) or pasture (grazing rights for peasant cows), transport services, help in relations with local authorities, emergency aid, etc... Due to this cultural background, it is important to stress that patronage, ensuing spontaneously from the control over land and external contacts, is not perceived as a permanent obstacle for the advancement of the dependent peasant to a status that resembles that of the finquero, but rather as a viable road to individual social mobility explained by the finqueros' role in granting access to resources and markets. Cultural proximity due to the peasant origin of the finqueros as well as real-world success stories of a limited number of upwardly mobile, formerly dependent peasants confirm the role of the finqueros as a role model and a helping hand in social mobility, and thus the necessity to respect their (and others') property rights to land. Patronage therefore constitutes a third principle of entitlement to land, reinforcing the rights derived from economic capacity. Entitlements to land in the agricultural frontier region are indeed embedded in a social order characterised by "*relations of patronage, in which power resides with those who have access to land, cattle and the market.*" (CIERA, 1989: 297)

A fourth source of entitlement to land is derived from the purchase of property rights. Since the agricultural frontier is a very dynamic region of in- and out-migration, it is also characterised by an active land market. Land property and land improvements are readily and easily transferred from one owner to another by means of purchase. Capital used to buy land is normally viewed as coming from legitimate proceeds of previous efforts and performance in the same region (if the buyer is from the community) or from elsewhere (if the buyer is an outsider). Land acquired through an act of buying thereby generates a locally legitimate property right, provided the new owner demonstrates capacity to use the resource productively and – if he is rich – even more so if he assumes his patronage responsibilities. Besides land purchases, inheritance from father to sons is of course a further (fifth) legitimated way of transferring land to new owners,<sup>13</sup> but here also there is an additional provision to demonstrate capacity to work and 'love' the farm. Peasants need to educate their sons in the peasant way of doing things and in particular it is critical that they learn "to earn what they have": "*que les cueste lo que tienen*" (CIERA: 1988: 300).

<sup>13</sup> Take note that women do not usually have inheritance rights to land in the traditional rural society of Nicaragua.

### 3.2. The role of the state: from recognition of unofficial local rights to outright intrusion

#### Mechanisms to legalise non-state rights

Nicaraguan law and legal practice have traditionally included mechanisms that allow the gradual formal recognition of informal property rights (on demand), especially those generated in the agricultural frontier where the state's presence is historically weak. A legally recognised property title often becomes useful at a certain moment in time, in particular to access credit from formal banks and historically usually for the larger land owners (finqueros and entrepreneurs). The legal provision of the 'título supletorio' (supplementary title) provides a mechanism to legalise 'de facto rights of possession' over time, by means of the public recognition of uncontested land possession. In its essence, this mechanism requires the confirmation – by means of testimonies – of an uncontested and active, i.e. productive utilization of the land resource, belonging to the public domain (and thus without any previous private or collective property right status, nor record in the land registry) (IRAM, 2000a: 85-86). As time passes by without any contestation of the possession, registered by the 'título supletorio', it gradually gains in legal strength as against future contestation by third parties.<sup>14</sup> Especially in the case of a legally registered sales operation to cancel outstanding debts, these rights can easily be transferred to a new owner, which is why banks or microfinance institutions may accept these titles as collateral (although formal banks usually do not).

<sup>14</sup> There are no clear legal provisions about a minimum length of time required; in case of conflict it will be up to the court to ratify or reject the legitimacy of the contested property right.

Another procedure to provide public backing of unofficial property documents is to look for some kind of public recognition or even 'registration' of the private sales/purchase documents. Producers who buy land unofficially usually have a private document – the "promesa de venta" – wherein the seller confirms the purchase transaction in favour of the new owner. Often these new owners try to improve the 'public' status of these private documents, e.g. by asking the local community leader or other personalities to be a witness to the transaction or in exceptional cases even by registering it in informal community plans or in a municipal registry (which exists for local fiscal reasons). It is also possible to register the right of possession, derived from such unofficial transactions, with a notary.

In the present-day context, one must also emphasize that from a purely state legal point of view, two broad types

of property rights circumstances should be distinguished, each with quite different problems and ways to solve them. The first type consists of land that has no previous legal history. Such land can be legally attributed by the rather simple mechanism of the ‘*titulo supletorio*’, which only requires the intervention of the local judge. The second type relates to land with a legal history, which applies to most of the agrarian reform land and some areas of communal property (‘*tierras ejidales*’). In this case, the easier road of ‘*legalization*’ through the ‘*titulo supletorio*’ is *in theory* no longer possible, and a much more complicated exercise to create individual property rights for the present-day *de facto* owners becomes unavoidable under current legal procedures.<sup>15</sup> For the agrarian reform cooperatives, the property rights must be traced back to the previous owner; today’s membership needs to be legally recognised as those entitled to the collective property (net of any collective debts); and individual plots need to be established with precision. This second road to legalisation is obviously quite complex and expensive, as it inevitably involves state institutions at departmental (and sometimes even national) level. An additional difficulty is that some of the cooperatives do not possess a legal personality and the land is registered in the name of one or more natural persons (usually the cooperative’s leadership). Except for a voluntary transfer of this land from the official owners to the entitled beneficiaries, whether or not induced by social pressure from below, there are no legal solutions to this problem. In the case of communal property, no official road to individualise property rights seems to exist.

Both in the (changing) legal provisions and even more in actual ‘*legal*’ practice one should also note that the different routes and mechanisms of state legalisation-registration are not always very clearly defined, nor unequivocally applied, nor for that matter always mutually compatible and coherent. This implies that the different mechanisms of state legitimization/recognition of non-state property rights should certainly not be viewed as an unequivocal mechanism with superior capacity to define and enforce property rights. Without the backing of local legitimating processes, the official legal status of land is usually of little value and if it has some value it often contributes to tenure insecurity by creating contradicting claims to land in the presence of competing normative registers. The lack of clarity in legal provisions and practices also provides ample opportunities for manipulation of the process – especially by more powerful and better informed parties.<sup>16</sup>

<sup>15</sup> It should be stressed that in practice a lot of irregularities can be observed, since often previous records of private or other property rights have not been updated or lost. (Thanks to R. Broegaard for this observation.)

<sup>16</sup> Complaints and evidence of widespread, gross abuses of peasant ignorance (e.g. by lawyers) in the legal arenas around land abound (de Janvry & Sadoulet, 2000: 12). This evidently does not contribute to strengthen peasant confidence and acceptance of the so-called ‘*rule of law*’.

## State intervention through land reform

Besides providing these legal procedures which are – at least in principle – complementary and supportive of local land rights, from the 1980s onward the state has also engaged in an agrarian reform process that deliberately tried to correct the unequal and allegedly unjust property relations and thus overtly violated several principles of entitlements to land in agricultural frontier regions like Terrabuena. The Sandinista agrarian reform began by confiscating properties of dictator Somoza and other people that had left the country, and used the properties to set up mainly state farms and production cooperatives. With time, an increasing number of additional landowners were affected as new criteria were added to justify expropriations (idle land, land exploited inefficiently, public utility, social interest).<sup>17</sup> When landowners were expropriated, they sometimes received other land in exchange (“permuta”) or were compensated financially.

<sup>17</sup> Occasionally, cases of expropriation for outright political reasons have also been reported.

There was however a lack of clear regulation so that a lot of arbitrary political decisions were made with different owners receiving different (or even no) compensation according to the particular circumstances.<sup>18</sup> Systematic registration was not a concern during the Sandinista era. In fact, “only 27% of land in the reform sector received a title” and most of the documents provided were ‘provisional agrarian reform titles’ (de Groot, 1994: 108). This incomplete registration and the contested nature of the state-provided property rights (see below) made the agrarian reform process rapidly run into serious problems after the unexpected Sandinista electoral defeat. This could not be prevented by the emergency law n°88 from April 2th 1990 (de Groot, 1994: 109) that the Sandinista government promulgated before the handover of their power to the newly elected liberal government, in an attempt to secure the more equal land distribution produced by the agrarian reform.

<sup>18</sup> People accused of collaborating with the counterrevolution were usually expropriated without any compensation, whereas landowners that were affected to respond to a ‘social needs’ were usually better off.

Especially in the initial period, the Sandinistas imposed a model of state or collective cooperative production which disturbed the old patterns and principles of patronage – substituting them with a new form of *state paternalism* – and radically cut off the dream of individual advancement to “finquero” status (Horton, 1998). (See also discussion on page 11 and 12 about principles of patronage). In fact, being – at least potentially – a prototype of the ‘capitalist class enemy’, the finqueros represented a social class to be viewed with suspicion (Bastiaansen, 1991). These policies by the revolutionary Sandi-

nista regime rapidly transformed the initial sympathy for the revolution into widespread distrust and – triggered by US military support – also into overt and substantial armed resistance. As Horton (1998: 95-97) indicates for the region of Quilalí, local finquero leaders, using their ideological and practical influence over dependent peasants, played a crucial part in creating and organising the local peasant basis for the resistance and the armed struggle. Viewed from the logic of the agricultural frontier, the Sandinista agrarian reform was perceived as a life-threatening attack on the basic values and principles of peasant society. The Sandinista reform of land tenure rights was rejected as completely illegitimate, threatening to take away the land from owners that had earned it through hard work and who often played a crucial role in the survival and development opportunities of the smaller peasants.<sup>19</sup>

The reform also lacked legitimacy, since the new owners received the land totally for free and were bereft of their autonomy as individual producers, being almost completely dependent upon the directives of the Ministry of Agriculture which acts as a kind of national planning agency. Furthermore, the cooperatives were usually obliged to engage in mono-cultivation of staple foods (corn) and to shift to ‘modern’ mechanised and input-intensive technology. Also because of the Sandinista policies of controlled and low official food prices (Spoor et al, 1989), financial losses were quite common, but systematically compensated by input subsidies and cheap credit-cum-yearly remission of outstanding debts (Bastiaensen, 2000: 155).

Yet, viewed from another perspective, the Sandinista state farms and cooperatives were not such a fundamental break away from the previous society in the sense that they preserved the paternalistic-authoritarian rural governance structures, be it in a new fashion. In a way, this new state patron was far more benevolent and protective than the previous one – providing access to guaranteed food packages, schools and health facilities – especially attractive for the poorer peasants (Ruben, 1997) Yet, due to bureaucratic rigidities and organisational problems it did not always suit (poor) peasants’ needs in an equally effective and flexible way. Also, more fundamentally, it did radically cut off the road towards a future as a successful, individual finquero farmer.

It is important to stress that – as before – patronage was at the heart of the national and local power structure. Local patrons – now more political figures – exercised their

<sup>19</sup> Purposeful manipulation of these perceptions were of course present, since the Sandinistas did not usually focus their expropriations on the finquero owners that had not fled the country – although some notable exceptions might have been of great practical and ideological value for those who fuelled the discourse of communist disrespect for private property.

power serving as intermediaries of the national state towards local clients; whereas national control is maintained indirectly through these local representatives and their dependence on resources provided by the state. In this perspective, it is worthwhile to note that the strategy not to legalise agrarian reform land rights (and even more not to attribute individual land rights) is quite congruent with traditional state-dependent clientelistic power mechanisms in the sense that the state always retains the authority to recall the rights it has extended to the agrarian reform beneficiaries. As a consequence, the latter remain in a kind of permanent loyalty debt towards the state and its local intermediaries. Viewed from this perspective, it is also much less surprising to find the high rotation of membership in most agrarian reform cooperatives. Members were indeed never close to be real (individual) owners to the land.

How deep-rooted the patronage and authoritarian-clientelistic power structures really are, is best illustrated by the *historical irony* of the post-Sandinista agrarian reform. In fact, the contra-rebellion, which in part emerged as a reaction against a Sandinista agrarian reform that was deemed to threaten the peasant way of life, ended in a peace-process which paradoxically comprised an additional agrarian reform to (re)settle many of the landless young guerrilla-fighters and army soldiers. In Terrabuena, part of this additional agrarian reform was forced through the violent occupation of state and cooperative land under the leadership of ex-contra commanders. Given the anti-communist ideology of the contras and the new government, one would of course have expected a straightforward model of land redistribution to individual peasant owners, but surprisingly the post-Sandinista agrarian reform followed a comparable cooperative model, paradoxically receiving a lot of support from the resettling politico-military leaders of the contra-forces who apparently understood the advantage in view of maintaining their stronghold over 'their' people. This is a clear illustration of Marchetti's conclusion about the tenacity of the authoritarian patron-client legacy in the Nicaraguan rural society: "*The traditional consensus reproduces itself under the umbrella of whatever political or ideological rhetoric*" (Marchetti, 1994: 194). After the war, small 'Sandinista' and 'contra' peasants-agrarian reform beneficiaries therefore found themselves quite logically in a similar struggle to secure their individual claims to the land.



### 3.3. Important social actors within the political arenas around land property

Now that we have a grasp of the broad principles and processes of property rights practises in Terrabuena, we need to introduce a brief typology of actors that play a relevant role in the real world political arenas around land property before turning to the case-studies. Since property rights have to be secured by referring to both the local and national norm-generating spheres and instances, most of them operate as intermediaries that link producer-owners with both the community and the 'outside'. They are a kind of 'brokers at the interface' and function as important articulation points of the prevailing social fields and their discursive practices. We first describe those actors who function mainly at the community level and who link 'bottom-up' with actors situated at the municipal level and beyond. Secondly, we indicate those actors that belong to institutions operating at the municipal level or beyond, and who reach out into the community level through their operations.

At the community level, key actors are local *community* leaders, the "facilitador judicial rural" (FJR), the "promotor juridico", and the "seguridad ciudadana". Local leaders, officially appointed and/or recognised by the Terrabuena municipality, are key multifunctional brokers and gatekeepers to the community around whom all the other actors mentioned above articulate. Sometimes they are elected in a local democratic and secret voting process. In other cases they are elected in a public process of 'hand raising' or sometimes simply appointed by the Mayor without any local election at all. In areas with a high incidence of Sandinista or post-Sandinista agrarian reform, these local leaders are practically always historically dominant leader-members of the ex-cooperatives. Partially depending on the way in which they have 'gained office', but also as a function of their perceived performance for the community, local leaders enjoy more or less local legitimacy in their community. When there is congruence between the 'natural' community leader and the (liberal) political colour of the municipality, brokerage usually functions best and local leaders will have less difficulties to deliver on the communities' expectations and thus maintain and deepen local legitimacy, unless leaders are incompetent or excessively corrupt. When such congruence does not exist, Sandinista local leaders tend to confront the liberal municipality, which often leads to strained and less effective brokerage relationships with the municipality and the state

at the local level. Often this can be compensated by their better relations with NGO sectors or higher levels of state organisation where Sandinista influence is stronger. In certain cases, the liberal mayor – in an attempt to increase his local political influence – may also be tempted to ‘undemocratically’ impose a liberal community leader. Such a leader then usually faces fierce competition by Sandinista opponents, but may manage to gain legitimacy by ‘delivering’ to the community through the brokerage links with the municipality. Whatever the political constellation, local leaders are always officially linked to the municipality since they are the lowest level of state representation through which the ‘state’ acknowledges local leadership in view of creating a functional bridge between ‘municipality’ and ‘community’.<sup>20</sup> When local leaders mediate in conflicts over land property rights, they usually have to bridge the gap between state and local law, often tending more towards the recognition of the latter.

Besides the multifunctional local leader, we also find the “facilitador judicial rural” who mediates in all kinds of conflicts and spreads information on different legal and general interest topics (e.g. intra-family violence, alcoholism) and who is often in charge of several communities at once. The FJR depends on the municipality and is trained by the local judge. His role is similar to that of the “promotor juridico”, a function which is tied to the intervention of the NGO Actuar in 13 communities and is not linked to the municipality. Finally, a limited role is sometimes played in property rights conflicts by the “seguridad ciudadana”, which is linked to the local police at the municipal level.

In one way or another, all these local actors in their different guises and at different moments and places, play a role in local arenas to resolve claims and counterclaims or to prevent or mediate conflicts. They are all linked with different public institutions (municipality, local judge, and local police) at the municipal level, with the NGO Actuar functioning as a parallel structure, enjoying different levels of local acceptance and legitimacy. If these local actors are not capable of resolving the issues at hand in a satisfactory manner, they have the possibility to refer cases to the local judge or to the “commission de paz” (peace commission, see below for details) at the municipal level. Both have the capacity to arbitrate local cases without necessarily calling upon state law, but rather by forging and acknowledging agreements on which the different parties agree locally.

<sup>20</sup> In cases of outright political opposition between the Mayor and the local leader, the Mayor might be tempted to appoint his own representatives, trying to strengthen the opposition against the local leader.

At the *municipal* level, other local institutions participate in political arenas around land although it is worth mentioning they usually offer a wider range of services.<sup>21</sup> First of all, there are a number of *service cooperatives*<sup>22</sup> in Terrabuena, (the Asociación de Ganaderos y Agricultores de Terrabuena (AGAT), the San Fernando, 16 de Septiembre) that were born in the second half of the 1990s and that are of Sandinista political orientation. Out of these, largest is the AGAT which was formed in 1995 and comprises 11 ex-agrarian reform cooperatives in Valle de Bernardo and the rest of the valley region. Alongside the Sandinista cooperatives, there is also the Cooperativa de la Resistencia (or CoResist) which was created as a result of land occupations by ex-combatants of the contra-resistance and which is headed by former resistance leaders. Besides these cooperatives, there is also the Fondo de Desarrollo Local, a market-based credit institution with significant operations in Terrabuena. All of these institutions, except the San Fernando cooperative, provide some kind of legalization services, but it is interesting to note that they do not justify them in the same way.

The AGAT emphasizes the importance of legalization to protect small peasants since they assume legalization is currently only accessible to large landowners and therefore used and abused by these in their process of land re-concentration. A legal, individual title is therefore perceived as a necessity to safeguard land ownership of all the agrarian reform beneficiaries. According to our information from the CoResist, legalization is also necessary in order to guarantee the inheritance rights of women and children. Both FDL and the '16 de Septiembre' cooperative, that run substantial credit operations, promote legalization in the context of generating reliable collateral to guarantee investment loans. In the 16 de Septiembre cooperative clients are obliged to follow the internal legalisation process for loans above C\$ 70,000 (about US\$ 4,500). Similar thresholds exist in the FDL, where access to smaller amounts of loans also becomes easier and more flexible for clients with a title, since they no longer need to find a co-guarantor, providing bail, and usually a richer local patron (from whose influence they often want to free themselves). In actual practice, both the 16 de Septiembre and FDL legalization process are mainly confined to the 'título supletorio' type of titles.

<sup>21</sup> They often supply credit but can also be multisectoral cooperatives. Regarding credit, a threshold to grant credit has been defined above which a legal title is required. This threshold goes from about US\$ 2000 to about US\$ 4500. Despite this rule, all institutions are following different criteria to grant credit. However, social recognition seems to be as important as a legal title even for credit amount above the threshold. This means that also in the local rural credit market, a mixture between contractual guarantees originating in formal state law and informal social arrangements are necessary to make the credit market work. (For an illustration of this in the case of the Fondo de Desarrollo Local, see also Bastiaensen, 2000, 2002).

<sup>22</sup> In contrast with the agrarian reform cooperatives created during the Sandinista and post-Sandinista periods, membership in these cooperatives is not related to land property. These new cooperatives provide services (credit, commercialisation, technical support, etc.) to its members. Those tend to come from a much broader geographical area than the members of a typical agrarian reform cooperative, where most members logically live in the same village, on or close to the land that was received.

As a part of its broader programs in Terrabuena, the NGO Actuar has developed interventions with respect to land issues in 13 hamlets of Terrabuena. In principle, they work with all the institutions present in Terrabuena, but in practice their efforts have been matched most effectively by the AGAT with which they have entertained a stable and intense relationship. Actuar began working on legalization issues with the view that a legal title would improve peasants' access to credit; but nowadays their main argument is that properties of small peasants without legal title might be in danger of contestation, given the on-going legalization processes that mainly favor larger landowners.<sup>23</sup> In its somewhat limited area of influence (part of the Valley of Terrabuena), Actuar is an important NGO-actor in the local property rights arena and linking with higher level state processes, provides technical-administrative and financial support to legalize land for a limited number of peasants that are usually located on former cooperative land, and are thus required to follow the complex legal-administrative procedures to acquire individual titles. Besides its particular titling intervention, Actuar also supported the apparently successful efforts of the Terrabuena municipality to create a municipal cadastre of land property in the framework of the larger national effort of INIFOM<sup>24</sup>, by triangulation of locally legitimate information with geo-reference data from GPS-positioning. Although the municipalities' main motivation to create this valuable data base was local (land) tax collection,<sup>25</sup> it nevertheless also plays an important role in clarifying and securing local property rights. Some peasants use it to mutually clarify and document each others' property rights as a way to prevent conflicts. In some cases, the maps and documents also constitute evidences during conflicts or litigations over contested property rights at least at the local level but probably at higher level as well. Indeed, apparently, the NGO Actuar has made strong progress towards and, nearly reached, that the more accurate local information would sometimes even be used to correct and supplement inaccurately registered cadastral information in the departmental capital, Ocotal.

Actuar and AGAT are quite visible actors with a strong presence in some of the agrarian reform villages in the Valley. They attract members since they represent a real opportunity to access resources for legalisation (and other purposes) and they exert strong influence on people's beliefs and have contributed substantially to spreading a felt need for legal title in 'their' villages. The influence of the other institutions is more discrete and less strong. Some are focussed on the local elite of

<sup>23</sup> The argument is thus close to that of AGAT which sees legalization as a means to counteract land re-concentration

<sup>24</sup> Inifom is the "Instituto Nicaraguense de fomento municipal".

<sup>25</sup> The Terrabuena municipality does not really seem to have land property rights issues on its present-day agenda –which in itself is of course also an indication that insecurity of land tenure is not an urgent or severe problem. Nevertheless, the cadastral system has been developed to serve a multiple range of objectives.

cattle ranchers and other better endowed peasants (San Fernando and 16 de Septiembre), while the FDL has a broader social range, but is also quite more dispersed over the territories and has as of yet not developed intense legalisation efforts as compared to some of their other regions of operation. The CoResist initially had a very strong impact in the areas of its presence, but its influence has decreased due to waning legitimacy of some of its leadership.

#### 4. LAND RIGHTS PRACTICES IN TERRABUENA AFTER THE DEFEAT OF THE SANDINISTAS: SOME CASE-STUDIES

Both the Sandinista revolutionary land policies and the consequences of the armed peasant resistance have generated a series of *institutional shocks* that to this very day continue to exert substantial influence on local political struggles around land property. As we indicated above, the Sandinista land reform process disrupted the existing social order of the 'agricultural frontier' and its associated land rights practices. Indeed, the perceived illegitimacy of the redistributed land rights was one of the initial triggers of armed peasant resistance. The war and in particular the frontline between the Sandinista army and the forces of the armed resistance that ran through the municipality of Terrabuena also created a strong divide between the Sandinista-controlled, fertile and easily accessible Valley of Terrabuena and the relatively inaccessible mountain areas where the armed resistance found refuge and the Sandinista incursions were sporadic. In order to undercut local support for the contras, the Sandinista military obliged all people in the mountains to resettle in the better-protected and Sandinista-controlled valley area. Logically, most of the Sandinista agrarian reform was located in that same valley area, especially as it became increasingly motivated by politico-military rather than socio-economic motives in order to secure the hearts and minds of the local peasants. (Bastiaensen, 1991: 194). The cooperatives were a logical way to secure survival of the resettled population as well as a practical means to organise a more effective defence of the local territory and to politically control the local population. Even though the war itself was a clear expression of the political contestation of the Sandinista reforms, there was not much internal and peaceful space to question the legitimacy of the redistributed land reform property, since state (military) control was almost total within the confines of the Sandinista area. With the peace process and the unexpected electoral defeat of the Sandinistas, this situation changed drastically. The rapid decrease in state control and the overall political re-accommodation in the country as a whole also gave rise to a complex process of reorganisation and renegotiation of local land property rights. In Terrabuena, initially one observed a fierce struggle for access to land as well as an extremely active land market with significant in- and out-migration of producers following the return to the normal agricultural frontier dynamics, repressed by the war. Despite this turmoil and the concomitant legal chaos, interviews in the

regions reveal that a surprising amount of local producers seem to have assembled reasonably secure land tenure rights – from their subjective point of view –, reaffirming or (re)constructing the local legitimacy of their rights, with or without reference to statutory law or national political agreements.

#### **4.1. The initial contestation and renegotiation of the property rights of the Sandinista agrarian reform cooperatives**

The end of the war, the change of political regime and the ensuing reduction of the state, and in particular its interventionist role in the agrarian reform sector, radically changed the conditions for the Sandinista cooperatives. As a consequence, the cooperatives' land property rights were reorganised and renegotiated in response to both an internal and an external questioning of the prevailing rights and practices. Rights and rules, derived from the collective Sandinista model of vertical outside control, were immediately questioned from within the cooperatives themselves, inducing cooperative members to parcel out the collective land. Sometimes this individualization was already in place before the end of the revolutionary regime as a practical solution to the inoperative collective organisation of production. On the other hand, the appearance of anti-Sandinista and contra-revolutionary forces in formal and informal political arenas also implied a more fundamental questioning of the legitimacy of the cooperatives' access to the fertile Valley land – given the 'illegitimate' political origin of these rights. Even though the peace and transition agreements at the national political level legally, and thus theoretically, secured land property rights of the former cooperatives and their members, in actual practice cooperatives still had to make their claims validated and accepted at the local level.

In the first period after the end of the armed conflict, the initial demand for land by the demobilized combatants of the Sandinista army as well as the 'contra' forces intensified the historical struggle for land in Nicaragua. Following the peace agreements, a substantial amount of additional land was redistributed to ex-contras, to ex-Sandinista combatants and workers of state firms between 1990 and 1992. Most of this land was obtained from the privatization of state properties, new colonization area in the agricultural frontier and also the partial redistribution of Sandinista cooperatives to demobilized people (de Groot, 1994; Strasma, 1999). However, well into the reign of the new government – up to 1994 –, a large part of the ex-con-

tra peasants remained unsatisfied with the actions of the new government and started to doubt whether it would ever comply with the promises made in the peace accords. Several groups of ex-contras in Terrabuena therefore started occupying land of Sandinista cooperatives by force in order to strengthen their claims to the land that in their view was promised to them. In response to these land occupations and the threat of violence amidst the hostage crisis, the government stepped up the negotiations about access to land for these ex-contras with the occupied cooperatives as well as other local land owners willing to sell additional land. Finally, the re-contra movement, as it was called, managed to negotiate seven large land properties that would be grouped in and administrated through the CoResist. In theory, the cost of the newly acquired land would be shared in equal parts between the state and the new member-owners. As we have already indicated, by giving a collective title and thereby imposing an at least partially centralised administration, this new agrarian reform had a number of characteristics, similar to the previous Sandinista reform, especially in terms of the power imbalance between cooperative leaders (authoritarian patrons) and ordinary members (dependent clients, often longing for more autonomy). This situation would persist until individual members would repay their 50% share of the land price and thereby gain the right to process an individual title.

The pressure on the land from the returning contra forces was however felt long before the occupation took place and beyond the occupied cooperatives. In a way, the latter was a kind of final round of the on-going negotiation in which the contras (and some of their leaders in need of political clout), unsatisfied with what they had achieved up to then, successfully claimed a last additional share of the land. Indeed from the very beginning of the post-revolutionary regime, the fate of the Sandinista cooperatives was far from clear, despite the all too general reassurance of the emergency laws n°88 in principle guaranteeing property rights to cooperative members. In the predominantly anti-Sandinista Terrabuena, the local legitimacy of the ownership rights for the Sandinista cooperatives clearly had to be reconstructed and re-imposed. The initial fear of former owners reclaiming their land rapidly faded away. Provided their claims were accepted as legitimate, the new government proposed financial compensation rather than restitution of land, and most owners also preferred this solution. However, given the problem of the mass of demobilised combatants looking for land, contestation of cooperative ownership came



from this new group claiming to have similar entitlements to the redistributed fertile land of the cooperatives. Where local pressure on land mounted, the leadership of Sandinista cooperatives usually realized quickly that access to the redistributed land had to be renegotiated with the influential returnees. The local peace commissions, operating in the region after the end of the war with the mission to accompany the return of refugees and former combatants, often played an active role in the facilitation of these negotiation processes.

In actual practice, the problem of contra and other demobilized combatants' pressure on agrarian reform land<sup>26</sup> became mixed up with pressure 'from below' by the rank and file of cooperative membership to parcel out the collective land. With the demise of political and military Sandinista control of the cooperative and with the disappearance of subsidies, cheap credit and other social advantages provided by the revolutionary state, the undesired collective mode of production was no longer viable, nor was there anyone to impose the model. Most cooperatives there rapidly decided to give each member individual access to a specific parcel, where they could at least try to eke out some staple foods in order to guarantee some food self-sufficiency in the short term (D'Exelle & Bastiaensen, 2000).

The post-war experience of the *Pedro Arrauz* cooperative in Valle de Bernardo serves well to illustrate the kind of processes that took place. Initially, the leadership decided to form four decentralised commissions, composed of members of the cooperative, in order to parcel out the collective land. Given local pressure from the contra-side, they rapidly decided to create two additional commissions composed of demobilized combatants looking for land. This decision was taken in the framework of overall negotiations with the demobilized returnees and their former leadership in the local peace commissions, where the need to share some of the redistributed land was also promoted as a means to facilitate pacification. The *Pedro Arrauz* cooperative granted 100 manzanas<sup>27</sup> to each of two ex-demobilized commissions, while it kept 1200 out of the original 1452 manzanas to be shared among the members of the four initial commissions. Such sharing of land by Sandinista cooperative was obviously an initial and politically necessary first step to secure further local legitimacy of land rights.

<sup>26</sup> In Terrabuena most of the returned combatants belonged to the forces of the resistance.

<sup>27</sup> One manzana = 0,7 hectares

Evidently, the process of dividing up the cooperatives' land among its members was fraught with many difficulties. Sometimes there were complications in defining the members that would be entitled to the redistributed land, since the actual members at the time of the division often only poorly matched the list of original members mentioned in the collective agrarian reform title. In certain cases, former members indeed turned up to claim their part of the land. Once the issue of entitled membership was clarified, the trickier problem of dividing up the patrimony of the cooperative had to be dealt with. Certain cooperatives had to sell off part of their land to clear pending debts, since the change of government also implied an unannounced and unexpected end to the Sandinista policy of continuous debt remission. Once this problem solved, the real process of dividing up the cooperative could be tackled. Obviously, the cooperatives' land was heterogeneous in several relevant aspects, such as access to roads, water sources, topography, soil quality, housing and productive infrastructure, and so on. Inevitably, it was an almost impossible task to reach a negotiated consensus on a just distribution of the land. In actual practice, the process was under the strict control of the Sandinista leadership of the cooperative, which among others defined the criteria to be used for the purpose of the division. Besides obvious criteria, such as the estimated value of the land, age and sex of the members, also more political criteria such as the previous disposition to defend the Sandinista revolution were taken into account. Given the prevailing patronage structures, the Sandinista leadership 'naturally' ended up with the best pieces of land located near the previous centre of the cooperative (and the road), where most of the collectives' farm infrastructure and equipment was located. Possibly using (and abusing) their privileged access to resources during the Sandinista period, many of them also turned out to have acquired private land outside the cooperative before its division.<sup>28</sup> Power asymmetries thus played a crucial and un-equalizing role in the internal division of agrarian reform land.

<sup>28</sup> Case-studies of Nitlapán about cooperatives in the Masaya-Carazo region in the beginning of the 1990s documented that some of the leadership abused part of the collective loans for private land purchases. (Personal communication of researchers)

#### 4.2. Land market activation and the struggle for autonomy

The dissolution of the cooperatives as the structure regulating access to land did not immediately undermine the power and control of the cooperatives' leadership, although it obviously weakened them since the flow of income from collective production and state subsidies, which they previously intermediated, vanished. Some cooperative leaders, as the formal representatives of the cooperative, formally maintained their control over the land as they were the depositaries of the collective title. This was the case where cooperatives did not manage to pass through all the necessary and complex legal procedures to formalise the division and providing members with individual land titles. Most of the previous leaders also tried to engage in a new style of patronage with their poorer 'constituency' and thereby renewing their leadership as well as vesting uncontested property rights of the land and other resources they appropriated. (see also below) When the smaller peasants wanted to have access to loans, they often also were the only local contacts, with sufficient collateral, to which these peasants could turn to serve as co-guarantors of the loans.

The lack of a formal title did however not hamper that the *de facto* individualised land plots were heavily traded in a very active local land market, even when the legal status of the plots – being covered by the collective title – was quite uncertain and the sale of these plots thus quite problematic from a legal point of view.<sup>29</sup> As a testimony to the limited relevance of state legal provisions and rules in the local political arenas around land, quite many of the new individual owners quickly decided to sell their plots, either to local finqueros<sup>30</sup> or to new (small and medium-sized peasant) immigrants coming from the western dry zone looking for cheaper land now that the region was pacified. In the Pedro Arrauz cooperative, all of the Sandinista commissions have dissolved for lack of remaining original members; except the commissions formed by the original leaders, who later formed a new cooperative that to date remains the central reference point in the area. From all the ex-contras that had received land, only one member is still present, all others sold out and left. A similar evolution could also be noted in the newly created cooperatives of the CoResist, where apparently the first concern of many had been to get a piece of the cake and then to mobilise its value in order to invest it in a new farm in a more desired location, or to migrate to the cities or simply to survive during a certain period.

29 Rather than being an impediment for the development of local land market, as usually assumed by economists (Platteau, in Lavinge Deville, 1998), the lack of formal (individual) legal title thus rather seems to have been a stimulus, since it was at least in part insecurity of land ownership of the initial owners that drove the willingness to sell. At the same time, lack of title does not deter sufficiently embedded peasant smallholders to buy land and feel sufficiently secure. (Of course, in the case of real outsiders this could be different.). Moreover, to the extent that the act of buying increases legitimacy and security of land rights, the assumed causality between security and land transactions may also go in the opposite direction.

30 Baumeister & Fernandez (2005) indicate that at a national level part of the redistributed agrarian reform land has passed to the hand of finqueros.

A combination of several reasons seems to have spurred this sellout by many agrarian reform beneficiaries. Some seem to have had positive reasons to sell their share of the cooperative as they preferred to return to the same (or other) land-richer mountain areas, deeper in the agricultural frontier, from which they were driven away by the war. However, many beneficiaries also had negative reasons to sell out such as fear to lose their land or distrust in the cooperative' leadership. They rather preferred to cash in – even at a high discount in a relatively shallow land market – than to risk losing everything in an uncertain future. Often people also wanted to start a new life and to get away from the people and the tensions related to the war.

In practice, these massive land sales by the original, ordinary cooperative members have contributed significantly to the re-establishment of local legitimacy of land ownership in the areas of the former cooperatives. These new individual owners had in fact acquired their ownership rights, not by means of a fiercely contested political gift as in the case of the original members,<sup>31</sup> but through an act of buying, which is one of the ways to gain legitimate property rights in the agricultural frontier – as we have indicated above. At the same time, the land transactions were facilitated by informal information networks, running along extended family lines, such that many of the recently arrived peasants turned out to be relatives or friends of local peasant producers or – for that matter- of some of the agrarian reform beneficiaries who decided not to leave and managed to integrate successfully in the local communities. This contributed to facilitate the social integration of the new migrants in the new territory as well as to enhance the legitimacy of their land rights. At the same time, the landscape of the previously collectively managed farm started to change radically, with a uniform landscape of monoculture transformed into a patchwork of buoyant smallholder farms, growing corn and beans, and accumulating pigs and cattle. After some years, these evolutions managed to transform locally illegitimate land rights into locally accepted and surprisingly secure individual property rights, despite the dubious formal legal status of the plots, given that they officially still belonged to the collective land ownership of the cooperative, backed by a collective agrarian reform title. In the communities itself, the private sales documents were quite sufficient to sustain claims of ownership to the land.

<sup>31</sup> The use of the concept 'original' members is a little bit tricky here, since the membership of the Sandinista cooperatives was highly volatile. Many of the actual membership at the time of the end of the war did in fact not correspond to the first, 'really original' membership. As long as the war raged, members of Sandinista cooperatives in Terrabuena were however clearly identified as active (and usually) armed supporters of the Sandinista regime –even when some of this support was possibly more due to an urgent need for survival than real political conviction.

Some problems persist, however, in the often mutually uneasy relationship between these new owners and the cooperative leadership, which formally continues to be the custodian of the collective legal title and thereby inevitably extends some control over the newly arrived peasants. Many of the ordinary 'old' and 'new' owners of land from previous cooperatives express interest in a formal title as a means to end this patronage by the cooperative leadership – even when the local leadership is not necessarily disliked, nor actively pursues this patronage. In particular, for those requiring larger amounts of productive credit, the lack of an individual title reduces the opportunities for a more flexible access (without the need for a local co-guarantor – as we said often inevitably richer peasants from among the previous cooperative leadership).

The case of the CoResist 'cooperative' provides however a more problematic version of these problems. There, the government did not comply with its promise to reimburse half of the value of the loans that were contracted to finance the purchase of the redistributed land. Even though a major donor apparently contributed a substantial amount to the organization, confusion arose as to whether the common ex-contra beneficiaries now had to repay the full amount of the land value, as well as additional legalization costs, if they wanted to acquire an individual title. This evidently made it far more difficult for peasant members to gain their autonomy from the cooperative leadership. But even without this additional complication most of the beneficiaries as well as the new owners, who had acquired their rights from other initial beneficiaries, could not afford to pay what was required to obtain an individual title and therefore remained under the custody of the cooperative's leadership.

Grounded in their possession of the collective title, the leaders, among which a politically well-connected influential local landowner, also exercised a significant control over land use as they apparently decided about the transfer or even the denial of individual land rights – a practice whose legal 'co-operative' foundation remains unclear.

In one of the CoResist cooperatives, excessive abuses by the local representative of the cooperative leadership led to an outright rebellion and subsequent overthrow of the centralised control over the land. For years, peasants had felt they had been treated badly by the local leader, the CoResist and the government. Yet peasants expressed that they endured these hardships since they were afraid of losing their land

if they would raise their voice, as indeed has been the case in the neighbouring village. Some of the original peasant members therefore sold their land and were replaced by new settlers, among which a local trader: quite more autonomous, less dependent and socially more powerful. At a certain moment, the local leader and the CoResist decided to sell a piece of land on which a school, financed with external aid, had been built for the benefit of the community. This turned out to be an excellent opportunity for some of the newly arrived settlers, who had experience with community organisation from a neighbouring village, to react and gather widespread support in the community and beyond, in order to resist this arbitrary and detrimental decision. In the community elections that followed these events, the local leader was replaced and lost his control over the village and the cooperative. The new leadership then claimed the collective title to their land which was still formally deposited with the CoResist. By actively looking for the support of the municipality and some NGOs, like Actuar, they finally managed to get hold of the title. In other words, by exerting local political pressure they were clearly able to dispossess the self-proclaimed 'legal' proprietors, or at least the holders of the legal title. Afterwards, the NGO Actuar helped them with the process to obtain individual titles for all the owners, which was much desired as a safeguard against possible future abuses by any new leadership. Following this rebellion against the abuses of the leadership and also because of the different social status and self-perception of the new owners, the usual local patronage structures seem to have crumbled, creating new spaces for the development of more horizontal relationships between more autonomous individual landowners.

### 4.3. The re-invention of Sandinista patronage

Not all circumstances are the same, however, and in certain cases the dismantled cooperatives and their Sandinista leadership were quite successful in re-inventing and re-establishing their previous patronage-role under the new conditions. In these cases, the dependency relationship between the ex-cooperative leadership and their surrounding clients was continued with hardly any contestation by the latter as it was perceived functional for their (survival) purposes. The most successful in this strategy were the local Sandinista elites in the village of Valle de Bernardo. This village even became an exceptional case in the Nicaraguan agrarian reform history, since most of the cooperatives' organisational structures remained active even after the land was parcelled out even when many of the original members have been replaced by new owners. To a large extent, this has been made possible by the ex-cooperative leaderships' capacity to establish privileged linkages with external non-governmental aid agencies to their benefit and that of their poorer constituency. A particularly important role has been played by the AGAT, created in 1995 with the specific aim to reactivate the cooperatives in the region which at the time were at the verge of economic and political collapse.

In Valle de Bernardo, the Sandinista leadership created a new cooperative linked to the AGAT of which they 'naturally' assumed the presidency.<sup>32</sup> Based on the flow of resources running through these structures, they continued to be local gatekeepers of external subsidies for those belonging to their constituency within and outside the cooperative, much like had been the case before in their relation with the Sandinista state. This process was facilitated by the strategy of most development agencies in the region (mostly NGOs) to adopt a *community-driven* approach to development, which can easily be matched with the cooperative discourse and practise of the local leadership – even though the relative effectiveness in reaching some (not all!) of the poorer sections of the community hides a more problematic reality of patronage and dependency, often unknown or ignored by the well-intended NGOs.<sup>33</sup>

As far as the issue of the land property is concerned, one can note that this successful resumption of patronage strongly reduced the subjective perceptions of tenure insecurity. Even when the present leadership initially might have been perceived as having unjustly appropriated a disproportionate amount of better quality land and farm infrastruc-

<sup>32</sup>In fact, the new cooperative largely corresponds to the commission to which all of the leadership belonged and that was formed at the time of the dismantling of the cooperative (see above).

<sup>33</sup> We do not mean to suggest here that there is no genuine horizontal collective action taking place within and around these cooperatives, but we do stress that there are inevitably problems of patronage and power hierarchies in the relations between the richer, better connected and more powerful members with the poorer, less knowledgeable members.

ture, their property rights are by now often firmly legitimized in the local social networks, which does not prevent however that they would prefer to have individual titles (especially in view of guaranteeing a better access to credit).<sup>34</sup> The situation to a large extent mirrors the history and function of the *finqueros* in the agricultural frontier. Given successful and effective patronage, without excessive abuses of arbitrary power, most smallholders in their sphere of influence do not feel an urgent need to have an individual formal title in order to protect them from potential abuses by the cooperatives' leadership either. The presence of the re-invented and re-invigorated cooperative structures, with their upwards links to the AGAT and the municipal and national Sandinista party structures, indeed generates a general perception of stronger security in the face of any future inside or outside threats of contestation of their property rights. In fact, one should observe that due to the local legitimacy of land rights, the prospects of contestation of any right are quite small. A desire for individual title can however be observed by those who have a need to contract credit, including the richer proprietors themselves.

In the face of a higher relative security of tenure in Valle de Bernardo, as compared to other villages where the local leadership has not been equally successful in recreating effective patronage structures, it is rather paradoxical that a disproportional part of the beneficiaries of Actuar's (significantly subsidized) titling program are nevertheless situated in this village. From the neighbouring village of Limayito only the former cooperative leader managed to 'get onto the list'.<sup>35</sup> Yet, in Limayito, where the former Sandinista patronage structures have largely disintegrated and a much more fragmented social structure has emerged (D'Exelle, et al., 2004), our interviews showed that expressions of tenure insecurity by agrarian reform beneficiaries are much more pronounced. There is notably more fear about a possible outside contestation of the agrarian reform titles, which is spurred by the loss of the collective title in the turmoil caused by Hurricane Mitch, even though that title had been properly registered previously. Most peasants in Limayito however lack the information and the access to funds and assistance to engage in the complicated process of legalization. Except in the post-Mitch resettlement area, the capacity for local collective action which could be helpful in this context is also quite deficient in Limayito.

<sup>34</sup> There are also cases where ex-leaders have not managed to consolidate their positions as local gatekeepers and there a stronger desire for a legal title as a safeguard against possible contestation of the property right can be observed.

<sup>35</sup> This of course provides just another example of how important external and internal social connections are in order to get access to resources in the local political arenas, including those around NGO and other aid resources.



#### 4.4. The arrival of new powerful migrants

The issue of abuses by the more powerful local actors in order to get (cheap) access to land and the role of patronage as a local legitimating mechanism is not at all limited to ex-Sandinista or ex-contra leadership practices with respect to agrarian reform land. It has been an attribute of local land market practices of the agricultural frontier from its very beginning. Land grabbing in a weak institutional environment is in fact one of its defining characteristics. It should therefore not come as a surprise that similar practices reappeared after the war when the 'normal' agricultural frontier dynamics resumed and new migrants from the western dry zone arrived in the region looking for cheaper land. Some of them were well-endowed urban migrants who put small peasants under pressure to sell their plots, and in this way managed to accumulate considerable amounts of land in a relatively short time. Pressure was often exerted by not respecting the local rules regulating access to land and water (often critical in the reformed cooperatives) or by allowing cattle to damage farmer crops. Sometimes outright intimidation was applied. In most cases, affected peasants – especially the poorest ones – did not have the capacity to denounce these pressures and were forced to sell, often at far below market prices.

In Valle de Bernardo, local informants often refer to the case of a migrant, coming from a provincial town in the more developed west of Nicaragua. This man could amass around 800 mzs. (while the typical average amount of typical small peasant is less than 20 mzs), gradually buying plots from small peasants living on agrarian reform land. Apparently, and despite the fact that other peasants were in the impossibility to legalise this land, he managed to legalise part of it by the 'título supletorio' mechanism. In the hamlet of La Carreta, a similar evolution could be observed, with one rich new migrant buying land and accumulating up to 200 mzs.

It is crystal-clear that the state law does not provide a lot of protection against such land grabbing practices. In particular, it is interesting to note that small peasant-owners tend to be better protected against such practices to the extent that they can rely on local networks of support to defend their interests. There are indications that, for example, the powerful new migrant in Valle de Bernardo is quite restricted in his capability to force involuntary land sales by those small peasants who have consolidated themselves in the constituency of the

local Sandinista leadership – a factor which of course also contributes to strengthen the latter’s patronage structures. This illustrates what was mentioned above about the capacity of the renewed cooperatives to shield off any contestation of property rights in its area of influence. Those who sold land were the poorest and inadequately connected peasants, incapable of mobilising the necessary local support against the aggression by the richer farmer. It is also interesting to note the difference between the strategy of the new outsider owners in Valle de Bernardo and in La Carreta. In the smaller, more traditional and better-integrated community of La Carreta, the migrant-landowner has developed multi-stranded, new patronage relationships, including with some of the peasants that he left landless and who became sharecroppers and/or agricultural labourers on his farm. This producer also invested a significant amount of time and resources in building good relations with the local elite in the community. In the larger and socio-politically more divided Valle de Bernardo, the powerful migrant apparently did not care so much about his local integration, creating very few linkages with the community and relying heavily on the official law and – probably even more – on his own private capacity to defend his ‘rights’.<sup>36</sup>

#### 4.5. Local arenas in the mountain villages

The villages in the mountains to the north of the urban centre show a different kind of local arrangements around land issues than the communities in the Valley region. Indeed, the latter have experienced far greater *institutional disturbances* than the mountain villages, such that their local land arenas are more varied and complex than in most of the mountain villages. Also, better roads and easier access in the Valley increase the mobility of community members and stimulate the presence of multiple external organisations and related resource flows. Nevertheless, also the mountain villages suffered from the war as most of its population was forcefully relocated (mostly to the Valley) as a consequence of the contra-insurgency strategy of the Sandinista military. Those who did not follow Sandinista orders had no choice but to flee over the border to contra-revolutionary refugee camps in Honduras and/or to join the irregular insurgent forces. Beyond these drastic temporary measures, state intervention in the mountains was however almost inexistent and in particular no land reform processes occurred. After the war, many of the people who left, or were forced to leave,<sup>37</sup> returned to their original villages and gradually resumed their normal way of life based on their traditional values and rela-

<sup>36</sup> According to local gossip, the origin of the wealth of this new migrant could be related to illicit activities. This might be the factor that explains the relative absence of a search for local legitimacy and embeddedness, which makes this case somewhat deviant from the usual strategy to vest legitimacy of land rights in the establishment of local patronage relationships.

<sup>37</sup> Although some people could not, or did not want, to return to their original villages due to their contested political choice in the turbulent period of the war, for most of them their choice at the time does not seem to impact much on present-day relationships. Of course, relocation was forced and often the families on each side maintained much more contact than could be expected.

tionships. Social differentiation, and in particular the number of landless inhabitants, is quite inferior to that in the Valley region. Also, some of the villages are dominated by extended family-networks, such that many land issues are reduced to inter-family conflict and inheritance issues.

In these circumstances, it does not come as a surprise that most (of the few) disputes around land are solved through local social arrangements with little outside, legal or other, intervention. Disputes of a more serious nature are first of all mediated by the informal local rural legal mediators (*facilitadores judiciales rurales*). In most villages this seems to function quite well, except for one village where the local mediator was apparently an outsider piloted into the function without much local consultation, nor information. In another village, we also found that the local (Terrabuena) judge was sometimes called in by the local facilitator to serve as an outside mediator. Apparently, this was mainly due to the existence of a good personal relationship between the judge and the local “*facilitador judicial rural*”, who is also the recognised village leader. The local judge is only consulted when there is a need for outside mediation in order to resolve the issues in a satisfactory way. Such rather exceptional cases are however arbitrated by the judge without referring to state law, but rather by mediating and subsequently acknowledging agreements between the different local parties. Written documents are usually elaborated to formalise the more difficult local agreements between landowners in dispute.

In the mountain villages, a number of people are informed about the procedures to legalize land property (usually through the lighter mechanism of the ‘*titulo supletorio*’, since only some of the land has any previous legal history in the area). All of our informants in the mountain villages, including the leader/‘*facilitador judicial rural*’ of the village of San Sebastian, agree however that even this lighter procedure is still too costly and complex compared to its limited utility, given that most land property is uncontested and access to credit is unattainable for most producers anyway.<sup>38</sup>

In one of the communities, we also found an interesting illustration of the functioning of informal ‘agricultural frontier principles’ in local land arenas. In this community, 11 better endowed families with between 20 and 500 mzs of land share the area with poorer families that migrated more recently. One of the larger landowners rented out some of his land to one

<sup>38</sup> With the expansion of the rural microfinance from FDL and the 16 de Septiembre cooperative this could however change and indeed some of the larger *finqueros* express a potential interest in titling their land for this reason.

of these smaller producers for seven subsequent years and after that time found his tenants claiming the ownership rights to that land when the landowner decided to break their arrangement. The conflict was solved entirely within the community, without any outside legal or other interference. It was mutually agreed that the landowner could maintain the ownership to the land, but that he had to compensate his tenants as if they had been working for him as day-labourers during these seven years. Failure to accept this (expensive) compensation would have made the tenant – as the one who made the land produce – the rightful owner of the land. While this case illustrates the importance of active, productive use of land for property rights to maintain their local legitimacy, it also sheds light on the difficulties of land rental arrangement as long as the tenant demonstrates his productive capacity and undermines the owners' right (see also page 16). Moreover, it could be perceived as a constraint for larger farmers' decision-making power. Despite the fact that patronage constitutes a principle of entitlement to land and that respect for patrons' property rights prevail in the Terrabuena municipality, the outcome of this conflict's resolution shows also the obligation for larger landowners to assume their responsibilities towards smaller peasants.

## 5. SOME CONCLUSIONS AND COMMENTS

Despite the exploratory character of our research in Terrabuena, it nevertheless clearly demonstrates the variety and complexity of the locally specific institutional processes in land-related political arenas. We also found many indications of the diversity of ways in which local actors creatively play with different principles of entitlement, referring to either the complex legal framework of the state or the local laws produced in the evolving social field of the agricultural frontier. It is clear that legal issues play a definitive role in the local arenas. However, this role is not to be seen as unequivocal, independent or once and for all arbitration between conflicting claims, but rather as a strategic resource to be mobilised by actors in the social negotiations and local struggles over the legitimacy of their land rights. State legal land rights and state law in general are only valid to the extent that they can be made to be respected and valid in the local political arenas. And this validity is foremost dependent upon dominating local perceptions and power relations. Therefore, the entitlements of participation, i.e. the social position “*closely linked to membership in social networks and participation in both formal and informal political processes*” (Berry, 1993: 104) are indeed the determinant factor in the struggle over land resources. This conclusion is quite similar to that of Broegaard (2005) who, based on fieldwork in another region of Nicaragua, also concluded that there was no straightforward link between legal title and tenure security. Other studies on Honduras (Jansen & Roquas, 1998) also concluded that the state on its own did not have the capacity to define and enforce property rights in land.

Following this fundamental diagnostic, it is hard to see how a one shot state-led legal intervention, by means of a comprehensive land titling program, would change these real world conditions on the ground. In fact, our analysis gave clear examples how poor and politically weak land owners can be forced to ‘voluntarily’ sell their land by more powerful actors. Rather than believing that a comprehensive titling program would solve these issues in Nicaragua, when in fact it has failed elsewhere (Platteau, 2000), it could therefore be worthwhile to reflect about another type of state and legal intervention that would explicitly recognize legal pluralism and the locally negotiated character of land rights. An alternative approach might consist of the creation of more flexible local institutions aimed to contribute to better local land management practices (e.g. like the intermediating and arbitrating role played by the local

judge in one of the mountain villages). Such an approach could also offer new opportunities to try to equalise power relations within the local arenas, by defining certain rules of the game and by creating more effective –easier accessible and better informed- mechanisms of appeal. Fundamentally, however, the social position of actors will always remain key and therefore programs that try to foment local organisation and social integration of the weaker sections of society are very much wanted.

We also believe that our tentative analysis indicates that detailed studies about local land management practices leading to a better, qualitative understanding of land-related issues are quite necessary. Our analysis indeed also casts doubts on some of the more detailed elements of the dominant received wisdom. Mainly based on econometric research on a nation-wide sample (Deininger & Chamorro, 2000, 2002; Delaiglesia, 2003), this received wisdom asserts that (a) publicly registered titles are necessary in order to create security of tenure that would enhance the willingness to invest and spur the development of local land markets and (b) that no credit-collateral effect, that would also enhance the capacity to invest, was found due to a lack of rural credit supply altogether. In Terrabuena, we found however that the lack of (registered) legal land titles has not impeded the development of the local land market, but rather that the reactivated local land market has significantly enhanced the legitimacy of land property rights – sometimes even more than the mere possessing of a state legal title. We also found little evidence of widespread perceived insecurity of tenure (except maybe in some (few) remaining areas of conflict), which generates some doubts about the relevance of the nation-wide econometric evidence of a significant investment effect associated with the possession of registered legal titles in specific agricultural frontier regions like Terrabuena.

Our detailed analysis, however, did show a credit effect, or at least, a demand for land titling as a means to facilitate access to credit. In this case, this is directly related to the specific policies and credit-technologies of the FDL and the 16 de Septiembre cooperative in the study region (and thus not just a general expectation of such an effect –which afterwards might not materialise as observed in other regions (Broegaerd, personal communication)). In fact, without a title you are either restricted in the amount of credit, or you are required to find a co-guarantor of your loans (which often implies a longer, more burdensome procedure and possibly an undesired increase in

the ‘moral debt’ with the co-guarantor ‘patron’). In this context, we are however not talking about publicly registered titles, but mere ‘supplementary titles’ suffice for FDL and 16 de Septiembre, even when these titles do not have a full official legal value as collateral. Both credit institutions consider that the mix of official legal status and local legitimacy of these ‘supplementary titles’ is enough for them to serve as guarantees for loans (and in fact local practice proves that they are).

What our analysis also shows is that at least part of the smaller owners, especially within the reformed areas, might be quite interested in gaining an individual title, not necessarily because they feel insecure about their tenure rights, but because they feel uncomfortable with their continuing dependence upon the richer local ‘patrons’ (often the former leadership of the cooperative). The burdensome legal procedures and the impossibility to apply the simpler procedure of the ‘supplementary title’ are however a serious impediment for many of them to go through the procedures. Again, legal innovations that would allow simpler, locally managed procedures might be helpful.

Finally, following our own findings of the complexity and diversity of local land right practices, it is also clear that a lot more local research will be needed to fine-tune interventions in local arenas around land. Even in our study areas, our exploratory research left many relevant issues understudied, like e.g. the role of the local rural mediators in some of the conflicts that we mentioned.

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