

Legal pluralism as a new perspective to study land rights in Nicaragua.

A different look at the Sandinista Agrarian reform

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Abstract

Before the 1980's state-led agrarian reform in Nicaragua, the country was characterized by a very unequal distribution of land. The Sandinista agrarian reform deeply changed land distribution, creating state farms and redistributing large areas of land to small producers through cooperatives. The policy implemented was essentially based on distribution and enforcement from the state of collective land rights and attempted to compel beneficiary farmers to work in a collective way. This paper uses the lens of legal pluralism to analyze the Nicaraguan agrarian reform of the Sandinista period in the 80's. It shows the importance of social relations and power structures in the policies implemented during the agrarian reform. Besides, it demonstrates the importance of non-state mechanisms with respect to land and claims that these mechanisms are also the result of power and social relations. Finally it argues for the necessity to understand these social processes in order to design adequate intervention aimed at improving land access and tenure security for the poor.

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Introduction

The objective of this paper is to shed a new light on the Nicaragua agrarian reform that dramatically changed the landscape of land tenure in the 1980's but has been largely reversed after 1990. In order to achieve this we will develop a theoretical framework in which we will adopt a socio institutional definition of land rights together with an analytical approach based on the concept of legal pluralism.

The document draws on a literature review and the extensive knowledge that the authors have on the Nicaraguan rural reality and in special the agrarian reform process. More precisely, the analysis realized here aims at reinterpreting the extensive reflection already implemented for more than 30 years by one of the authors (M. Merlet) with respect to these processes using the lens of legal pluralism. Legal pluralism is barely used in the Nicaraguan context. Therefore, we believe that this can bring interesting insights both for the assessment of the agrarian reform process and the reflection about what kind of land rights interventions can be implemented nowadays in Nicaragua.

This paper is organized in three sections. Section 1 presents the theoretical framework that frames our analysis; section 2 gives an extensive overview of the agrarian reform process; section 3 analyzes this process using the lens of legal pluralism. Finally we conclude by giving overall conclusions and some recommendations.

1. The theoretical framework: socio institutional approach to land rights and legal pluralism.

1.1. Different approaches to land rights

In academic, policy and development arenas two main approaches exist regarding land rights. The first one is influenced by economic theories, argues for the superiority of private individual ownership and emphasizes the necessity to have formal legally recognized rights. This conception is related with modernization theories and what is called by Platteau (2002), the Evolutionary Theory of Land Rights according to which land management has to follow a universal transformation from collective land rights to individualized formalized rights, accompanying the gradual growth of an intensive market based agricultural production. This

vision focuses essentially on the economic role of land as a factor of production and has been defended by many economists and policy makers, leading to numerous interventions around the world aimed at the simplification and formalisation of land rights through titling and registration initiatives (De Janvry et al., 2001; Platteau, 2002; Benjaminsen et al., 2008; Sjastaad and Cousins, 2008).

The second approach to land rights is a socio-institutional approach. According to it, land is much more than just a piece of soil with economic functions, and has social and environmental functions. Here, land rights are the result of social processes, they are social constructions, are context specific and they continuously evolve according to the claims and struggles between social actors (Merlet, 2007; Lavigne-Delville and Chauveau, 1998; Le Roy, 1996). This approach brings two main implications. First, it implies the recognition of land as a particular space which contains other natural resources (e.g. water, biodiversity) that are used by human beings as part of their livelihoods (Le Roy, 1996). This aspect suggests that when dealing with land issues it is necessary to take into account, not only the rights on the soil, but also the other rights that exist on one piece of land and which are associated with other resources. Second, considering land rights as social constructions means that they “refer to relations with other humans who might travel over this space or use its [natural] resources” (Merlet, 2007:8). This leads to the idea that several social actors, whether individual or groups, can have rights over the same piece of land.

As a result, several authors have introduced the idea of ‘bundle of rights’ to deal with land rights (e.g. Merlet, 2007, Schlager and Ostrom, 1992; Le Roy, 1996). The concept of ‘bundle of rights’ means that land is characterized by a variety of superposed rights owned by different right holders. Therefore land rights are always incomplete, they usually overlap and are socially limited and controlled.

In sum, by adopting a socio institutional approach to land rights and using the concept of ‘bundle of rights’ this paper embraces a complex vision of the issue, more related to social science than economics. An important question that appears at this point of the work is how to handle with this diversity of rights and rights holders when trying to study land rights in a specific context. As we consider land rights as social constructions, it seems that one key aspect is related with the role of norms and rules that regulate the exercise of the rights. This paper will argue in the next section that the existence of a ‘bundle of rights’ and in particular of a variety of right holders is directly linked with the existence of a variety of normative

orders, whether formal or not, and that an interesting concept to deal with this is the concept of 'legal pluralism'.

1.2. Legal Pluralism and land rights

A quite predominant ideology when dealing with law and its role in society is 'legal centralism' according to which "law is and should be the law of the state, uniform for all persons, exclusive of all other laws, and administered by a single set of state institutions" (Griffiths, 1986:3). This ideology seems to fit very well with the economic approach to land rights that argues for the importance of the state in land rights management through the formalization of rights in the state based system. However, legal centralism can be quite limited when adopting a socio-institutional approach to land rights that recognizes the existence of a diversity of rights and rights holders. That is why this paper argues for the necessity to adopt an approach based on the concept of 'legal pluralism'.

According to F. and K. Von Benda-Beckmann (2006), the concept of 'legal pluralism' was firstly introduced by legal anthropologists to study the evolution of legal systems in contexts of decolonisation where the existence of several legal systems (e.g. former colonial law, customary law) could be observed. However, they say that, later on, this kind of approach has generated new debates about "whether the term 'law' should by definition be tied to the state, or whether it would also include normative structures of other political or social units" (F. and K. Von Benda-Beckmann, 2006:11). This broader questioning has led to several conceptions of legal pluralism. This paper will adopt Griffiths' idea of 'strong legal pluralism' (Griffiths, 1986) which is based on Moore's concept of 'semi-autonomous social fields'. According to Moore (1978), a semi-autonomous social field is a social space that "has rule-making capacities, and the means to induce or coerce compliance; but [that] is simultaneously set in a larger social matrix which can, and does, affect and invade it" (Moore, 1978:55-56). Moore also argues that the state is just one of these semi-autonomous social fields and that it does not have the monopoly of defining and enforcing rules. Griffiths (1986) uses Moore's concept as the core of its theorization of legal pluralism and argues that legal pluralism is an approach based on the empirical existence of different legal orders due to the existence of several overlapping semi-autonomous social fields, that have their own rules, norms and enforcement mechanisms and that can be formal or informal.

Entering more in details, we can say that working with a legal pluralist approach implies the following aspects. Firstly, law is, here, defined in a very broad sense. F. and K. Von Beckmann precise this idea by defining law as “a generic term that comprises a variety of social phenomena (concepts, rules, principles, procedures, regulations of different sorts, relationships, decisions) at different levels of social organisation” (ibid,2006:13). This definition of law is the one that will be adopted in the rest of the paper. Secondly, it implies that there is no hierarchy between semi-autonomous social fields, which means for instance that state law can not be considered as a better or fairer legal order. By doing so, legal pluralism seems to embrace Migdal’s approach of the ‘state in society’ which says that “no single, integrated set of rules, whether encoded on state law or sanctified as religious scriptures or enshrined as the rules of etiquette for daily behavior, exists anywhere” (Migdal, 2001:11) and that “[s]tates are no different from any other formal organization or informal social grouping” (ibid:12). Thirdly, it recognizes the importance of social factors, such as social relations, in the definition of rules and norms and rejects the idea that state-law can actually be considered as a tool for inducing social change (Moore, 1978). Fourthly, it reveals that there are continuous struggles between social actors belonging to different semi-autonomous social fields. These struggles exist inside each social space but also between them and play a key role in defining which norms and rules will prevail (Merry, 1988; Anders, 2003; Berman, 2007). Finally, and certainly most importantly, it implies that legal pluralism is not a concept that is only adapted to countries in a context of decolonization. On the contrary, as Griffiths says: “Legal pluralism is the fact, Legal centralism is a myth, an ideal, a claim, an illusion” (Griffiths, 1986:4).

In sum, the previous leads us to consider legal pluralism not as a theory on legal orders and systems but as an analytical approach to study concrete complex situations. This aspect has been highlighted by F. and K Von Benda-Beckmann (2006) who argue that legal pluralism allows to reveal different norms and rules according to one same situation and to explain from where they come and the possible social conflicts or struggles that they will bring with them.

1.3. Designing a framework of analysis

In the scope of this paper, the previous discussion about adopting a socio-institutional approach to land rights and using legal pluralism as an analytical approach has the following implications.

First, it will force us to recognize that the diversity of norms and rules concerning land rights revealed in section 1.1 is related with a multiplicity of normative orders and that this multiplicity of normative orders is linked with the existence and overlapping of several social fields. Second, in this landscape of social fields, it will imply a demystification of the state as explained by Younes (2003) who argues that by adopting a legal pluralist approach, social actors pass from being object of the law (i.e. they only receive norms imposed from above) to being subject of the law (i.e. they play an active role in the production and enforcement of the norms through the dialectic struggle between normative orders). Thus, in our approach there is no theoretical hierarchical order between them. However, the recognition that rights are social constructions leads us to understand that what really matters in the process of land rights recognition, protection and enforcement are the social struggles between social actors with uneven power and bargaining capacities inside and between social fields.

In sum, the previous section has stated that legal pluralism is an adequate analytical approach to study land rights and deal with situations characterized by a diversity of rights and rights holders. Altogether, the concepts of ‘bundle of rights’ and ‘legal pluralism’, create an interesting tool for the social analysis of concrete situations. This tool is applied in section 3 to analyze the Nicaraguan agrarian reform of the 1980’s with an innovative approach and try to grasp insights in the current general debate about land reforms. However, before realizing such an analysis, we need first to describe in details the Agrarian reform process in order to grasp the main.

2. An historical review of the Nicaraguan state led agrarian reform²

2.1. The context

Since the beginning of colonization, the Nicaraguan agrarian structure has been characterized by the struggle between two main sectors, a powerful oligarchic sector of large estates and a more and more important peasant sector of small farmers. During the colonial period, the laws in place only recognised “Spanish” and “Indian” members of the population, within a quasi apartheid framework, which allowed dominant groups to build their wealth on the

² This part of the paper is taken from Merlet, M. (2007). More precisely here we reproduce with little changes the description we had already made of the Nicaraguan Agrarian reform that can be found in pp. 23-32

exploitation of Indian labour force. However, a new social group of *mestizos* began to form and develop, gaining economic and political independence through their settlements step by step in vast unoccupied tracts of land. They were to make up the greater part of Nicaragua's peasantry. After the country's independence (1821), the only way the oligarchy in place and the new dominant classes could maintain their control was to gain possession of most of the land. They achieved this by developing coffee plantations, privatising virgin land in their favour and by putting a halt to the pioneer frontier, during the late 19th and early 20th centuries. The rebellion led by A. C. Sandino in the thirties expressed the peasants of the North's reaction to this process and the forced introduction of capitalist farming. The revolt was crushed, auguring a long period of dictatorship that lasted until the Sandinista National Liberation Front (FSLN) came to power in 1979. During the Somoza (father and son) period, a strong capitalistic development took place, the surfaces used for agriculture, (especially cotton, sugar cane, coffee) and extensive pasture considerably increased. The polarization of land structure became more and more critical in the populated and western regions, while peasants were pushed away to central and eastern forest areas, in an active agricultural frontier, where a considerable part of Nicaragua staple food was produced.

2.2. The Nicaraguan Sandinista agrarian reform

Nicaragua had an early "agrarian reform" in the 60s which had basically zero impact, if we set aside the projects for extending the farming frontier onto virgin lands, which had been misnamed as agrarian reform projects. Heavy crackdowns prevented any sort of rural unionisation. When the Sandinista Front took over in 1979, there was no national farmers' organisation capable of representing small farmers. The ATC (Asociación de Trabajadores del Campo), a recently founded association for poor peasants and farm workers which existed in 1979 in only a very localised form, took advantage of the prevailing mood and political context to extend its influence over the entire country, although it remained weak.

Instead of supporting farmers' movements and land invasions, the revolutionary government confiscated lands held by the Somozistas and turned them into state farms³, thereby forcing the poor farmers who had taken them over to become, or return to being, farm workers. Only the small groups succeeded in keeping control of their land by adopting the status of co-operative farms. In 1981, fearing that the wealthy peasants would turn to the opposition, the

³ State farm : farm belonging to the state and operated like a Junker estate or a large commercial farm, with resident labour force paid in wages.

FSLN backed the creation of the UNAG (National Union of Farmers and Livestock Breeders), which united small and medium sized farmers with part of the pro-Sandinista rural middle class. The ATC therefore only represented the farm workers and the poor peasants, whose belligerence and demands were considered as incompatible with national unity and defence. For this reason, they had no more room for real organisation of the civil society. Therefore, it was the government that directed the agrarian reform via the INRA (Nicaraguan Institute of Agrarian Reform) and then the MIDINRA (Ministry of Agricultural Development and Agrarian Reform).

The agrarian reform law (1981) allowed for the gradual allocation of insufficiently exploited land that is part of big estates. The beneficiaries were State companies and cooperative farms. Farmers must agree to work on these cooperative farms in order to have access to the land affected by the agrarian reform.

The State sector quickly grew to represent 20% of the country's agricultural production. An interventionist policy gave absolute priority to a few major agro-industrial projects with the aim of fulfilling a macroeconomic scheme to meet the immediate needs of the urban population. From 1981 to 1984, the UNAG took no initiative to further the agrarian reform. Its leaders, whose interests were often contrary to those of the poorest peasants, did not really claim more equal access to land. The government managed the technical support, finance, technical assistance and cooperatives management training. Whereas the State took care of "organising", it did not have the means to question the form it had inherited. Different types of farming were set up in the cooperative farms, but the farmers themselves could not become landowners nor ensure the security of their tenure. While the FSLN was in power, the agrarian reform beneficiaries were not allowed to sell the land they had received at no cost.

This division of tasks hindered the emergence of a genuine peasant movement. The cooperative movement did not structure itself into a Cooperative Federation until 1990, after the electoral demise of the FSLN. Peasant resistance began to materialise in the face of unfavourable economic and agrarian policies (1980-1984: priority given to government farms, price controls, disorganisation of commercial channels). In the central region of the country, unable to find channels for expression in recognised organisations, the peasant opposition was recruited by the counter-revolution, which received massive financial and military assistance from the USA. In the Pacific region, peasant resistance took other forms: resorting to the

black market, setting up rather secretly individual plots or herds within the farm cooperatives, demanding land from service cooperatives, joining protests linked to the Catholic Church.

The political and military situation became critical at the end of 1984. In order to rebuild the alliance with the peasantry, the revolutionary government reintroduced the right to trade, improved the conditions of exchange between urban areas and the countryside and modified its agrarian policy. The role of the UNAG in applying these measures was only secondary. Land redistribution increased and the beneficiaries were left to organise themselves as they pleased. The number of individual plots assigned increased, though the title deeds issued through the agrarian reform were non-negotiable and were more than often assigned collectively. From 1985 to 1987, nearly half the State sector had been redistributed to cooperatives and small farmers. These measures helped the government to regain control of the situation. Food production increased and the advance of the "Contras" was stopped, but the rift in the peasantry remained. Softening the agrarian policy from 1984 onwards did not bring about any radical revision. Once the country had emerged from its crisis, the FSLN stopped agrarian reform from going further.

2.3. Changes in the structuring of the farm sector in the late 1980s

By 1988, the way land was organised had been transformed, albeit in a limited way. The large farms (over 350 ha) only represented 19% of cultivated farm surface area (7% private, 12% government farms), instead of 36% in 1978. The cooperative farms occupied 12% of the land while the rest remained in the hands of individual peasant farmers and the lower middle classes of the countryside. Land was given to 70,000 peasant families, about one peasant family out of two. However, the portion of land given for individual use only amounted to 5% of the country's cultivated land.

The political context changed radically in 1990 when the opposition won the elections. Under pressure from the farm workers, the lands occupied by cooperative farms were divided up and individual farms became the rule in only a few years. By 1994, 80% of the cooperatives had been parcelled out. The organisation of the farm sector had been radically modified by successive and often contradictory reforms before the changes desired by previous governments came to fruition. Nicaragua had become initially one of the Latin American countries with the least unequally distributed land tenure systems. 70% of the country's

farmland was occupied by farms smaller than 140 ha as opposed to 47% in 1979, whereas farms over 350 ha decreased from 36% to 17%. However, the situation remained very fragile.

2.4. The 1990s: insecurity and concentration of land ownership

Violeta Chamorro's government began to work for national reconciliation. The return to peace revived farming on the pioneer frontier, which had declined during the armed conflict. Regarding land, the new administration set up compensatory mechanisms for former owners affected by the agrarian reform, and started revising reform-period title deeds.

It privatised the State farms to the benefit of both sides' soldiers (the officers receiving much more than the ordinary soldiers), former owners and private purchasers. After having fought for it, State farms' workers earned the right to continue farming part of the land. Workers' companies were established, which were supposed to buy the land after several years.

From 1990 to 2000, a series of laws were passed to deal with what is known as the "ownership problem". However, these laws have been applied only partially. By creating or maintaining maximum land insecurity for those who use the reformed land, as well as through discourses about the supreme respect of the law, the successive governments actually promoted a restructuring of the national agricultural landscape that privileges the strongest.

In addition, there was a situation of economic insecurity: the structural adjustment policy, started by the Sandinista government and continued by its successor, has led to a brutal change of rules by eliminating a large number of subsidies for farmers.

Because of high tenure insecurity resulting from pending legal problems, the people who work on the new small farms or for recently privatised former State companies suffered from pressures coming from former landowners and the police. Also, both the reduced possibilities for obtaining credit and the shortcomings in the processes of renegotiating prior debts incurred by the companies or cooperatives were economically suffocating. Under these conditions, the advantages of more equal distribution of property as a means for increased economic development were rather difficult to see.

Many former owners immigrated to the USA during the revolution and acquired American nationality. The American government pressured for the compensation of "its" nationals, threatening to impose the blackmail of international aid if it was not the case. The

compensations of former owners reached exorbitant amounts that could not be handled by the country on the macroeconomic level.

In spite of easily bypassed legal conditions, large expanses of reformed lands are being sold at prices far below the market price, due in part to their imperfect legal status. These sales mostly concerned the best lands and those with the highest value in terms of urban and tourist construction. In the communes of San Juan del Sur and Cardenas, with high tourist potential, 91% of the lands belonging to cooperatives had already been sold in 1994. If a balance sheet were to be made taking into account the assets (e.g. land awarded to veteran soldiers) and losses (sales, restorations to former owners), it would be clear that the beneficiaries of the reforms have lost a running total of 400,000 ha of land between 1990 and 2000.

The farmers' organisations did not find any solutions to prevent this reversal of the agrarian reform land distribution. In 1993-1994, UNAG and FENACCOOP admitted that the division of cooperatives was the rule although they maintained a predominantly collectivist discourse, still refusing to consider systems that allow the legalisation of individual plots, and even establish mechanisms that would have permitted the control of latter transactions by a community authority.

Globally, agricultural colonisation, land markets and agrarian reform had mixed results. This is especially the case if one considers the economic and human cost of the transformations that have occurred in Nicaragua over the past few decades. There was some improvement concerning access to land: since 1963, the GINI coefficient decreased from 0.79 to 0.71 at 2001 (CENAGRO agricultural survey, 2001). But the 2001 survey confirmed what empirical observation had shown: the arrangement of the country's farm sector is evolving rapidly towards dramatic polarisation.

Progression of the distribution of land in Nicaragua: 1963 to 2001

| Category | % owners | | % surface area | |
|--------------|----------|------|----------------|-------|
| | 1963 | 2001 | 1963 | 2001 |
| < 0.7 ha | 2 | 5 | 0 | 0 |
| 0.7- 7 ha | 48 | 39 | 4 | 3 |
| 7- 140 ha | 44 | 52 | 37 | 54 |
| 140 - 350 ha | 3 | 3 | 18 | 21 |
| > 350 ha | 1 | 1 | 41 | 22 |
| Totals (000) | 102 | 200 | 3,823 | 6,254 |

Source: Survey 2001 CENAGRO.

Whereas 44% of farmers still own less than 3% of the land, 1% continues to control nearly a quarter of the country's farmland⁴. The sale of land affected by the agrarian reform has continued to benefit a small minority of Nicaraguans and foreign purchasers.

Although large farms are now in crisis, for example, with the fall of coffee prices on the international market, a coherent agricultural policy capable of placing small commercial farming at the heart of the national development strategy is not yet a component of the programme promoted by the decision-makers or any major opposition party.

3. Analysis of the Nicaraguan agrarian reform using the lens of legal

pluralism

In the following section we will try to analyze the agrarian reform process described above using the analytical approach designed in section 1. As a crude simplification we can say that two main social fields participated in land rights management in the Nicaraguan context: the 'Sandinista state' and the 'peasant society'. The distinction between the state and peasant society as two semi-autonomous social fields participating in land issues has been proposed by Bastiaensen and al. (2006), in a study undertaken about property rights practices in the Nicaraguan interior. In this work the authors identify that all the rules and norms that are related with land are not imposed by the state. On the contrary, they say that the normative system that characterizes the context of agrarian frontier "still remain an important reference in everyday life" (ibid:15). Even if this study has been realized almost 30 years after the Sandinista Agrarian reform in a specific region of the country, we are likely to claim that the argument made by the authors can also be applied to other historical periods and regions of the country.

3.1. The peasant society

Having access to all the complexity and context specificity of the normative systems that exist locally is a tedious and always incomplete and subjective work. Besides, assuming that these rules are the same all around the country and that they have been the same in the last 30 years is certainly an exaggerated simplification. Thus, it is not our ambition in this paper to give an exhaustive list of these normative systems, but to identify some common and general features

⁴ The method used in the survey systematically underestimates the concentration of land ownership, since it reasons in terms of farms and not owners, which often have several farms in different regions.

that can describe the Nicaraguan peasant society. Indeed, we believe that, in the scope of this paper, this level of simplification is helpful to highlight relevant points for the reflection.

Most of the normative system that exist in the peasant society can be related to the argument made by Maldidier and Marchetti (1996) about the importance of the image the ‘campesino-finquero’ in Nicaraguan rural societies. These authors define the ‘campesino-finquero’ as a medium land-holder who has been able to have access to a portion of land on which he can implement agriculture or livestock activities and that he will be able to transfer to his children. Important characteristics of the campesino-finquero are that he sees himself, and is considered by the rest of a society, as the legitimate owner of this piece of land (whether having legal documents or not) and, that he is a model for the rest of the society as argued by the following excerpt:

“They have a farm, even if it is small one, and are a sign of hope and a model for all the poor peasants: because the agricultural worker dreams of growing plants, even if it is in another’s land; because those who rent land and the sharecroppers dream of having their own plots of lands.” (ibid.:, 1996:3, personal translation)

Obviously, most of the peasants in rural areas are not ‘campesinos-finqueros’ as it is confirmed by Maldidier and Marchetti (1996). Besides, the description given above may certainly be influenced both by the ideological conceptions of the authors and a too strong reference to the situation of the ‘agrarian frontier’ that characterize the interior of the country. Peasants do not even explicitly refer the model of the ‘campesino-finquero’, which is an academic conceptualisation of the reality. However, our own field experience confirms the importance of the values comprised in the above definition in the peasant society, and that is why we consider interesting to adopt it in this paper.

Moreover, in the scope of the present study we have to notice the importance of access to land in the model of the ‘campesino-finquero’. More precisely, it appears that what matters is an individual and locally legitimate access to land. Drawing on this idea, Bastiaensen et al. (2006) have identified five “socially accepted ‘routines’ [...] that have the potential to create and/or maintain locally legitimated land ownership” (ibid:15):

1. The ‘improvements’⁵ made on the land in order to transform it in a productive area.
2. The efficiency of the farmer. This aspect refers to the ability of the producer to demonstrate that he will be able to make the land produce (e.g. because of his knowledge, work)
3. Patron-client relationships. This corresponds to the fact that medium or large landholders can gain legitimacy about their tenure through their capacity to provide security/protection (i.e. sources of income, place to live, support in case of shock) to poorer people in exchange of various services.
4. The purchase of property rights
5. The inheritance of property rights

In addition to these five aspects, Broegaard’s work (2005) leads us to add a sixth element: the social relations and economic situation of the land holder. In effect, Broegaard argues for adopting the concept of perceived tenure security. This means that tenure security is not only a question of having official state-issued (or state-recognized) legal document but rather a matter of social relationships, power balance and economic situation, all of these factors interplaying in a specific context at some specific moment.

Finally, there is one important aspect on which the previous study does not give any light and which is actually very important when dealing with land rights: the issue of a plurality of rights and right holders. Based on our field experience, we believe local practices that characterize land rights relations actually recognize the idea of ‘bundle of rights’. On the one hand, our observations on the evolutions of the structure of the peasant sector show that it is in a constant state of change. In order to adapt to these changes, several mechanisms are actually implemented by peasants according to the circumstances in order to secure the access to land whether inside families, between neighbours or through market mechanisms (e.g. inheritances, sales, leases, loans, sharecropping). To this multiplicity and constant evolution in the use of one or another mechanisms corresponds a multiplicity and always changing list of rights and rights holders concerning a piece of soil. On the other hand, we have also been able to acknowledge the existence of several the informal arrangements between right holders

⁵ This term has been traduced by the authors from the Spanish term ‘mejoras’ frequently used in Nicaraguan rural areas to refer to the inversions, in money or in labour, that human beings realize on a piece of land to improve its capacity of production.

in relations with natural resources present on a piece of soil and the use that is actually made of this resources. For instance we can underline the existence arrangements concerning water rights, path rights or grazing rights. Moreover, these arrangements appears to be very context specific depending both on the geographical and the social contexts.

3.2. Relationships, struggles and conflicts between with agrarian reform's normative order

3.2.1. The main contradiction between Sandinista state law and peasant law

The previous analysis of the peasant society reveals interesting aspects of the historical description of the Agrarian reform process presented in section 2. Indeed, it appears that huge differences exist between the peasant society's normative order and the Sandinista state's normative order.

Firstly, in spite of the importance of individual land rights and individual production systems in the peasant society, the Sandinista state put collective forms of production and collective access to land at the core of its intervention. This collectivization of the production tends to simplify the approach of land rights. Indeed, it centralized and oversimplified the production systems and leads to a tendency to deny the existence of a multiplicity of rights and rights holders that characterize the access and management of resources in the peasant society.

Secondly, most of the mechanisms described in section 3.1 to legitimate the access to land were tremendously weakened during the Sandinista era. More precisely, it appears that a specific tenure regime was introduced in the land affected by the agrarian reform. For instance, the land of the cooperatives could not be sold or mortgaged; it could simply be conveyed through inheritance under certain conditions to descendants. Another example is linked with the collective production system inside the cooperative. Bastiaensen et al. (2006) explain that, the fact that most of the production was collective and that it follows the directives of centralized state authorities challenged the efficiency of the farmer and the improvement he realized on the land as ways to built legitimacy of land tenure.

Thirdly, it seems that the important support given by the state to the sector concerned by the land reform, maintained the pattern of client-patron relationships. However, this time the state was the one that played the role of patron (Bastiaensen et al., 2006).

Altogether, the previous contradictions reveal a huge denial from the state of the practices that locally characterize the peasant society. On the contrary, it appears that the state made an important effort to try to centralize land rights management, demonstrating the adoption of a legal centralist positioning. Nevertheless, even in this highly state controlled system, it appears that that peasants tried to reproduce in certain extent the some of the features of the peasant society's normative order. More precisely, they illegally and more or less secretly implement mechanisms of production and land rights transfers that were consistent with come features of the peasant society inside of the cooperative system (selling plots, ceding land for sharecropping or rentals).

Finally, it is interesting to notice that this denial of the values of the peasant society seemed to have had a certain influence in the process of land redistribution after 1990. Indeed, Bastiaensen et al. (2006) argue that the redistribution of individual plots of lands between members of the cooperatives lacked of local legitimacy because it did not correspond to the social processes that characterized the peasant society. As a result, these authors argue that, by fear of losing the acquired rights over the land, several former members of the cooperatives preferred to sell their plots. The interesting aspect here is that it appears that the buyers were considered locally as more legitimate owners that the peasants who received land through the post 1990 redistribution processes internal to the cooperatives.

3.2.2. The importance of social struggles and uneven power relationships

The review realized in section 2 also shows the importance of social struggles and uneven power relationships inside both social fields but also between them.

First, the historical review reveals the importance of the low level of peasant organization that result in a low bargaining power of the peasant society in order to influence the policies implemented at the beginning of the 80's. Even, when the level of peasant organization increased during the 80's the role they played was very limited according to the way the Agrarian reform was implemented. According to our analysis, the latter was also the illustration of differentiate power relations and interest inside the most important peasant organization whose leaders' main interest was not in a real individual distribution of the land. Moreover it appears that the changes in the policies implemented after 1984 that incremented the land that was individually allocated were not the result of an in-depth recognition of the features of the peasant society by the state. On the contrary, it was a 'strategic move' from the

Sandinista state in response to a situation where it needed to regain the support of the peasantry.

Second, it appears that what is behind the social struggles and uneven power relationships in the context of the agrarian reform are actually discursive struggles that correspond to different ideological approaches of agriculture, and more generally development. Actually, the policies implemented in the Nicaraguan agrarian reform correspond the argument of the superiority of a 'modern' large-scale mechanized and chemical inputs-consuming production system as compared with 'backward' unproductive family production systems. Interestingly, the previous vision that enters largely in contradiction with the values of the peasant society was actually highly supported by the Sandinista state. It has been proven elsewhere (Merlet, 1991) that actually this approach corresponded to the ideologies (and interests) of the two powerful sectors allied at the head of the Sandinista state. The first sector was composed by members of the oligarchy that were allied with the FSLN against the dictatorial regime. They belonged to families that hold large quantity of land on which large scale mechanized production systems had been implemented for long and some of them enter to work in the Sandinista government. The other sector comprised the historical members of the FSLN that were characterized by dogmatic-socialist. This approach was conveyed by the example of Eastern Europe and Cuba where the path followed was towards the replacement of unproductive family production systems by large scale mechanized systems.

In 1990, dramatic changes occurred and the Sandinista state system was replaced. This leads to the evolution in the context and power relations surrounding the land that was re-allocate during the agrarian reform. At first sight, the individual redistribution of plots of land in the cooperatives and their posterior management locally by a system governed by local practices seems to indicate that renewal of the peasant society system building again a local legitimacy around the access to land. Nevertheless, it is unquestionable that the polarization of land tenure since 1990 is an illustration of the important influence that new social struggles and power relations play in land access processes. Moreover, in these processes of struggles and bargaining around access to land poor peasant family seems to be at the losing side, which concretely leads to the weakening, and often the lost of their land rights. Particularly, the tenure of individuals that receives land from the dismemberment of the cooperatives was threatened both in the local peasant system (Bastiaesen et al., 2006) and in the state system. In both systems, more powerful actors often challenged the rights of the people and were able to

gain access to land, whether based on locally-legitimate processes of access to land or on legally processes in the new state system.

This process is actually confirmed by Maldidier and Marchetti who write that “the agrarian reform beneficiaries dream of the day when their friends will describe their plot of land with the word ‘farm’” (ibid, 1996:03, personal translation)

Conclusion

The analysis of the Nicaraguan agrarian reform 30 years later using the lens of legal pluralism is actually very insightful. By forcing us to broaden our scope of analysis and to look further than just the characteristics of the state intervention it reveals that land rights are developed and enforced in social and relational arenas where bargaining processes between social actors and power structures play a key role. The policies implemented during the agrarian reform respond to these social relations. It has been proved that the transformations were radical only on the surface and that they were unable to alter the social relationships in the countryside or to shift the power struggle over land matters. More importantly, the polarization of land tenure in the last 30 years is also directly related with these social struggles. As a result, nowadays the question of land access and tenure security is still at the core of the debate about rural development in Nicaragua. However, the question remains to define which kind of intervention had to be implemented to allow for a real fair and long lasting redistribution of land.

The previous analysis leads us to argue two things. First, the in-depth understanding of the local practices that govern land rights and of the power relations is necessary. This can hardly be done at national level because of the complexity and context specificity of the situations. As a result, we tend to argue for decentralized land management schemes. Second, it seems crucial to ‘level the field’ with respect to the bargaining processes concerning land rights in order to allow for the poor to have their rights respected. In order to achieve this, representative and strong peasant organization and more generally processes that could strengthen the position of the poor in front of other actors are necessary. The way to achieve this is not easy and doing concrete proposals about the path that has to be followed goes well beyond the scope of this paper.

Altogether, this leads to the necessity to have a reflection about governance structures that will govern land rights management. The issues of the type of structures, their level of decision making, the existence of appeal procedures, and more generally the rules and norms that will be respected are crucial. In particular, special attention has to be given to the introduction of the mechanisms and values that characterize the peasant society local practice in the design and implementation of these governance structures.

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