

A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective

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ABSTRACT

Contemporary policy discussions around land issues concern the contested past and uncertain future of public/state lands worldwide, taken in the context of two broad currents in the development policy discourses, namely, effective poverty reduction strategies and efficient land governance approaches. This paper offers a civil society perspective on this complex development question. It examines the question using the lenses of poverty reduction, governance, human rights, and empowerment. State/public land is an important category in contemporary discourses around pro-poor policy and governance because of the enormity of its scope worldwide in terms of actual land area and the number of rural poor directly linked to it. But it is a category that is not fully understood by mainstream state and non-state actors, including many civil society actors. It is especially crucial to specify the key criteria of a ‘pro-poor land policy’ and ‘truly democratic land governance’ concerning state/public lands. This paper attempts to do that, using insights and lessons from previous scholarly studies and also empirical cases drawn from activist databases, including that of the international human rights organization Foodfirst Information and Action Network (FIAN).

“States and the international system have not been capable of defeating poverty and hunger in the world. We reiterate our call to our governments, to the FAO, to the other institutions of the UN system, and to the other actors who will be present in the ICARRD, and our societies, to decisively commit themselves to carrying out a New Agrarian Reform based on Food Sovereignty, Territory, Dignity of the Peoples, and which guarantees us, as peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendants, unemployed workers, Dalit and other rural communities, the effective access and control over the natural and productive resources that we need to truly realize our human rights.”¹

¹ Excerpt from the Final Declaration of the “Land, Territory and Dignity” Forum, a civil society parallel meeting to the ICARRD, 6-10 March 2006, Porto Alegre, Brazil, convened by the International Planning Committee (IPC) for Food Sovereignty, a global network that includes La Via Campesina and the Foodfirst Information and Action Network or FIAN, among others.

1. INTRODUCTION

Importance and relevance of the issue

For organizations and movements of the landless or near-landless rural poor today, many of whose rights are either fragile, insecure or non-existent, land has a multidimensional character. Land is crucial for constructing a rural livelihood, for laying the foundations for social inclusion and empowered political participation especially in development-related decision making, and for ensuring cultural and collective identities. Full and meaningful, effective access to land is central to their existence and survival. Most close observers today agree that there is a strong connection between state/public land and rural poverty, while at the same time, rural society remains heterogeneous with much social differentiation along class, gender, ethnic and historical lines. Given this, how to ensure full and effective access to land resources for the rural poor in state/public land is of major concern.

The conventional perspective and the need to rethink it

Conventional thinking about land policy in public/state lands revolves around two broadly distinct but related streams of thought, both of which are concerned with ‘combating poverty’. The first current emphasizes the productive assets deemed necessary for the rural poor to construct livelihoods, views public/state lands as having great potential to be transformed into active capital of the rural poor, and sees the need to carry out reforms in terms of how these lands are officially recognized, (re)allocated, and used within and between households and communities. The second current emphasizes making the necessary reforms while at the same time promoting good governance, or the most technically and administratively efficient ways and means to carry out ‘pro-poor land policies’ (usually assumed to be the most transparent, fastest and cheapest as well). But while both streams of thought correctly draw a link between rural poverty and state/public lands, they both suffer, unfortunately, fatal analytic weaknesses that undermine their power for pro-poor land policymaking (broadly defined). The first weakness has to do with their understanding of landed property rights as ‘things’ and not social relations; and the second has to do with their ‘blindness’ to several key dimensions in the stratification of human life, which if left ‘unseen’ will inevitably impede truly pro-poor land policymaking.

Toward an alternative framework for pro-poor land policy

Too often, ‘pro-poor’ land policymaking has had the reverse character and effect in reality, leading to crooked processes and skewed outcomes favouring elites rather than the rural poor. This suggests that it is not enough to claim that land policies aimed at public lands are pro-poor; it must be so in practice, in terms of both the process and the outcome. But how to achieve this is not obvious. What is needed is an alternative framework that is capable of understanding better the importance of effective access to land by the rural poor, of anticipating the obstacles to achieving effective access, and identifying possible steps forward. We propose a set of core criteria that we believe can be used toward the construction

of alternative approaches that will be more capable than the existing ones of generating truly pro-poor land policies and policy outcomes. The proposed framework is grounded in a human-rights based perspective that takes seriously the heterogeneity of rural society in terms of class, gender, ethnicity and history, and that gives absolute primacy to promoting and boosting rural poor people's full and meaningful, effective access to land-based wealth and power in state/public land.

Methods

In putting forth a framework for a civil society perspective on state/public lands, this paper hopes to contribute to the building of a useful and relevant alternative approach to policymaking in the state/public land sector. It attempts to do so by drawing in part on knowledge accumulated by one especially qualified international NGO network, namely the Foodfirst Information and Action Network or FIAN. FIAN is well positioned to undertake this task not only because of its well-established human rights perspective and work, which provides empirical case material for consideration, or because of its extensive network of country-based human rights advocates and advocacy groups. FIAN is well-positioned for such analysis precisely because, alongside the transnational peasant movement La Via Campesina, it has been an active participant in the two largest and most important initiatives by rural poor movements, historically, to amplify their own voices in local, national and global policymaking. These two historical initiatives are the Global Campaign on Agrarian Reform (GCAR) and the IPC for Food Sovereignty (IPC).

Despite its extensive background on the important and urgent issues and questions at hand, FIAN nonetheless does not pretend or claim to provide the only possible civil society perspective on these issues. Rather, FIAN is well aware of its own knowledge limitations, as well as of the likelihood of there being a plurality of civil society perspectives on these matters as on others. One limitation of this paper on state/public land issues is its geographic scope. FIAN's databank, logically enough, is limited to geographic areas where FIAN members are located and working on human rights issues; hence the specifically FIAN case material used for this paper does not include, for example, cases from the transitional societies of the former Soviet Union, nor does it include cases from the Middle East. Another limitation is that not all of FIAN's advocacy work is around human-rights issues in specifically state/public lands; FIAN also works in urban, peri-urban, and private land settings. The FIAN case material reviewed this paper is drawn mainly from Central America (Honduras, Guatemala, El Salvador, Mexico), South America (Venezuela, Brazil, Paraguay, Bolivia, Colombia, Ecuador, Argentina, Chile), South Asia (India, Pakistan, , Bangladesh, Sri Lanka), a few parts of Southeast Asia (Philippines) and a few parts of Africa (Uganda, Ghana, Chad).

In light of these limitations, an effort has been made, however, to compensate by drawing on the work and insights of various scholar-activists and others where and when relevant and by commissioning additional case studies. Insights have been drawn from interviews with a few key informants from the academe and from civil society: so far, scholar Ben Cousins of

PLAAS (South Africa), activist Rafael Alegria of La Via Campesina (Honduras), and scholar-activist Saturnino Borrás Jr. of Saint Mary's University (Canada). In addition, a comparative case study method is used to demonstrate in a concise presentation the importance of the issue, how the dominant thinking has played out, and how an alternative framework has made a positive difference in terms of pro-poor land policymaking and outcomes and democratic land governance. For the case studies where we attempt to showcase and analyse positive examples of pro-poor state/public land policymaking, we draw from the work of individuals with grounded knowledge of these. One case draws on a published report containing the participant-observations and analysis of an FAO resident adviser (Mozambique). Another case is based on the participant-observations and analysis of a key staff member of the FIAN International Secretariat (Brazil) who made a report specifically for the present paper. A third case comes from a previously published study made by a well-known land reform scholar-activist, and is supplemented by the present author's own knowledge of the case (Philippines). And finally, this same scholar-activist likewise is the source of the final case study as well (Vietnam). Two additional case studies were commissioned for the present paper, but we are unable to include them for reasons beyond our control (India and Indonesia). All the cases were purposively selected; that is to say that they were chosen for inclusion in this paper precisely because each shows in different ways that pro-poor processes and pro-poor outcomes are indeed possible. By including them in the analysis, therefore, we hope to contribute relevant and useful insights on how official land policies might better deal with the complicated reality that characterizes the state/public land sector so that they can truly benefit the rural poor.

Overview of the paper

The rest of the paper is divided into five sections. The next section offers a perspective on why it is both important and urgent to carefully address the challenge of constructing a truly pro-poor land policy for specifically state/public lands. The section that follows then presents a critical examination of the dominant thinking that currently prevails with regard to land policy for state/public land, in an effort to show that an alternative framework is needed. Then the discussion turns to laying out the building blocks for a truly pro-poor land policy in state/public lands. The penultimate section then presents five case studies of how pro-poor land policy in state/public lands may be difficult but not impossible, while trying to specify how the positive steps forward in each case became possible. The paper concludes with a brief of relevant implications and recommendations for policy makers and other relevant development actors and agents.

SECTION 2. IMPORTANT AND URGENT QUESTIONS

For organizations and movements of the landless rural poor or near-landless rural poor — many of whose rights are either fragile, insecure or absent/non-existent, land has an essentially multi-dimensional character. Land as well as their connection to it holds combined economic, social, political, cultural and environmental meaning and importance. *Full and meaningful, effective access to land – understood here as the recognized right to land,*

coupled with the actual control of it, its uses and its fruits over time – is central to their existence for many reasons. For many if not most segments of the rural poor, not only is land essential for constructing a rural livelihood. It is also a factor in laying the foundations for social inclusion and access to basic public services; without it rural poor households risk being left uncouneted by state census takers and more likely to face difficulties sending their children to school, accessing basic health care services etc. In addition, effective control of land (as defined above) is important for constructing autonomous political incorporation as well; for example, when national regime transitions away from dictatorship and to elective civilian rule in the 1980s and 1990s failed to eliminate local authoritarian enclaves, many rural poor people were left captive to landed elite political control. Meanwhile, for many indigenous communities, land is a key component of territory more broadly, effective access to which is central to maintaining their culture and collective identity.

At a time when three-fourths of the world's poor are rural poor, it is especially significant that much of the land that is occupied by rural poor people today is considered to be state/public land. While there are no exact data available on just how much agricultural and/or cultivable land falls into the state/public category globally, most observers would agree that the amount is very significant. According to Ribot and Larsen (2007), for example, some 1.6 billion poor people live in forested lands worldwide, approximately 80 percent of which is considered public/state land. As will be seen, while many poor people live and depend upon state/public land, their hold on it is often insecure and problematic. Effective access to particular plots of land is ultimately a long and ongoing social-political process, one that is often contentious, involving struggles for full and meaningful recognition not just of poor people's rights to land, but also their 'right to have rights', in theory and in reality. Moreover, as Borras has recently emphasized (2007), while competing claims with the potential for social conflict is generally accepted as a fact of life when it comes to policy vis-à-vis private lands, the same is also true for state/public lands. Many state/public lands are sites of persistent and heated struggles between various social groups and classes to gain effective access to the land resource. It is this fundamental process that determines 'who has the right to do what with the land for how long' (Richards, 2002: 1).

In taking up the question of what kind of law and policy is best in what is known as state/public land, it is important to contextualize the inquiry from the outset. The distinction between 'private' and 'public' land is mainly a formal-legal one originating in an earlier 'wave of globalization' (Robertson 2003). It was a conceptual construct devised and used by centralizing state authorities to claim and control foreign or so-called frontier lands and populations and make them 'legible' for modern nation-state building, part of the "simplification" process associated with "seeing like a state" (Scott 1998). In this way, past land policies continue to shape present land politics. As Cousins points out, much of the land across Africa, for example, is state owned as a legacy of colonialism.² The formal-legal distinctions drawn by bureaucrats in the cities, however, did not necessarily or even very frequently reflect the actual human realities that may have already existed on the ground in the countryside. Moreover, as time passed and societies changed, it was often rendered further

² Interview, Dr. Ben Cousins, 21 February 2008, by Skype.

obsolete by the normal ebb and flow of human activity. This is perhaps especially true for remote rural areas where the state and state law has constituted (and often still constitutes) little more than a distant abstraction.

This suggests that any discussion of what to do with state/public land today, must begin by examining the societies that have taken shape there, which in turn implies adopting a more profoundly sociological and anthropological view of property rights than the conventional frameworks permit. We will return to this point later in the discussion; for now suffice it say that many scholars (see for example Moore 1998; Tsing 2002; Juul & Lund 2002) now view property rights as essentially about historically dynamic social relations among and between people and key institutions -- such as the state and state law, of course, but also important non-state regulatory institutions, such as customary law or what might be called “cacique law”, as well (see Franco, *forthcoming a*). From this broader perspective, the private/public distinction in land can be seen as flawed for at least two reasons. First, the lines have often been drawn on central state maps irrespective of the local societies that may exist on the ground in question. Second, state/public land has proven to be much more porous over time to “unauthorized” social actors in reality than the formal-legal categories admit. Tsing reminds us that ‘A history of property is always a history of shifting contests over meaning and power in which the textualization and enforcement of particular property concepts are only tentatively confirmed’ (2002: 95). In short, property rights are dynamic, not static, social phenomena. Equally important, ‘To study this instability is to acknowledge cultural and political legacies yet admit that one does not yet know the outcome—or even the outline—of the unfolding story’ (Tsing, 2002: 95). Such an approach to property rights suggests that while the concept of state/‘public’ land requires ‘unpacking’ or disaggregating, so does any given single piece or swathe of (contested) land too.

Looking more closely, there are at least *three* interrelated and equally important broad dimensions of land that demand attention. The *first* dimension involves acknowledging the social history of the land: what are the actually existing social relations and modes of access that have evolved over time in a given parcel of land, who was included or excluded by these processes and how did it happen? The *second* dimension involves confronting the question of the appropriate basis for allocation or distribution of the land resources: who should get how much of which land, for how long and for what purposes? Cousins identifies this second dimension as the main policy challenge at hand in the African context: deciding “what kinds of rights, held by which categories of claimants, should be secured through tenure reforms, and in what manner, in ways that will not merely ‘add to possibilities of manipulation and confusion’” (Cousins, 2007: 282). The *third* and last dimension has to do with the politics of social change in settings that are very often marked by substantial power imbalances: where the transfer or reinforcement of effective access over a given land territory is considered necessary and beneficial, how can the desired intervention be made – and made *successfully*? The underlying issue here of course is power. We follow Cousins (quoting Lund) when he says that “Power relations are key to understanding how tenure regimes work in practice, since ‘struggles over property are as much about the scope and constitution of authority as about access to resources’” (Cousins, 2007: 282).

To put it differently, the first part of the puzzle is a matter of de facto claims; the second is a matter of de jure rights; and the third is a matter of change strategy. Each dimension is important, but it is likely that all three must be taken well into account if a state/public land law and policy is to be truly effective. Here, we take *full and meaningful, effective access to land for the rural poor as the most desirable objective of a land policy* today. By full and meaningful, effective access to land, we mean both the recognized right to land, coupled with the actual control of it, its uses and its fruits over time. Hopefully, this basic principle is stringent enough to preclude any insecurity or fragility of tenure, but broad enough to address a variety of extremely problematic situations that obtain in state/public lands from the point of view of the rural poor, and thus imply the need for nuanced and variable policy approaches.

To illustrate, in South Africa (and many other parts of the African continent as well), an approach is needed that emphasizes “mak[ing] socially legitimate occupation and use rights, as they are currently held and practised, the point of departure for both their recognition in law and for the design of institutional frameworks for mediating competing claims and administering land” (Cousins, 2007: 282). This is because -- and often *despite* the existence of relatively strong pro-poor land laws, as in Tanzania or Mozambique, for example – “the actual nature of the development taking place is skewed towards private sector companies (tying in with commodification and also scales of production) and the thrust of agrarian change is toward larger scale and capital intensive forms of production”, with serious (negative) implications for existing production and livelihood systems and uses of the land natural resource.³ By contrast, in the Philippines (and elsewhere in Asia such as Indonesia, for example), a huge problem today is the de facto control of much state/public land by wealthy/landed elites who illegally grab it, enclose it, and then exploit it for personal gain by coercively imposing extremely oppressive and informal wage-labour and share-labour regimes. What is needed in places like this is a policy that is explicitly redistributive in character. This is likewise the case in Honduras, where, according to Rafael Alegria of La Via Campesina, there is a lack of political-policy instruments for “re-capturing” many state/public lands that are illegally being held in the possession of private elites or for transferring effective access to them to peasants, rural women or indigenous communities, and so communities of rural poor are only able to remain on the land “by means of resistance”.⁴

In all these settings, both aspects of “effective access” (e.g., recognition of poor people’s rights and (re)enforcement of their control over the land) are fundamental and therefore both must be addressed appropriately if a given state/public land law and/or policy is in turn to be effective. For our purposes, following Borras and Franco (2007), state land laws and policies are understood here as important ‘institutions’ that are created expressly to govern relations between various groups of people and entities, as well as their (differential) access to land. As such, they both structure and are structured by the strategic interactions of different actors in society and the state over time (Thelen and Steinmo, 1992), and therefore can be seen serving as *both* the context *and* the object of such interaction, where officially recognized and

³ Interview, Dr. Ben Cousins, 21 February 2008, by Skype.

⁴ Interview, Rafael Alegria, February 2008, translated by Sofia Monsalve.

effective control of land resources is at stake. Land laws and policies are an important *context* to land-oriented struggles because they partly define the political and legal rights and resources that individuals, groups and classes can (and cannot) mobilize in support of their land claim making. At the same time, land policies are an important *object* of contestation within and between the state and society. Different groups will try to (re)shape state land laws and land policies in order to strengthen their claims vis-à-vis state law.

The outcomes of state/public land law and policy are shaped not only by their design, however. They are also shaped and reshaped by the processes of promulgation and implementation. Beyond their design, what matters is how a policy gets adopted, implemented, and made authoritative in society. Not just what kind of policy, but also how the policies are actually implemented and to what extent they are made authoritative in society results in specific outcomes in terms the nature of land-based social relations. In reality, a single land law or policy can result in two different kinds of outcomes at the same time, precisely because no land law or policy is self-interpreting and self-implementing (see Houtzager and Franco 2003; and Franco forthcoming-a), but instead subject to the strategic interaction of important actors or ‘stakeholders’, in both society and the state, and their strategies. The resulting outcomes can take multiple forms, which can be broadly categorized as either pro-poor or anti-poor. Land policies are never neutral, but necessarily transform the status-quo somehow – either by reinforcing it or undermining it, to varying extents and degrees. Drawing on Borras and Franco (2007), four broadly distinct outcome trajectories or ‘ideal’ policy types (in the Weberian sense) are possible. These broadly distinct types of land policy are summarized in Table 1, and each is discussed in a more elaborated manner in the discussion that follows.

Table 1: Trajectories of Change and Reform in Land Policies

<i>Type of Reform</i>	<i>Dynamics of change & reform; flow of wealth & power transfers</i>	<i>Remarks</i>
(1) (Re)concentration	land-based wealth & power transfers from the state, community or small family farm holders to landed classes, corporate entities, state or community groups	change dynamics can occur in private or public lands, can involve full transfer of full ownership or not, can be received individually, by group or by corporate entity
(2) Non-(Re)distribution	land-based wealth & power remain in the hands of the few landed classes or the state or community, i.e. status quo that is exclusionary.	‘no land policy is a policy’; also included are land policies that formalize the exclusionary land claims/rights of landed classes or non-poor elites, including the state or community groups.
(3) Distribution	land-based wealth & power received by landless or near-landless working poor without any landed classes losing in the process; state transfers	reform usually occur in public lands, can involve transfer of right to alienate or not, can be received individually or by group
(4) Redistribution	land-based wealth & power transfers from landed classes or state or community to landless or near-landless working poor	reform can occur in private or public lands, can involve transfer of full ownership or not, can be received individually or by group

Source: Borras and Franco 2007

Type 1 (Re)concentration

The first type of land policy path involves *(re)concentration*. The defining character of this path is that while land-based wealth and power transfers do occur, the direction of the transfer is away from the rural poor, because effective access to the land resource actually gets (re)concentrated in the hands of non-poor entities – for example, private landed classes, private or state corporations, and state or other elite community groups. As with the other policy types or path, and contrary to popular perception, this kind of change can and does occur not only in private lands, but also in state/public lands as well. The organization of control over the land resources in question can be through individual, corporate, state or community group property rights arrangements. The transfer may involve full land ownership

or not. Different variations are possible, but the bottom line is the same: the recipients of land-based wealth and power transfers are landed classes and other non-poor entities or the state.

Notably, many if not most of the FIAN cases reviewed for this study involve this kind of trajectory. Take the case in Mato Grosso do Sul (Brazil) involving land that is the traditional territory of the Guarani Kaiowa indigenous population, and which is being increasingly encroached upon by private entities, who are taking over large chunks for capital intensive production of soybean (Case No. 0802UBRA). Or another example is a case in Alto Parana (Paraguay) involving 12,000 hectares of state/public land that was illegally grabbed by a company called AGROPECO S.A., and which some 1,200 landless families argue ought to be redistributed to them (Case No.APGY0801). Yet another example comes from Tamil Nadu (India), where the local government dubiously leased 180 hectares of Adivasi ancestral land to a group of business elites wanting to create a zoo and conservation park (Case No.0331UIND). Still another comes from Mubende (Uganda), where more than 2,000 peasants were evicted by government soldiers, their houses and crops destroyed in the process, in order to clear the way for leasing the land to a German company for a coffee plantation (Case No.0215HUGA). Still another comes from Jalisco (Mexico), where 300 peasant families were forcibly dispossessed of 280 hectares of ejido land by the transnational company Nutrilite, killing at least one peasant leader in the process (Case No.0018UMEX). A final example comes from Davao Norte (Philippines) and involves a 5,212 hectare land that was formerly part of a government penal colony (originally set up during the colonial period), but has been illegally leased to a private family corporation engaged in producing bananas for export, while successfully evading land reform (Case No.0126UPHL). These six examples all involve a concentration of land in the hands of a few, where the transfer (whether through official or unofficial means) that was effected and is being protested was from rural poor populations to private elite entities.

In other cases, however, the beneficiary of the summary transfer is the state itself, or at least a particular branch of the state, as is the Okara case in Punjab (Pakistan), where land that was previously owned by the provincial government, but occupied and tilled for decades by tenants and their ancestors, is steadily being taken over by the federal-level Ministry of Defense, potentially leading to the eviction of as many as one million tenants (Case No.0328APAK). There are also numerous cases in the FIAN database involving instances of the state summarily taking over (or threatening to take over) indigenous territory and other land and displacing hundreds of thousands of existing occupants in order to build “mega” development projects, such as hydroelectric dams especially.

Type 2 Non-(re)distribution

The defining nature of *non-(re)distribution* is maintenance of an inequitable and exclusionary status quo in the land-based social relations. Here, the lack of an explicit land policy is just one scenario. In settings where there are vast inequities and exclusion in land-based social relations, this type of policy effectively advocates for non-redistribution of land-based wealth and power. In many other settings, a similar effect is created by having a land policy, even a

relatively pro-poor land policy mandating redistribution to or recognition of land rights of the rural poor, but then keeping it dormant, as in the case of Indonesia, the Philippines, El Salvador and Honduras, for example, among others. Another more specific example here is El Salvador, where peace accords that ended the civil war in that country stipulated that state land appropriate for agriculture should be transferred to landless peasants, but this has rarely been done; in at least one case involving 210 hectares of land in Usulután Province, not only was this stipulation ignored, but the government itself was directly involved in evicting landless families who were occupying the land (FIAN, ARC Hotline 0106). Similarly, in a case in the department of Yoro, Honduras, numerous families who, for twenty years, had been occupying land that had previously been awarded to them in the context of the government agrarian reform program (but for which the land titles had not yet been issued), were summarily evicted in 2001 by national police (FIAN, ARC Hotline 0104).

Another form of non-(re)distribution involves violent acts perpetrated not by the state but by non-state actors to avoid a land or labour reform (but then tolerated by the state), such as forcible evictions of rural poor occupants by landlords, agribusiness or real estate companies from contested landholdings. One good example of this kind of situation involves the indigenous territory of the Yakye Axa in Paraguay (FIAN Case No. 0701), which was taken over by cattle ranchers in the late 19th century, thereby dispossessing the indigenous people, but which the latter still seek to reclaim. Although their ongoing effort to regain possession of the land was boosted by a positive ruling by the Inter-American Court on Human Rights, the Paraguayan state has yet to comply. Another good example is found in the remote region of Bondoc Peninsula on Luzon island in the Philippines, where peasant-claimants on state/public land have been facing systematic harassment and coercion by a regional landlord backed up by his private army and in alliance with the underground communist revolutionary movement (FIAN, Case No.0322HPLL; this case is also discussed extensively in Franco, 2008-unpublished manuscript). Yet another form involves formalization of land rights programs, which are increasingly common today. Rather than promote the land rights of the rural poor, such programs are, under certain conditions, most likely to ratify or reinforce the land claims of non-poor, mostly elite, claimants. This tendency is not unlike what happened in the previous century with many of the earlier private land titling programs that were carried out by then-colonial powers, and which ended up dispossessing the local population and facilitate land-grabbing by colonizers.⁵

Non-(re)distribution is also closely associated with conflict and post-conflict settings. Many civil wars have been at least partly caused, or been aggravated by, struggles over the control of valued land resources or territory. Consequently, peace settlements usually include some kind of land policy. However, redistributive land reforms seldom take shape; those opposed to redistribution can often be found on all sides, as was the case in the southern Philippines, for example, where negotiations between the government and a succession of separatist movements have studiously avoided redistributive land reform for any (anticipated) restored

⁵ That the renewed thrust in technical formalization of land rights initiatives is having a similar effect is shown by Nyamu Musembi (2007), Manji (2006) and Cousins (2007), among others, in the context of contemporary Africa, and elsewhere, for example, in the Philippines (see Borrás and Franco 2007).

‘ancestral’ lands, in part because armed rebels did not want to antagonize allies in the Muslim (landed) elite (see, e.g. Gutierrez and Borrás, 2004). In the case of the Central American peace accords in the 1990s and beyond, the land policies adopted tended to be too market-friendly, ultimately benefiting the elite more than the poor (see, e.g. Pearce, 1998; De Bremond, 2007; Gauster and Isakson, 2007). This has also been a big problem in Colombia, where the war there, combined with implementation of certain kinds of rural development projects (particularly, agribusiness, mining and “mega-projects”), displaced more than 2 million peasants; in one case, state-sponsored, “market-assisted resettlement left displaced peasant families on poor quality land, unable to pay (via a credit) the required 30 percent of the cost of the land, and vulnerable to attacks by paramilitary groups who follow them (FIAN Case No.0028UCOL).

Type 3 Distribution

The basic defining character of distributive reform is that landless and near-landless working poor gain full and meaningful effective access to land either as ‘new’ occupants or as ‘old’ occupants. As with redistribution, distribution can take shape within a wide range of land policies, including conventional land reform, forest devolution, public land resettlement, and so on. But unlike *redistribution*, distribution is a basically ‘positive sum’ reform process; it should not, by definition, involve any dispossession whatsoever or the taking of the land resources of one group in society and redistributing them to another. Two different sub-types of this kind of land policy path are possible. The first is probably least reliably pro-poor, however: here, distribution by resettlement involves identifying a piece of land, moving land-starved people onto it, and transferring land rights for it to the new occupants. Under certain conditions, the conventional practice of resettling potential and actual land claimants onto presumably ‘empty’ public lands may have some distributive potential. Where the lands are indeed vacant and idle, or not already being occupied or used by other (usually poor) individuals or groups, the transfer itself can indeed be considered positive-sum in nature. Yet this has rarely been the case. Historically, land policies packaged as resettlement have been adopted in order to avoid redistribution (Fox, 1993: 10). As such, the practice has often simply ignored pre-existing settlements or use patterns, undermining the rights and control of local populations of rural poor that may already be present, whether small peasants, forest dwellers or pastoralists (Scott, 1998).

The more relevant and potentially salutary type of distribution involves the recognition and reinforcement of those already occupying or using specific lands, but whose tenure there has remained or become fragile and insecure. For example, imagine a certain swathe of state/public land that is actually agroforest land tended and tilled by a group of poor peasants or forest dwellers. A truly distributive land policy would have the capacity (and take the time) to detect and understand the existence and practices of these populations, and then, following the suggestion of South African scholar Ben Cousins, “make socially legitimate occupation and use rights, *as they are currently held and practised, the point of departure* for both their recognition in land and for the design of institutional frameworks for mediating competing claims and administering land” (2007: 282). Sadly, with the setting aside of the 1999 Land

Rights Bill and subsequent enactment of the Communal Lands Rights Act in 2004, post-apartheid South Africa represents a missed opportunity to undertake true distribution (see Cousins 2007).

By contrast, the 1997 Land Law in Mozambique is a good example of how a real opportunity to undertake truly pro-poor distribution can be created by official policy; this case will be discussed in more depth in the case study section of this paper. Another very interesting case of (partially) successful distribution is in Vietnam, where two successive waves of forest land allocation/reallocation beginning in the 1990s at first failed, but then eventually succeeded -- in a few instances -- in actually recognizing and reinforcing the rights and control of rural poor communities over forest land that they already occupied (see Borras 2007 Vietnam report). This latter example will also be discussed in more detail later in the case study section of this paper.

Type 4 Redistribution

The defining principle of this last type of policy pathway is that land-based wealth and power are transferred from the monopoly control of either private landed classes or the state to landless and near-landless working poor (poor peasants and rural labourers).⁶ Redistribution changes the relative shares of groups in society; it is a ‘zero-sum’ reform process, but still a matter of complex degrees (Fox, 1993: 10). As Borras (2007: 22-23) emphasizes, redistribution is a matter of degree, depending on the net loss of the landed entities and on the net gain of the landless and near-landless poor. One of the key implications of this approach to redistribution (that it involves zero-sum transfers of wealth and power and is matter of degrees), is that it “requires that analysis of land reform investigate actually existing conditions rather than rely wholly and uncritically on what the official data claim or convey” (Borras, 2007: 25).

Historically, the conventional notion of redistributive land reform is that it applies only to large private lands (see the classic works of Tuma 1965; El-Ghonemy 1990; Sobhan 1993; Lehmann 1974, and Griffin et al 2002, for example). But as Borras (2006) and Borras and Franco (2007) point out, there are many possibilities beyond this conventional application that likewise can involve changing the relative shares of land-based wealth and power held by different groups in society through a policy intervention -- such as land restitution, land redistribution, share tenancy or land tenure reform, land stewardship, and indigenous land rights recognition. As this suggests, the goal of redistribution may pertain not only to private land, but also to state/public land as well. One revealing example here comes from the FIAN database and involves 46 land-claimant families in Trujillo, Colon, Honduras (Case No.0717AHND). Since 1981, the 46 families were occupying a 550-hectare area of state/public on the basis of a warranty issued them by the National Agrarian Institute (INA). Yet their status as legal occupants was not accepted by a local landed elite family, who

⁶ The usual monetary value-centred way of measuring redistribution is a convenient, but inherently limited way of measuring the degree of redistributed wealth and power, since, as noted earlier, for many people, land has a complex value that cannot be reduced to or expressed in monetary value alone.

mobilized the local town council to issue, illegally, property titles for the land. To its credit, INA continues to argue that the land is state/public land; but what this suggests is that the *entire* state apparatus is needed to come down decisively on the side of the 46 families in order to fully consummate the (re)distribution. Another good example of this type of policy path comes from a case in the Philippines in the late 1990s, which involved the redistribution of private elite-controlled state/public land via a community-based forest management mechanism (this case will be discussed in more detail in the case study section of this paper). This latter case shows that redistributive reform in state forest lands can occur not only through redistribution of private individual titles, but through a variety of community-based forest management arrangements as well, as in some cases in the Philippines (Borras, 2007).

As these examples suggest, what matters is not how the land is officially classified, but what social relations obtain and how the policy intervention affects these in terms of the distribution of land-based wealth and power. The underlying issue is whether wealth and power is redistributed and in which direction.⁷ In yet another example, take the case of state forest land that in reality is a productive crop plantation controlled by a private company, which is precisely the case of 70 percent of agricultural lands in Indonesia (Peluso, 1992). When a piece of land is taken away from a private company and given to landless peasants, as has occurred since 1998 in West Java amidst a resurgent agrarian movement, then real redistribution is attained (Bachriadi, 2007).⁸ But what the experiences in West Java seem to suggest is that effective access to land, ultimately, must also be settled locally. In settings where the land is contested and state law can be legitimately interpreted as redistributive, but state agents do not automatically or uniformly embrace such an interpretation, then it is often left to the access-seeking rural poor groups themselves to initiate the relevant state law and sustain the momentum of redistribution “from below”, through what O’Brien (1996), looking at rural China in the 1990s, has termed “rightful resistance”, a term that refers basically to when ordinary citizens take official policy declarations seriously and mobilize social pressure in and around official channels to make state law authoritative in society. O’Brien’s concept of “rightful resistance” has also been used to analyse similar conflict and dynamics in the rural Philippines (Franco and Borras 2005).

⁷ For example, a land may be officially classified as (idle) state land, but is actually cropland controlled by private elites, as in the case of contested public lands in Bolivia. A policy that takes this land away from the controlling elite and redistributes it to landless and near-landless rural poor or indigenous communities is thus redistributive reform, which explains why the land issue in Bolivia is so complex and fiercely fought (Kay and Urioste, 2007; Assies, 2007). In another example, a leasehold reform does not alter actual private land ownership, but under certain conditions it can redistribute land-based wealth and power, as in the case of West Bengal.

⁸ One of the cases which was commissioned for, but which, unfortunately, we could not include in this draft of the present paper is from West Java, and involves what is essentially rightful redistribution from below by rural poor farmer-occupants in three villages (Dangieng, Sukamukti and Mekarmukti) in Cilawu, a sub-district in the district of Garut.

SECTION 3. THE DOMINANT THINKING ON PRO-POOR LAND POLICY AND LAND GOVERNANCE

Although conventional thinking about land policy in public/state lands is still evolving, it generally falls into two broadly distinct but basically related streams of thought. Both are at least nominally concerned with ‘combating poverty’, but each stream approaches the challenge in a distinctive way.⁹ The first current emphasizes the productive assets deemed necessary for the rural poor to construct livelihoods, and views public/state lands as having great potential to be transformed into active capital of the rural poor. In their present form such lands fall short of this value, and so the need to carry out reforms in terms of how these lands are officially recognized, (re)allocated, and used within and between households and communities. By contrast, the second current emphasizes making the necessary reforms while at the same time promoting good governance. When applied to the land question, the conceptual framework of good governance is commonly referred to as ‘land governance’, which refers to the quest for the most technically and administratively efficient ways and means to carry out ‘pro-poor land policies’, with the most efficient means usually assumed to be primarily the most transparent, fastest and cheapest.

An analytic strength shared by these two currents of thought is the link they make between rural poverty and state/public lands; there is indeed a connection between the two issues. However, they suffer similar fatal analytic weaknesses that undermine their power in the context of pro-poor land policymaking (broadly defined). The first weakness has to do with their understanding of landed property rights as ‘things’ and not social relations; and the second has to do with their ‘blindness’ to several key dimensions in the stratification of human life. In other words, the link between rural society and state/public land is diverse and complex, and this diverse complexity -- if left ‘unseen’ and unaccounted for -- will inevitably impede truly pro-poor land policymaking.

On the first count, there is a strong continuing tendency for conventional policymaking to posit state/public land as a “thing” to be exploited, including nowadays for large-scale “biofuel” production, or for “conservation” in relation to carbon trading, or for the “ecological services” that it can provide to the larger society, for example.¹⁰ In many places, much state/public land is increasingly under threat of being captured by private elite and corporate actors, through privatisation, formalization and new lease/licensing arrangements as in Honduras, for example.¹¹ But as noted earlier, landed property rights are best understood as sets of social relations that are dynamic and not static, and that are linked to the dynamic

⁹ However, Ben Cousins also points to recent World Bank argumentation that small-scale farmers should simply accept that they cannot make it in the global market and go elsewhere (Interview, 21 February 2008, by Skype).

¹⁰ These different examples of how land is posited as something to be exploited were mentioned by Cousins (Interview, 21 February 2008, by Skype). It should be noted that the push for increasing biofuel production by opening up ‘new’ lands, often consolidated through enactment of new legislation and targeting state/public land, and appears to be growing in many parts of the globe. For example, Rafael Alegria also mentioned this as a new dynamic unfolding in Honduras (Interview, February 2008, translated by Sofia Monsalve), and it is also happening in many parts of Southeast Asia, especially Indonesia and the Philippines as well.

¹¹ Interview, Rafael Alegria of La Via Campesina, February 2008, translated by Sofia Monsalve.

process of land-based wealth creation. Unlike development projects, land-based social relations remain embedded in a time/place continuum and continue changing or evolving even after a land titling project or a land reform program has ended. Actually existing land-based social relations may change even as the official documents pertaining to them do not. The case of Indonesia, where 70 per cent of the land is officially classified as state forest land, but unofficially marked by diverse and variable uses and “ownership” in effect, is illustrative (Peluso, 1992). But land-based social relations do not automatically change even when the official documents do, raising the additional challenge of having to find ways to ensure that laws and policies enacted by policy/political elites at the “commanding heights” of the state, become authoritative in practice on the ground.

On the second count, ‘policymaking’ here is understood broadly to refer not only to the usual processes of formulating and implementing a given policy, but also and perhaps more importantly, to the deeper process of making a given policy authoritative in society, which in turn is intimately related to the larger process and challenge of nation-state-building. The process of ‘making law’ (including policy) begins with an idea of what needs to be done, which must then be negotiated and formulated into official declarations and mandates, whether in the form of constitutional provisions, or legislation or policy and so on. If it mandates distribution or redistribution, this first step in the process of ‘making law’ can constitute an important or unprecedented change in what Tarrow (1998) more generally calls the “political opportunity structure”. This is certainly a necessary, but definitely not sufficient condition for consummating a successful pro-poor land policy. The next big challenge, especially for distributive and redistributive policies that threaten to “shake up” the status quo, involves implementation. Of course much of the discourse around land governance rightly emphasizes the importance of technical and administrative efficiency in land policy making and implementation. But limiting land governance to technical and administrative aspects alone often unnecessarily and erroneously de-links land policy processes from the actual power dynamics and political-economic conditions of human society.

A fuller understanding of policymaking would go beyond a formal-procedural perspective, to include the political processes (and political conflicts) that are involved not only in legislating change, but also implementing change and making it authoritative on the ground. This in turn requires expanding the analysis to include a wider range of factors and actors (beyond merely state officials and line agents). Key considerations here include: (i) the extent to which each and all of the institutions that are actually involved in policy implementation both formally and informally are open to social pressures from below in favour of reform; (ii) the availability to rural poor land rights claimants of a support structure for political-legal mobilisation, or as Epp (1998) terms it, “rights advocacy organization, but also as Franco (2005: 2) has emphasized, “with the interpretative resources to determine the political-legal possibilities of using the law [or policy] to claim lands rights”; and (iii) the particular political-legal strategy that rural poor land claimants use to achieve effective access to a specific land resource. With regard to the latter, a *proactive and integrated political-legal strategy* is important for: activating a pro-poor interpretation of land law or policy; exploiting the independent initiatives of state land law or policy agents; and resisting anti-poor legal and

extra-legal moves of anti-reform actors whether in society or the state (see Franco 2005; and also Franco forthcoming-a).

More generally, the dominant thinking around land governance is either ‘state-centered’ (where the state, usually the local state, remains a key actor) or market-led (where most of the processes are effectively privatized or market actors given the primacy). In the market-centered framework, state/public land is viewed as a wasted (economic) asset that ought to be freed from state control and placed at the disposal of private individuals assumed to be rational economic actors. In this view, it matters little how land is used or by whom; what matters instead is how clean and clear the property lines are and how secure individual private freehold possession of a land asset is under the law. Only when such possession is legally secure and the lines demarcating it are clear can the land asset be ‘maximised’ – e.g., bought and sold freely in the market. For market-centered advocates then, the main agenda worldwide is to ‘formalize’ all ‘non-private’ lands lacking clear private titles (including state/public lands). This position is best articulated by the Peruvian economist Hernando de Soto, and given de Soto’s leading presence there, is also the motivating force behind the (self-appointed) ‘Commission on the Legal Empowerment of the Poor’ (CLEP). De Soto’s (2000) advocacy for the formalization of land rights, almost always understood as ‘private’ and ‘individual’ property rights, is one of the most influential versions of this first school of thought, but certainly not the only one. Other versions similarly view public/state lands as potential productive assets but stress other reasons. This is the case, for instance, of the 2003 World Bank Land Policy Report (World Bank, 2003), which argues more generally for the most economically efficient (re)allocation and use of public/state lands as a scarce factor of production.

In a state-centered framework, state/public land is viewed, like private land, as one of several key factors in development, and also one key element in the permanent state agenda of nation-state building, since many public lands are in fact ‘non-state spaces’, to use Scott’s (1998) term. Having secure access to land and its products is a necessary (but not sufficient) condition for billions of rural households worldwide to have even a chance of climbing out of poverty. But in contrast to a market-centered framework, in a state-centered framework, it does matter how land is used and by whom, although the specifics of this can vary quite widely. Historically, there has been a strong tendency for the control and ownership of land to be concentrated in the hands of a few and to be used in ways that do not benefit society as a whole and that undermine stability. Some state intervention is thus needed, at minimum to regulate the distribution of private lands and the use of state/public lands. But again, it would be assuming too much to say that this pole necessarily has a social justice or pro-poor orientation; for some this is clearly not the case. Meanwhile, in light of the continuing vulnerability of state institutions to elite capture and corruption, the question is whether the state can be made to administer and manage the state/public land resource in such a way that that it will be held and used most equitably, sustainably, and efficiently.

While differing in key ways, the market-centered and the state-centered frameworks nonetheless share at least one very important feature. Civil society’s participation in either

kind of approach is often reduced to being mere administrative adjuncts in what are assumed to be ‘conflict-free’ land policy interactions. The important decisions are left to political and policy elites and bureaucrats – not to those in society who are often the bearers of relevant, if not crucial accumulated knowledge, but also the most vulnerable and will most seriously be affected. State authorities alone will often fail to know and appreciate the relevance of the social history of state/public land prior to it being declared (usually by colonial authorities) as belonging to the state/public domain. They will also often fail to recognize or acknowledge the extent to which state/public land has been captured by private elites and therefore is not or no longer controlled by the state. In the end, such skewed decision-making tends to either lead to or reinforce elite capture of the land process, ultimately undermining the cause of combating poverty. The central problematic in land policymaking may well be ‘who has the right to do what with the land for how long and for what purpose’, but the underlying issue ultimately is *who decides*.

The actual complexity of the situation on the ground in state/public land areas can of course be daunting. Unfortunately, there is a strong tendency for state authorities to discover this only after they have intervened. The first challenge then is to find ways to overcome the serious ‘knowledge deficit’ that exists amongst development policymakers and practitioners regarding state/public lands. The second challenge involves how to reform those areas where inequitable social relations prevail in order to categorically recast these in favour of the rural working classes and other marginalized sectors in the countryside. Here, what is needed is an alternative framework that is committed to placing rural poor people, as rights-holders, at the very center of truly accountable state/public land policy decision-making, giving due importance to their autonomous and empowered participation in the land policymaking process (broadly defined).

SECTION 4. TOWARDS AN ALTERNATIVE FRAMEWORK FOR A PRO-POOR LAND POLICY

Too often, putative ‘pro-poor’ land policymaking has had the reverse character and effect in reality, leading to “crooked” processes and skewed outcomes favouring elites rather than the rural poor. It is not enough to claim that land policies aimed at public lands are pro-poor; it must be so in practice, in terms of both the process and the outcome. But how to achieve this is not obvious. In this section, we propose a set of core criteria that we believe can be used toward the construction of alternative approaches that will be more capable than the existing ones of generating truly pro-poor land policies and policy outcomes.

Human rights approach

At minimum, for official intervention in state/public lands to have a better chance of actually resulting in either redistributive or distributive outcomes that benefit the poor, state/public land policy must incorporate a human-rights perspective.¹² A human rights approach to land is one that is anchored firmly in the human rights tradition. The most basic elements of this

¹² The discussion in this paper about a human-rights approach to land issues draws heavily from Franco (2006).

“human rights tradition” may be summarised as the following: (i) people are viewed as rights-holders, rather than mere “beneficiaries” (ii) states are viewed as duty-bearers with the obligation to respect, protect and fulfil people’s human rights, rather than “service providers” and (iii) governments should be held accountable when they fail to meet this obligation and rights are violated.¹³ With respect to state obligations, the UN Committee on Economic, Social and Cultural Rights has elaborated a further set of criteria that spells out more particularly what this entails.¹⁴ Accordingly, the nature of States parties obligations means:

- The obligation to guarantee that all rights will be exercised without discrimination;
- The obligation to take deliberate, concrete and targeted steps towards the full realization of ESC-rights within a reasonably short time by all appropriate means, including particularly the adoption of legislative measures;
- The obligation to move as expeditiously and effectively as possible towards the full realization of ESCR and not take any deliberately retrogressive measures;
- The obligation to use the maximum of available resources in the State Party and in the community of States;
- The obligation to prioritize in State action the most vulnerable groups; and
- The obligation to guarantee a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.

This delineation of the nature of States parties obligations clearly reveals a built-in bias in favour of the poor, such that one may say that the human rights tradition intrinsically *means* a pro-poor approach. But then what does such an approach mean with respect to land specifically? The answer, unfortunately, is not obvious. There is no explicit human right to land in international human rights law, and consequently the obligations related to access to land have not yet been fully determined. As a result, there is not yet an authoritative consensus at the international level on what a human right to land would actually mean in practice.

According to Sofia Monsalve of the FIAN International Secretariat, in thinking about land rights, a distinction must be made between two very different groups of rights: “One group are the *property rights*, i.e. the rights protecting the interests of the owners, mainly landowners. The other group are the *rights to property*, i.e. the right to have land for those who have not got land, who do not have enough land or whose ownership of land is not

¹³ This view of the “human rights tradition” draws from a presentation made by Dr. Wenche Barth Eide, associate professor at the Institute for Nutrition Research at the University of Oslo, and the co-Director of the International Project on the Right to Food in Development (“From Food Security to the Right to Food”, presentation prepared for a symposium on “The Rights Based Approach to Food” held March 20, 2006 at the Wageningen International Conference Centre, Wageningen University.

¹⁴ See “The nature of States parties obligations” (Art.2, par.1): 14/12/90; and “CESCR General Comment 3” (General Comments).

recognized. The right to property has a controversial status in the international law on human rights and the relationship between the right to property and other social rights is regarded as an area of conflict which limits the latter” (2003: 1). While the more progressive “right to property” was established in international human rights law in Article 17 of the Universal Declaration of Human Rights (UDHR), it was not codified in the subsequent (legally binding) international conventions on economic, social and cultural rights and on civil and political rights. This was due to a lack of consensus at the time and during the deliberations over the conventions.

However, as Monsalve goes on to explain, “Even though there is no human right to land, the right to land of rural communities is implied in other human rights recognized in international covenants, such as the right to property, the right to self-determination, the right of ethnic minorities to enjoy and develop their own culture, as well as the right to an adequate standard of living.”¹⁵ There are indeed an increasing number of relevant international legal instruments, mainly on the human right to food, which lend support to the idea of a human right to land specifically and other productive resources, and that emphasise vulnerable people as the main rights-holders (see table below).¹⁶

<p>Article 11 of the ICESCR (1966/76)</p>	<p>“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.</p> <p>2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:</p> <p>(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;</p> <p>(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”</p>
<p>General Comment 12 of the Committee on ESC Rights (1999)</p>	<p>“26. The [national] strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries of rights in land (including forests).”</p>
<p>Voluntary Guidelines on the Right to Food adopted by the Council of the FAO</p>	<p>“Guideline 8B Land 8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that</p>

¹⁵ Monsalve, “Justiciability ...”: 4.

¹⁶ In fact, as Monsalve notes further, “It has become clear that the right to property, the right to self-determination and the right of ethnic minorities to their own cultural life, safeguard first and foremost the land rights of those who already own land. Only the right to an adequate standard of living, whether as such or in combination with the other rights mentioned above, provides a legal basis for claiming the right to land of those without land” (Ibid.).

(2004)

protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities."

Still, as important as these various international legal instruments are, the idea of a *human right* to land (which prioritizes the landless rural poor) remains contested in one arena where it counts the most -- that is, literally, on the ground (e.g., in specific landholdings claimed by contending groups or individuals). International law is one thing, but as one land reform scholar warns, "real property rights are inevitably local; right means what the claimant can make it mean, with or without the state's help".¹⁷ More concretely, despite the existence of redistributive land laws in numerous countries, landlords, backed up by their own private armies, a network of sympathetic local public officials, and sometimes even their own self-declared "law", may still invoke their "right" over specific pieces of land (and may even expect national governments to defend or protect their claims), over and against even the legally sanctioned rightful aspirations of rural poor claimants.

Experience suggests that a "rights based" approach to land that does not explicitly opt *for* the landless and near-landless rural poor, can just as easily end up working *against* them. For this reason, linking the discussion of land rights with the human rights tradition offers a much-needed pathway forward. If the goal is to construct a framework for land policymaking that is *truly pro-poor*, then a human rights approach is a powerful tool precisely because it *does* take sides: it is *not pro-elite*.

With these considerations in mind, what might a *human right to land* look like from the rights-holders' perspective (e.g., landless and near-landless rural poor people)? For advocates, the human right to land encompasses three interrelated dimensions. First, the starting point in any state/public land policymaking is the recognition of especially the most vulnerable humans as rights-holders. For FIAN and others, the most vulnerable include all those referred to at the start of this paper: 'peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendants, unemployed workers, Dalit and other rural [poor] communities'. Second, a human right to land refers to the "*actual and effective control over the land resource*" – including the power to control the "nature, pace, extent and direction of surplus production and extraction from the land and the disposition of such surplus".¹⁸ Third, this right also involves land understood as *territory* where people live and reproduce their communities and "cosmologies" (or shared understandings of the origins and evolution of the universe and their place in it). State obligations in this regard were established by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and later reinforced by the special rapporteur. As Monsalve has stated, "State Parties to ICESCR are obligated to *respect, protect and fulfil access to land*, given that this forms part of the basic content of the right to food and is particularly important

¹⁷ Herring, R. (2002). "State property rights in nature (with special reference to India)" in F. Richards (ed.) *Land, Property and the Environment*. Institute for Contemporary Studies: 288.

¹⁸ Borras, 2006: 125.

for peasants, indigenous peoples, fisherfolks, pastoralists, and people living in rural areas and who have no alternative options for earning a living. *The Special Rapporteur on the Right to Food has already adopted this interpretation and considers it to be clear that governments should respect, protect and fulfil access to land*.¹⁹

More analytically, a human-rights standpoint implies recognizing and taking seriously the actual heterogeneity of agrarian societies. Class, gender, ethnicity and history are key dimensions of human life that are integral to and shape the often complex and diverse realities that obtain in public/state lands. Understanding how such factors operate and interact and to what effect is an essential step toward truly pro-poor land policy making. As will be seen, many well-intentioned land policies targeting public lands have ended up resulting in pro-elite and anti-poor outcomes by failing to consider the prevailing particularities of class, gender, ethnicity and history in a given situation. Each of these aspects is briefly explained below.

First, to be truly pro-poor, a land policy must be class-conscious, with a commitment to ensuring that the benefits go to the landless and near-landless working classes. Agrarian societies are composed of various classes, which in turn are defined by their mode and degree of control over productive assets, especially, but not solely, land (see, e.g. de Janvry, 1981). In recognizing that the interests of landless and near-landless rural poor are plural (e.g., landless peasants, rural labourers, indigenous communities, artisanal fisherfolk-cum-rural labourers, and so on), a land policy is more capable of anticipating the differential impact of a land policy among even the rural poor. This is important, for example, when one is confronted with the situation where a limited supply of land has a great number of land rights claimants.²⁰ Forest lands in particular are well-known for hosting multiple classes accessing different resources therein: food, wildlife, firewood, non-timber forest products, timber products (see, e.g. Leach, 2007; Agarwal, 1994; Peluso, 1992). Any forest land policy risks undermining some segments of the poor, even as it benefits other. Making land policies as inclusive as possible is a difficult challenge – one that may require not only resolving the land question, but also reforming other aspects of the rural livelihood complex, such as labour, as well. But continuing to pursue class-blind land policies will likely simply continue to favour the non-poor and non-working classes.

Second, to be truly pro-poor, a land policy must likewise be conscious of the distinct right of women to claim effective access to land, as peasants, rural labourers, forest dwellers or pastoralists, and as women. As farmworkers, (part-time) farmers, herders, and firewood gatherers, rural poor women typically have their own connections to land resources, independent of the men within the household, thereby entitling them to their own distinct land rights (see, e.g. Agarwal, 1994; Kabeer, 1999). But there has been a strong tendency

¹⁹ Monsalve Suarez, Sofia (2006). “Access to land and productive resources: Towards a systematic interpretation of the FAO Voluntary Guidelines on the Right to Food – Summary”, FIAN Report R 1. Heidelberg: FIAN: 2.

²⁰ In the case of commercial plantations in the southern Philippines, for example, the government and the trade unions have almost always chosen a particularly problematic exclusionary path – that is, one that permits giving the maximum farm size to the least number of farmworkers, but then requires excluding from the land reform process altogether the poorest strata of the peasantry -- seasonal and retrenched landless workers (Borras and Franco, 2005; De la Rosa, 2005; Putzel, 1992).

historically for land policies, especially land reform policies, to exclude women either by design or during implementation (see Deere 1985; Agarwal 1994; Whitehead and Tsikata 2003; and Razavi 2003). In one especially notorious case in the Philippines, a 1,000-ha rubber and coffee plantation was redistributed, but only to the male farmworkers. The female farmworkers' legal land rights went unrecognized in practice, and when the new all-male cooperative took over the farm's operations, they also took over the female farmworkers' coffee-picking jobs, leaving the female farmworkers with neither land nor jobs (see Rimban 1997). This only-partially redistributive but fundamentally flawed outcome was the result of how the policy in question ended up being interpreted and implemented. Gender-blind land policies and their implementation are likely to undermine women's rights, which in turn tends to weaken household capacity to combat poverty. Civil society advocacy for the recognition of the distinct rights of rural women has been growing (see, e.g. Monsalve, 2006), while land policymakers have increasingly begun to try to incorporate rural women more fully, although implementation remains the next major challenge, as the case of South Africa has shown (Walker, 2003). However, recent studies now caution against over-romanticizing the (re)productive roles of women and against assuming that issuing separate land titles is always appropriate (see recent discussions by O'Laughlin, 2007; Leach, 2007; Ikdaahl, et al., 2005).

Third, to be truly pro-poor, a land policy must also endeavour to promote or reinforce the distinct right of ethnic groups to their territorial claims, as peasants and as a distinct people. Land (reform) policies have generally been ethnic-blind as well. Encroachment into indigenous territory has taken place via colonization and resettlement, as well as extractive industry, undermining indigenous peoples' effective access to the land (see, e.g. Holt-Gimenez, forthcoming). Meanwhile, many of today's violent conflicts over land actually have an ethnic dimension to them, as in Bolivia (Assies, 2007), Vietnam (Sikor, 2006a, 2006b), Namibia (van Donge et al, 2007), Rwanda (Pottier, 2006; Liversage, 2003), and Congo (van Acker, 2005). Increasing mobilization of indigenous peoples, especially in Latin America (see, e.g. Yashar, 2005; Assies, van der Haar and Hoekma, 1998) in the past decade or two has helped to make land policymakers more ethnicity-conscious.

Fourth and finally, to be truly pro-poor, a land policy would have to be historically grounded in order for the often 'invisible' social justice perspective to emerge and be fully developed. Bringing to light and setting right the social injustices that have been committed against the most vulnerable segments of society on the land is important in its own right. In more strategic terms, however, a social justice perspective is probably crucial for the long-term success of any land policy as well, since the sources of conflict that are left unresolved or the new sources that are created by a flawed land policy are sure to constrain, if not undo, its success in the long run. Land policies that are ahistorical, banking on unidimensional "here and now" economic interpretations of land and its significance, risk undermining the legitimate historical claims of at least some (if not all) affected segments of the rural poor. This in turn will result in anti-poor outcomes (even if only partially) and thus a further postponement of inclusive development, while laying the foundation for the next round of social-political conflict. Histories of land dispossession clearly underpin ongoing social and political conflicts in Zimbabwe, South Africa, and Namibia, for example, and likewise in

India, the Philippines, Indonesia and Vietnam, and of course throughout Central and South America as well. The strategic importance of crafting land policies that confront and deal with (rather than dismiss and ignore) the often complicated social history of land cannot be overstated. Ironically, history is littered with land policies that failed in part because of their failure to consider history.

Explicit articulation of how it is 'pro-poor'

State/public land policies that are ahistorical and blind to the actual nature, pace, extent and direction of wealth and power transfers they effect, risk undermining the poor, rather than supporting them. Land policies are never neutral, and they will always have an impact on the poor whether positive or negative or somewhere in between. From the essential starting point of a human rights standpoint, any public policy that claims to be 'pro-poor' must then self-consciously and explicitly articulate what it means by 'pro-poor' and how it qualifies as 'pro-poor'. By pro-poor, we mean here a land policy that contains the following key features, interpreted flexibly depending on specific concrete agrarian conditions: (i) transfer or protection/reinforcement of land-based wealth to the landless and near-landless rural poor; and (ii) transfer or protection/reinforcement of social-political power to the landless and near-landless rural poor. Each of these features is explained further below.

First, a truly pro-poor land policy will seek to explicitly and definitively transfer land-based wealth to, or protect the existing land-based wealth of, the landless and near-landless rural poor. Land-based wealth means the land itself, water and minerals therein, other products linked to it such as crops and forest, as well as the farm surplus created from this land. Moreover, access to these resources is an important wealth itself; it is perhaps the most important resource to the rural poor, as explained by Bebbington (1999). Any pro-poor land policies must involve land-based wealth transfers from the previous entities that control such resources (usually monopoly control) to the working poor people, or the protection of existing land-based wealth of the rural poor. There is no pre-determined answer as to how to identify and quantify which land-based wealth should be transferred or protected. This will differ from one context to another. But regardless of the kinds of land-based wealth that may be at stake, the key challenge is to make such contested wealth and effective access to these by rural poor people the primary subject of transfer or protection. Land policies that do not specify wealth and wealth creation dynamics in their framework often end up distributing empty and meaningless land documents, or worse, undermining rather than protecting and advancing the basic material interests of the rural poor.

Second, a truly pro-poor land policy will also seek to transfer land-based political power to, or protect the land-based political power of, the landless or near-landless rural poor. This means being willing to confront, rather than avoid, the whole range of social-political conflicts that are inherently associated with land-based social relations and any serious attempt to recast them (Putzel, 1992). By political power transfers we mean here two interrelated, but nonetheless distinct dimensions. First, we refer to the power to control decision-making vis-a-vis the land resource. This means decision-making control over the nature, pace, extent and

direction of wealth creation from the land, as well as the distribution and disposition of such wealth. This perspective draws on Jesse Ribot's and Nancy Peluso's 'theory of access' (2003: 153), which emphasizes a 'bundle of powers' rather than 'bundle of property rights' -- "the term 'access' is frequently used by property and nature resource analysts without adequate definition... We define access as 'the *ability* to derive benefits from things,' broadening from property's classical definition as 'the *right* to benefit from things'". They continue: "Access, following this definition, is more akin to 'a bundle of powers' than to property's notion of a 'bundle of rights.' This formulation includes a wider range of social relationships that constrain or enable benefits from resource use than property relations alone" (Ibid.). It then follows from this perspective -- and this the second point -- that we also are referring here to the autonomous political agency of the rural poor, as individuals and/or as distinct, self-identified groups and indigenous communities (e.g., of rural women, rural workers, rural youth, rural consumers, etc.). That is, the transfer of land-based political power includes the power to participate fully and meaningfully in any and all development decision-making that affects their lives and livelihoods.

Political empowerment or empowered participation in development-related decision-making is perhaps one of the most important arguments for pursuing a strategy of 'democratic land governance'. An alternative state/public land policy would aspire to go beyond mere 'land governance' (with its emphasis on technical-administrative efficiency), to reflect more *democratic* land governance. Democratic land governance is understood here as the process of land policymaking (broadly defined) that: (i) serves to increase empowered participation by autonomous and representative peasant organizations and their allies (such as allied NGOs, research think tanks and academics); (ii) while also increasing state accountability to the rural poor. Although certainly important, and difficult to achieve in its own right, professional state machinery that values transparency and is technically and procedurally efficient in land policy formulation and implementation is simply not enough. To achieve democratic land governance, whether in state/public or private lands, this specialized state machinery must also be committed to working with (not "for") key social constituents – especially the rural poor, as well as other state agencies and even relevant international actors, to make truly pro-poor land policy authoritative in society. Land policies that fail to appreciate the importance of rural poor people's political agency, and that fail to promote their full and meaningful political participation will most likely end up perpetuating the very structures and institutions that exclude the rural poor in the first place – the very ones that pro-poor land policies often profess to want to change.

SECTION 5. SELECTED CASES

The ideal situation is when an human-rights based perspective with its different social dimensions and criteria are obtained in a land policy and its implementation. These features necessarily complement each other. In the real world, however, they may not always be easy and straightforward to achieve, either separately or together, especially in places where there might be some contradictions between two or more aspects. Take, for example, where a contested land is limited in quantity and the land claim makers – all legitimate on the bases of

the key features – are far more abundant. If forced to choose to include some and exclude others, which feature weighs more -- class, ethnicity, gender, or history? or, productivity increases? The dilemma that is inherent here is illustrated for example in the case of Namibia where the government took on the ‘race basis’ at the expense of the ‘class basis’ in constructing its land policy, resulting in problematic and exclusionary outcomes (Adams, 1993; see also van Donge, et al., 2007). In the end, there is probably no ‘magic bullet’ that can guarantee that the key features are attained in every land policy especially because the latter is a contested process itself.

Yet there are also some real-world cases that show that pro-poor land policy making (broadly defined) in state/public lands may be difficult, but not impossible. These examples cover a range of phenomena, from the quality of some of the land law and policy debates and even enactments (as in Tanzania and Mozambique, for example²¹), to the quality of some of the social movement initiatives and efforts that have been made to shape, influence or construct pro-poor ‘making law’ trajectories, although in many cases, the social dimension remains weak and/or underutilized. In the discussion that follows in this section, we try to highlight some of the most interesting and relevant cases that we know of in order to show what has been possible so far and in order to draw lessons for future efforts elsewhere.

Case 1. Mozambique: Innovative 1997 Land Law

This case is exemplary of many of the particularities associated with an African setting -- where much occupied land is state/public land, but occupied and used in ways governed by customary law, and yet vulnerable to the disruptions caused by wars and the impact of overlapping laws, agencies and actions. The Mozambican case is also illustrative of how such challenges might be faced through good land policymaking processes, broadly understood. Indeed, the case highlights an experience that is often held up as a positive example of a pro-poor land policy in general, by both activists and academics alike.²² It turns out that this positive outcome (e.g., the policy’s innovative design) was largely the result of a dynamic and innovative process of relatively open investigation, consultation and deliberation. Our brief discussion of the case is based mainly upon the March 2002 account of Christopher Tanner, land reform and rural development scholar and resident FAO senior adviser with the Mozambican Land Commission. His account is accessible (<http://www.ppl.nl/books/ebooks/lpo26.pdf>), fairly detailed and well-written, with a useful focus on the dynamic processes that led up to the promulgation of the 1997 Land Law. As such it warrants a close reading by anyone interested in pro-poor land policymaking. Here, we focus on highlighting key points (raised in Tanner’s account) that offer useful insights for thinking about alternative state/public land policy making.

²¹ These two examples were identified by Ben Cousins (Interview, 21 February 2008, by Skype).

²² The 1997 Land Law in Mozambique first caught my attention in 2003 during preparations for a comparative study of rural democratization by the New Politics Program of the Transnational Institute (TNI). A field visit to Maputo in 2006 revealed to me a basically positive consensus among rural social change activists, academics and at least foreign nationals working on land issues about the 1997 Land Law as a rare case of good land policymaking. Our selection of the Mozambican Land Law for this paper was also more recently validated by Ben Cousins (Interview, February 2008, by Skype).

The 1997 Land Law is considered to be innovative in no small part because of the unusual degree of rigorous investigation, consultation and public deliberation that went into it. The investigative-consultative-deliberative process appears to have had both significant breadth and depth, and may have been driven by circumstance: the complexity and urgency of the land situation in Mozambique in the early 1990s was such that it perhaps could not have been either ignored or rushed, while at the same time the national historical turning point that the country had begun to make, moving from civil war to a post-civil war society, may have opened up new space for a more innovative political process. The accumulated effects of colonisation, national liberation, civil war and post-civil war developments had all contributed to making the complex land situation very urgent by the early 1990s. Most immediately, when the war ended in 1992, Tanner explains, “a rush for land” got underway in the form of: (i) large scale migration of refugees and IDPs back to lands they had occupied before and during the war; and (ii) a surge of private investors who had both the financial means and technical-legal know-how to request and receive land from the government.²³

Against this backdrop, international agencies (University of Wisconsin Land Tenure Center, USAID, UNDP and FAO), leading national scholars, and local non-governmental organizations working on land issues began conducting grounded empirical research in order to more fully understand what was actually happening and unfolding on the ground. Research enabled informed discussion. “National conferences were organised in 1992 and 1994, and especially in the second of these, the true complexity and scale of the land question began to emerge more clearly” (Tanner, 2002: 11). This is a crucial point given the tendency, historically, for official rural development policymaking to proceed along the lines of what Scott (1998) calls “simplification”, using simplistic, often urban-biased models that inevitably suffer from what one close observer elsewhere, and in relation to a different but related policy issue area, has aptly referred to as a “knowledge deficit” with regard to the crucial details of local conditions and complexities (see Carothers 2003). In other words, one aspect that makes the Mozambican case truly interesting and possibly unique was how, from the outset, the local complexities of historical and actual land occupation and use were not ignored, but emphasized.

²³ As Tanner explains: “The new Government taking office after the first multiparty elections in October 1994 therefore faced a ‘land question’ that was both potentially explosive and extremely complex. A curious mix of socialist principles and capitalist supply-and-demand was creating new pressures and new problems. The new 1992 Constitution reaffirmed that land and natural resources were the property of the State. The 1979 law was still in place, and land could not be bought, sold, rented or mortgaged. There was therefore no legal land market. The state was allocating land use rights however, for approved projects, and these rights were inheritable and renewable. Moreover, investments made on the land could be sold or mortgaged. Huge areas were apparently under-used or completely unoccupied, and very large areas could be requested from the State at no real capital cost. Demand for this extremely cheap factor of production grew rapidly, and those who were able to manipulate their way through the tortuous land allocation procedures stood to gain handsomely. Local people, seriously decapitalised by war and drought, were at a huge disadvantage, both legally and in practical terms, as they simply could not use even the resources they had once occupied. The loss of cattle was a major factor in this picture, with the national herd virtually wiped out and huge areas of previously used grazing land apparently lying idle and ready for occupation by new land users” (2002: 11).

Numerous parallel and intersecting initiatives and efforts to grasp the full weight of the complexity of the land situation eventually combined to identify key issues, problems and approaches did or did not work, laying the groundwork for policy propositions. The pre-policy research and discussion process likely also served to cultivate a pro-poor land policy alliance that would carry through the advocacy as well. It was in this early phase that *recognition* of the complex “underlying reality of land occupation and use” and *protection* of “local rights” (as Tanner puts it) were identified as a core objectives of any future land policy. The local NGOs and also the UN-funded projects were especially strong on this point. Tanner’s account goes on to highlight the role of the FAO in contributing the idea that what was needed in Mozambique was a land policy framed by an integrated model of rural development. This idea flowed partly from an appreciation of the value and durability of the “typical African farm system” (an understanding that was “derived from fieldwork in several countries including Mozambique”), and partly from a belief that new investments could, under certain conditions, benefit rural development there.²⁴ Through a farm system analysis, the complex space-time structure of the typical farm system was explained, as was how existing laws and government initiatives, including individual titling, “were wrong and ill-suited to the reality of rural Mozambique” (Tanner, 2002: 13). Individual titling in particular “was simply not going to work for small farmers, while the same approach heavily favoured stronger economic and political interest groups seeking new land resources” (Ibid.). At the same time, the FAO advocacy was for an integrated framework, since “private ‘economic operators’ and foreigners were potentially important sources of new capital and ideas, and were a necessary part of new rural development initiatives in impoverished rural areas” (Tanner, 2002: 15).

Eventually, the different research and discussion efforts converged on the idea of an integrated approach and thus the need for an altogether new national land policy and law. Without going into the back-story, Tanner simply states that in early 1995 “the Government responded by abolishing several land related bodies—including the Ad Hoc Commission—and creating a new Commission with a clear multi-sectoral composition” to examine the issue and make policy recommendations. Tanner stresses that “[t]he discussions surrounding the development of the new Land Policy are perhaps even more important than the legislative process itself. It was at this stage that the importance of using sociological and other empirical evidence was established, and where other pressures for change—from NGOs, independent specialists, academics—were given voice” (Tanner, 2002: 15). In the new Commission’s view, the biggest challenge was the high number of potential and actual land conflicts, as well as the institutional conflicts (e.g., “overlapping mandates and competing institutional interests”) that

²⁴ Tanner provides a very useful diagram showing the typical farm system and explains how it operates and how this makes it vulnerable to “here and now” policy interventions that are blind to necessary use/occupation cycles spread out over time and also spatially: “Each household requires access to and control over different types of land and resources over the course of a year. Some resources are communally used, such as forests, grazing land and water resources. Others may be regenerating and apparently unused as part of the lengthy rotation cycles commonly seen in this kind of system. Identifying and registering only the individual plots currently under cultivation – the plot labelled ‘Now’ for example – effectively leaves the vast majority of the local resource base unprotected as apparently ‘free’ land. These unused resources could then be allocated by the State to people from outside the local communities who were seeking land for new investment projects” (Tanner, 2002: 14).

these involved. For this reason, the Commission decided that “[t]he best approach was therefore to openly engage with all interests groups, even those in clear opposition, and move carefully ahead on the basis of open dialogue and participation” (Ibid.: 16). This desire to meet the challenge of conflict head-on came to be reflected in both the final composition of the Commission (which included representatives of all the relevant government ministries and agencies, and also of the NGO sector), as well as the way in which it proceeded with its work (which included a series of consultations with NGOs, academics, technical staff and civil servants, at the national, provincial and local levels). The Commission’s investigative-consultative-deliberative work culminated in a National Land Conference in June 1996, “when the final draft of the proposed Law was discussed by a wide audience of over 200 government officials, Assembly Deputies, civil society organizations and national and international specialists” (Tanner, 2001: 18). Notably, it was only after basic principles had been worked out that the lawyers were brought in to draft the proposed law; this helped to ensure, according to Tanner, that the legal formulations would follow the desired basic principles, and not the other way around.²⁵

In the end, the 1997 Land Law proved to be innovative in terms of the extensive and intensive process by which it was formulated and came into being, as well as in terms of its approach and content. Its deliberate accommodation of certain local complexities was crucial. At the same time that the new law’s basic starting point was the protection of existing local occupation and use rights, it also aspired to address key concerns voiced out by different quarters, especially protecting the rights of women and safeguarding against abuses of power by local leaders and chiefs. But as Tanner suggests, the real struggle with respect to each of these latter key issues would come mainly in the next phase of policymaking, broadly understood—that is, during the implementation phase where what is at stake are not only the technical-administrative details, but also the deeper in of making the law authoritative in society. Space limitations do not allow for discussion of this part of the process, although this phase of the struggle to make pro-poor land policy authoritative in societies marked by entrenched gender, ethnic and class-status hierarchies is certainly as crucial as designing pro-poor land policies themselves. What we have simply tried to show here are the factors that helped to make the first phase of the policymaking process so successful in terms of designing a pro-poor land policy. In the discussion which follows of the remaining four cases, we delve into the question of the next challenge – how to implement a relatively good land policy so that it actually results in pro-poor outcomes.

²⁵ He explains, “With the basic policy principles in place, attention turned to drafting a new law to put them into practice The old law did of course form an important backdrop against which the new one emerged. From the start, however, the principle reference point was the National Land Policy, itself the result of intensive sociological and other analysis of the reality of land occupation and use in Mozambique. In other words, the lawyers were *asked to come up with legally acceptable concepts and proposals that would reflect this underlying reality, rather than starting with concepts taken either from the old law or based in the legal practice of European countries*. Historical background, farm and land use systems, and the social and political organisation of local communities were all taken into account” (Tanner, 2002: 25, emphasis in original).

Case 2. The Philippines: Redistribution via community-based forest management

The next case takes us to the Philippines, and involves the effective redistribution of a large area of timberland (state/public land) that had been illegally enclosed and privatized and converted into a tenanted coconut and citrus farm by a local landed elite family in a remote part of the country. It provides insights into how non-state elite actors gain control of state/public land and manage to keep their acquisitions hidden from or beyond the reach of state law in reality. But it also shows how state land law and policy, in this case the 1988 Comprehensive Agrarian Reform Program (CARP), was successfully harnessed as a vehicle for pro-poor development. Two components of CARP pertain to state/public land and fall under the administrative jurisdiction of the Department of Environment and Natural Resources (DENR): the alienable and disposable (A&D) lands and the Community-Based Forest Management (CBFM) programs. The CBFM program establishes long-term land stewardship contract arrangements between the state and groups of individual tillers.²⁶ The present case involves the latter, as applied in a timberland area.²⁷ The landholding in question was a 201-hectare coconut and citrus tree farm tilled by 76 tenants in Mulanay, Bondoc Peninsula, Quezon, a remote town some 14 hours by bus from Manila. Here we present the case as researched and written by Philippine land reform scholar and activist Saturnino Borras Jr. (2007).²⁸

“[The landholding] is ‘owned’ by the politically and economically influential Aquino family, which is related to other equally powerful families in the municipio, and has been allied with the political elite of the peninsula. The town of Mulanay, like the rest of Bondoc, is a settler area: it was one of the land frontiers opened for settlement in the 1930s to 1960s, although elites from the outside were the ones able to secure contracts with government to make use of these vast tracts of land as timberlands or pastures. Slowly, some of these elites were able to secure private titles to these lands through fraudulent means, often in connivance with corrupt judges. Others opted not to secure private titles but nevertheless exercise effective control over the land (Franco, 2005; Borras, 2006b). Meanwhile, since the 1970s, the general

²⁶ According to Borras, “The CBFM programme does not constitute full formal ownership of the awarded lands; generally a stewardship type of arrangement is institutionalized partly through the issuance of a certificate of stewardship contract (CSC) under the old ISFP (together with other forestry-related programmes, it was subsumed by CBFM in the mid-1990s – see also, Broad, 1994; Carranza, 2006) and a CBFM contract under the current arrangement. The contract is for a virtual lifetime: 25 years, renewable for another 25 years. In the past, ISFP awards were given to individuals; since 1999, the CBFM agreement is provided to a group of beneficiaries. In the latter, while the contract is on a group basis, the actual plot assignment and farm work is on an individual basis” (2007:).

²⁷ Timberlands are officially classified as non-A&D land and excluded from CARP’s land redistribution program. But as Borras points out, “many so-called timberland areas are in fact no longer devoted to timber exploitation but have been converted to tenanted croplands. Some of the latter [at some point in time] were privately titled (although this is illegal), while others remain untitled but under the control of local elite” (2007:).

²⁸ In 2002 the author of the present paper likewise was able to visit the area and meet the peasant claimants.

pattern of land use has been transformed from timberlands to crop cultivation, mainly coconut, and share tenancy emerged and persisted with the influx of settler-peasants coming from various parts of southern Luzon and the Visayas (ibid.).

The Aquino estate has this typical historical profile, although the Aquino family was able to secure a private title to this 'timberland'. Since the 1960s, the Aquino family has imposed tenancy arrangements with sharing percentages ranging from 70-30 to 80-20 in favour of the landlord, while the peasants shoulder the bulk of production expenses. The Aquino family administered the coconut farm and controlled the tenants through the overseer (katiwala). It was a hard life for the peasants.

In the early 1980s, the clandestine communist New People's Army (NPA) began to organize the peasants in and around the village where the estate is located. During that time, at least seven of the Aquino estate tenants joined the guerrillas in various capacities. In the open, the same tenants became leaders of the militant peasant association organized in the municipality and controlled by the NPA. The NPA's indoctrination on 'genuine agrarian reform through agrarian revolution' became the most important campaign issue for organizing the landless peasants (see Putzel, 1995; Kerkvliet, 1993; Rutten, 2000a). In fact the NPA became quite popular in the countryside in the 1970s and 1980s, partly because of its campaign for *tersyung balik* (the inverted sharing arrangement). This means that instead of the 70-30 sharing arrangement in favour of the landlord, the sharing scheme would be inverted to 30-70 in favour of the peasants. The Aquino estate tenants were hopeful that the NPA campaign would be implemented on their farm, as promised by the guerrillas.

In the mid-1980s, the NPA told the tenants that a meeting with the landlord had been arranged, and that the tenants must themselves put forward the demand for a *tersyung balik*. The guerrillas would be present at the meeting to intimidate the landlord into agreeing to the peasants' proposal. The meeting occurred, but the NPA did not show up. The peasants could not even open up their mouths to speak out what they wanted. The landlord verbally abused them, and the peasants were made to apologize for taking up the landlord's time. The peasants later suspected that the NPA failed to show because it was able to strike a deal with the landlord on a 'revolutionary tax'. This incident changed the peasants' attitude toward the NPA. It was a major setback to the peasants' effort to alleviate their difficult living conditions. Meanwhile, during 1986-89, the village was subjected to militarization as part of the government's 'total war' policy against the communist insurgents. Two tenant-farmers from the village were killed due to the indiscriminate bombings by the military.

By the early 1990s, the NPA's presence was waning in the village. Yet the peasants still toiled under the onerous share tenancy arrangement. Around this time, the DAR information campaign about CARP reached the village.

The peasants became interested. But it was only toward the mid-1990s that they started to organize themselves around the issue of reforming the tenancy arrangement based on the CARP law that declares share tenancy illegal and requires a shift to leasehold. The peasants got excited; to them, CARP's leasehold was just like the NPA's *tersyung balik*tad, or even better as their share would be slightly higher and such a contract would be legally secure, unlike the NPA-brokered arrangement. Hence, the tenants preferred leasehold reform to land redistribution.

In 1995, they formed an association, SAMALA (Samahan ng Malayang Magsasaka sa Lupaing Aquino, Association of Free Peasants of the Aquino Estate). They then petitioned for leasehold reform. In the meeting at the municipal DAR office, the landlord came and shouted at and berated the tenants in public, insulting them as stupid, ignorant peasants who did not even know how to compute a leasehold arrangement of 25 percent and 75 percent. This outburst solidified the peasant ranks and the solidarity between them and the local DAR officials. Jointly, they elevated their demand to compulsory acquisition. The peasants were agitated.

Part of the expropriation process is to secure from the DENR the classification of the landholding to be acquired for land reform. When they got the certification from the DENR in 1995, they were faced with the biggest surprise in their lives: the DENR declared that the landholding in question in fact was 'timberland' based on a 1953 government classification; it thus could not possibly be titled legally to any private entity. The peasants had mixed feelings: elated by the fact that the Aquinos did not own the land, but wary that their hope to own the land would not be realized because timberlands are not within the CARP scope for redistribution. This was a major dilemma at this juncture, leading to a temporary inertia within the organization.

Momentum was regained in the following year when the Bondoc Development Program (BDP) – directly funded and operated by German overseas development assistance (GTZ) and its partner NGO the PEACE Foundation – reached the village and began to assist the peasants with their case. Their desperate situation pushed them to quickly embrace the offer of the assisting NGO. In addition, the barangay and municipal councils had elected new sets of officials who were sympathetic to peasants. They passed resolutions supporting the peasants' claim to the land. The emergence of the broader alliance proved strategic in their struggle.

Emboldened by the discovery of the illegal nature of the Aquino's claim over the land and by the emergence of a broad front of allies, the peasants decided to declare a boycott on land rent. The landlord filed criminal charges (*estafa* and theft) before the municipal court. Several waves of arrests and detention of the tenants and peasant leaders occurred between September 1995 and October 1998. During this period, the landlord filed a total of 108 *estafa* charges against the peasants. The peasants were jailed for a few days, then were able to bail themselves out, mainly drawing on the common fund

they had collected when they decided to launch the rent boycott (they had set aside 25 percent of their harvest as their ‘battle fund’).

The NPA came back around this period. However, instead of supporting the boycott campaign of the peasants, the guerrillas tried to persuade the peasants to stop the boycott, promising that the NPA would mediate with the landlord to reform the share tenancy arrangement from the onerous 70-30 to the government’s leasehold arrangement of 25-75. This amounted to a counter-flow in the momentum of the peasants’ campaign at this juncture. The peasants rejected these offers.

Together with their allies, the peasants brought the case all the way to the top-level officials of the DENR and the Office of the Solicitor General (OSG) in Manila. Their demand was elevated to the cancellation of the private title of the landlord arguing that it was illegal in the first place. They had a tactical purpose: the declaration of the private title as illegal would quash all the criminal charges filed against the peasants. It was not, however, an easy campaign: the peasants participated in marches, demonstrations, pickets, pitching camp for several days and on many occasions at the DENR national headquarters, visiting the OSG in Manila six times. Realizing the need to forge a broader coalition with other peasant groups in order to strengthen their demands vis-à-vis the state, SAMALA peasants co-founded a Bondoc-wide peasant alliance, KMBP (Kilusang Magbubukid ng Bondoc Peninsula, Peasant Movement of Bondoc Peninsula). The KMBP would later coalesce with a national peasant movement, UNORKA. Through these movement networks, the political reach of the local struggle of SAMALA peasants was extended to the very centre of state power. After persistent collective actions by the peasants, in 1998 a strategic victory was achieved: the OSG filed for the cancellation of the title of the Aquino family.

The DENR was slow in processing the case. But finally, in November 2001, the DENR awarded the estate to the peasants under the CBFM programme. It was a standard CBFM contract for 25 years, renewable for another 25 years; the peasants were not to pay for the land. The case was entered in the official records as accomplishment in the CBFM programme (i.e., public land category). It was a decisive victory for the peasants. The tenants who, since the land rent boycott in 1995, had begun to engage in intensive intercropping on the land, started to harvest farm products without having to pay any land rent. They planned to sustain their demand for the re-classification of their land from timberland to cropland so as to secure a full ownership title over the landholding. Meanwhile, the victory in the Aquino case was watched carefully by other peasants in Bondoc Peninsula who were in a similar situation. Not surprisingly, several group claims by Bondoc peasants similar to SAMALA’s struggle have already been filed before the DAR and DENR offices (see Franco, 2005).”

Excerpt from Borras (2007).

Case 3. Brazil: Distribution via “reservas extrativistas” (RESEX)

The next case comes from Brazil, and involves the experience of peasant families and particularly the women who collect *babaçu* (a particular kind of coconut) in Ciriaco, Maranhao. Like the previous case, this one also highlights the critical importance of civil society based rights-advocacy groups and initiatives in helping to make state law authoritative in society. But in this case an important component of the rights-advocacy effort come from the international community in the form of a sustained FIAN action campaign, which served to inform, sensitize and pressure Brazilian authorities to improve the situation of the peasant claimants. The description of this case is contributed by the FIAN International, which was actively involved in the campaign to support especially the women *babaçu* collectors.

“Reserva extrativista” Ciriaco Extractive Reserve

In Brazil, "reservas extrativistas" (Extractive Reserves, RESEX) are areas of valuable forest resources protected by the state for the sustainable use of traditional populations. The main purpose of such reserves is to ensure access to land and resources along with the continuation of the traditional way of life for the indigenous populations. The state creates Extractive Reserves on areas of land where extractive populations, natural resources for sustainable use and an ecological and social interest exist simultaneously. Working on these reserves is only allowed when natural resources are preserved. The use and management of these state-designated areas is guaranteed to the inhabitants through state decrees or contracts.

The Origin of Extractive Reserves

In 1985 the First National Rubber Workers' Meeting of Amazonia was held in Brazil. The participants demanded development policies for the Amazon that took care of the interests of the rubber workers and that respected their rights. They argued that the expropriation of native rubber tree plantations ought to preserve them and not destroy them. They also asked for health centres and schools, which would be available to all traditional populations, and retirement schemes for the so called "soldados de borracha" ("rubber soldiers") and rubber workers. In addition, they fought for an agrarian reform to recognize their right to the land that they had inhabited for such a long time and to fulfil the land's social function. They claimed the reserves were territorial spaces intended for the sustainable use of renewable resources. Furthermore, they argued that the reserves were of both ecological and social interest. The native inhabitants wanted to balance development with the preservation of the environment and social justice. Because each reserve would be managed by its own inhabitants, this balance was to be achieved by society participating not merely as an agent, but as an active part of the process. Consequently, the plans on how the reserves were to be used had to be based on the experience and knowledge of generations of inhabitants. As well as this, the inhabitants argued that the protection costs for the forests would decrease because

they themselves would defend the land.

After the World Bank and the Inter-American Development Bank, under pressure from environmental organisations and the National Council of Rubber Workers (*Conselho Nacional dos Seringueiros* CNS,) cancelled loans for the building of highways in the Amazon region, the Brazilian Government had to revise its development policies. In 1988 it entered into concrete negotiations with the CNS on Extractive Reserves. In 1990, Decree N° 98.897 for Extractive Reserves was passed in Brazil establishing a legal basis for future reserves. According to this decree the Brazilian State can allocate usage rights over these territories and the usage rights can be bequeathed. Concession of these usage rights is regulated by Decree N° 271 of 1967. Today many Extractive Reserves exist in Brazil, including big ones like "Alto Juruá" and "Chico Mendes". According to CNS (1993) the Extractive Reserves constitute the first institutionalised way, which has been legalised by the State, of implementing a new model of sustainable development.

The Ciríaco Extractive Reserve

Ciríaco is an area situated in the municipality of Cidelândia in the South of Maranhao where babaçu, a particular type of coconut, is the prevalent forest product and represents the major source of income for the local inhabitants. For some 300 families in Ciríaco (about 1,500 people,) babaçu extraction is the main source of income of the women of the area. Yet, despite a national decree in their favour ordering the creation of an Extractive Reserve, the right to feed themselves and their families from the produce of the Ciríaco natural reserve was seriously threatened.

In order to ensure their sustainable means of subsistence, the creation of a 7,050-hectare reserve was ordered in Presidential Decree N° 534 on May 20, 1992. Unfortunately, it took a long time for the government to take action to actually set up the reserve. The area first had to be regained because local landlords had illegally appropriated it. These landlords harassed the peasant families and restricted the women's access to the forest even further. As a result, the situation became increasingly tense, especially for the women collecting babaçu. The landlords destroyed the harvests and the ecosystem and acted to stop the decree from being implemented. The rural workers were threatened with violence by the police and landlords' men.

Because the government did not rapidly enforce the decree, the area became in danger of being transformed into eucalyptus plantations, an unsustainable export-oriented crop, which would have meant that the decree would have lost validity and the peasants' means of subsistence would have been destroyed. The preservation of Ciríaco reserve's flora and fauna therefore also meant the survival of a lot of people and the conservation of one of the few areas not affected by eucalyptus monoculture. The government first had to expropriate the local landlords and regularise the situation for the families living on the reserve. It also had to order the area to be demarcated and registered as an Extractive Reserve, which included a description of the use of resources allowed on the reserve. But the Brazilian Institute for Environment and Renewable Resources (IBAMA) and the National Centre of Traditional Peoples and Sustainable Development (CNPT) were facing a common problem: there were not

sufficient resources to compensate the local landlords.

Case Development and FIAN's Action

There were several non-governmental and church organizations²⁹ supporting the initiative, including the Brazilian Interstate Movement of Coco Babaçu Breaking Women, and FIAN. FIAN launched a letter campaign in 1998 to the Brazilian authorities, including the President of Brazil, the Ministry of Environment and IBAMA, supporting the demands of the Ciriaco community. Subsequently, many letters and emails were sent demanding the expropriation and regularisation of the reserve area and a program to preserve the local eco-system and to ensure the extractive populations had access to and use of the land and natural resources. As a consequence, in October 1998 the head of CNPT went to the Association of Workers of the Extractive Reserve of Ciriaco (ATARECO) to find a legal solution for the Ciriaco reserve. This led to him calling for a new land survey to find out the names of the proprietors and the numbers of inhabitants on the reserve. In addition, at the end of 1998 a delegation from the area met with the Agrarian Reform Minister, Raul Jungmann.

During the 1998-99 period, several organizations carried out support actions to help the peasants. Unfortunately however, problems caused by the local landlords continued. Despite access to the babaçu trees being permitted, the women peasants were only allowed to sell the coconuts to their landlords for a lower price than they would have otherwise got. Since they had no other way of earning money, a lot of them continued breaking coconuts under these conditions. Furthermore, although the landlords stopped cutting down so many palm trees, they started using pesticides to get rid of the babaçu palms. These actions seriously harmed the peasants, who utilize everything from babaçu for the production of charcoal, cooking-oil or covering their houses etc.

CNPT/IBAMA carried on with their efforts to legalize the Ciriaco reserve, but this depended largely on the amount of federal budget available. Even if CNPT were able to establish management plans, the compensation depended entirely on political willingness. Therefore, despite the efforts of various support groups, the Extractive Reserve Decree expired. Nevertheless, it was possible to open negotiations with the federal government and in August 2000 a working group (with ATARECO, CNS, CENTRU, MIQCB, STR, CNPT/IBAMA) was established by ministerial order to conduct technical studies about land issues, a new social economic survey, the organisation of inhabitants and, on October 10, 2000 the working group was ordered to remake the decree.

Moreover, the number of ATARECO members increased from 35 to more than 110. These people accomplished land projects by organizing small animal breeding, beekeeping, buildings and equipment for the production of manioc-flour and stoves to produce charcoal from the shells of the babaçu. In addition, they managed to improve the adult literacy rate, provide personal identity documents, birth registrations as well as forming groups of collaborating inspectors. In this context, the social and economic survey coordinated in November 2000 by the

²⁹ CENTRU, Sindicatos Trabalhadores Rurais (STR), Federacao Trabalhadores Rurais.

Ministry of Environment and the Secretariat of the Amazon Cooperation presented the following: 315 families distributed in four colonies were living in the area, counting a total of 1099 people, of which 25% were not [formally] educated, 31% had been to school for three years and 11.8% had completed fundamental education. Several health problems were also discovered, such as various influenzas, many disabled persons and a mortality rate of 11 per thousand inhabitants. The majority of settlements had last-and-plaster walls, straw roofs, threadbare floors, and lacked treated water.

Due to national and international pressure, CNPT/IBAMA finally managed to obtain the resources needed between 2001 and 2002 to carry out the demarcation of the reserve and to pay compensation to the landlords. Subsequently, IBAMA issued more than fifty certificates of ownership because of social interest, one for every proprietor within the RESEX area. In 2003 more than 80% of the RESEX area was in the hands of the extractors. IBAMA finally transferred the land to ATARECO by way of a Contract of Permission for Use.

Since 2003, more than 160 families have been benefiting from the area and each family has received 20 hectares of land and been able to use the credit programs from the Brazilian government. Together they have been organizing projects to ensure the sustainability of the babaçu palms, producing charcoal, almonds etc. and thus making it possible to feed themselves and live in dignity.

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Case 4. Vietnam: Distribution via (re)allocation of forest land

Our fourth case comes from Vietnam. It is a case about how a problematic government land policy in state/public land unexpectedly led to pro-poor results, and is drawn from an unpublished recent report made by Saturnino Borrás Jr. The official land policy at the center of the story actually has two parts. The first part entails the 1993 Forest Land Allocation Program (FLAP1), which was an anti-poverty measure targeting the upland rural poor (who are mostly indigenous peoples) and aimed at increasing sustainable agro-forest productivity. The crux of this first program involved distributing a forest land allocation (with a certificate called a “green book”) to rural poor households or communities. With ten years of implementation, however, the program was said to suffer numerous problems, such as a less than enthusiastic response by the target population, inequalitarian and exclusionary outcomes,

and unreliable official accomplishment claims (see Borras 2007b, citing Sikor 2006 and Sikor & Tran 2006). Notably, in response to this situation, between 1999 and 2004 the government made numerous reforms to the original program, including a new Land Law in 2003 and Decree 181 in 2004 (collectively referred to as FLAP2), while the old “green book” certificate was replaced by a new “red book” certificate.

The programmatic changes raised hopes for better outcomes, but for the most part these have not been borne out. Elite capture of the FLAP2 implementation process continued and the target rural poor populations have generally remained sidelined. And yet, against such an uninspiring trend, at least one bright spot has been shown to have emerged. This is the case of the Bac Lang Commune, Dinh Lap District, in the northeast of the country on the border with China, where the forest land (re)allocation program, at least since 2006, has taken on a “generally participatory and empowering” character, “resulting in egalitarian and pro-poor outcomes” (Borras, 2007b: 3). As Borras explains,

“The real puzzle is not why so many forest land allocation initiatives in Vietnam from 1993 onwards have resulted in ‘more of the same’ processes, i.e. non-participatory, disempowering, top-down, as well as in outcomes that are elitist and not truly pro-poor. Various scholars have already provided most of the answers: the institutional set-up in Vietnam and the way political resources between key actors are distributed within the state and in society tend to always result in such kind of outcomes. The real puzzle therefore is how is it that this general pattern in land allocation process was broken in some instances, resulting in egalitarian, inclusive and pro-poor (re)allocation outcomes? How did this happen in an institutional and structural setting that it is generally similar to the rest of Vietnam?” (Ibid.).

This puzzle is even more intriguing against the backdrop of historical tensions and deeply conflicting worldviews between state agents on the one hand and the indigenous populations that occupy the upland areas on the other. Borras’s description of this backdrop is quite compelling and so worth quoting in full here (see the box below).

“It is the actual and potential economic value of the land that seems to have driven the Vietnamese government to include forestry land in 1993 in its land allocation law. It aims to transform the forestry lands into a vibrant economic capital, although included in the official discourse is the concern for environmental regeneration and sustainability of the forestry lands.

But conflicts between different actors regarding the meaning of land, land use, land access, and land ownership have been widespread in the uplands. According to Kerkvliet (2006: 297; see also Akram Lodhi, 2007: 280), referring to recent developments in the Central Highlands, these dynamic transformation and conflict-ridden processes in the uplands are a combination of several factors. A demographic factor shows the steady influx of migrants (mostly Kinh people, the dominant ethnic group in Vietnam) into the upland territories of ethnic minorities, causing increasing

animosities and competing claims over forestry lands. Environmental constraints are also causing indigenous peoples to abandon communal farming. Meanwhile, according to Kerkvliet (ibid.) the state also insists against mobile and shifting cultivation and imposes its requirement for fixed area cultivation, believing that a sedentary farming system is more environmentally friendly and economically efficient. This is also part of course of the state 'simplification' process, i.e. trying to make legible complex social relations and cultural practices that are otherwise not legible to it (see Scott, 1998). And so, between the indigenous peoples on the one hand and the state on the other hand, conflict in the uplands have erupted, and these are mostly struggles over meanings around the issues of access to and control over natural resources (see also Li, 1996 in the context of Indonesian uplands): for the indigenous peoples, land belongs to the community; the State says it belongs to the 'people' and being 'managed' by the State and to be allocated to individuals and households; the indigenous peoples say that the allocation of land use rights to individuals and households should be done by community leaders through community norms, the State says it has to be done by the State through state laws and through the market (Kerkvliet, 2006: 297); the indigenous peoples say that boundaries are flexible, porous (i.e. inclusive) and temporary, the State says it should be fixed, 'solid' (i.e. exclusive) and permanent, and so on.

These pre-existing dynamics and conflicts are the general context, and partly the object, of the forest land policies carried out by the central government beginning in 1993. It is an official reform 'from above': initiated, interpreted, and implemented by the state."

Excerpt from Borrás, 2007b: 5.

The implementation of the first forest land allocation program in Bac Lang commune followed the national pattern, which is to say that the process got captured by a few locally influential individuals and their households, resulting in a concentration of land in the hands of a few. The majority of the commune's households – upland rural poor from the Dzao ethnic group -- lost out in a major way. Out of the commune's 5,780 hectares of land, 4,068 hectares were placed under FLAP1. Nearly all that latter amount was allocated to a total of 141 individual households; and only 189 hectares (4.6 percent) was allocated for the community at large. The distribution of the land that was allocated to households was extremely skewed in favor of a few influential individuals – current or former local officials from the politically strong, but numerically weak Kinh ethnic group. Meanwhile, it was found that the favored few recipients of the land allocations did not know exactly how much land they had been allocated or where their allocation was located, since the required mapping and surveys had been done by the government technicians in their offices and not in the field. Despite these results, District government officials declared the first program a success.

Then years later came the second round of intervention "from above", in a well-meaning attempt, as Borrás puts it, to "reform the reform". Nothing changed -- at least at first. Borrás explains that when the central government launched the new program, because the district government officials did not want to disturb the skewed results of the first intervention, the second intervention at first amounted to little more than exchanging the old green land

allocation certificates, for the new red ones. What few re-allocations that took place were from influential individuals to their own family members. But then, something apparently unforeseen happened. The new program contained enough new incentives for the previously uninterested Dzaio households to seek to benefit from it, and at the same time, the larger process of forest allocation had created and deepened the threat of land enclosures. “Pulled” by the possibility of getting land and “pushed” by the threat of being enclosed out from land, many rural poor Dzaio now suddenly became land claim-makers – leading to an urgent situation, made more chaotic by the fact that neither program contained any mechanisms for settling boundary disputes or resolving conflicting and competing land claims.

An important factor that eventually contributed to turning the situation around was the entry of the NGO called CIRUM in mid-2006, which succeeded in establishing a more bottom-up, participatory and transparent process -- in Borrás’s words, CIRUM’s efforts to “reform from below the reform of the reform from above” served to “largely (re)shape the FLAP2 allocation process” (2007b: 27). It should be noted here that FLAP2 now targeted a total of 5,246 hectares for allocation (or 30 percent more than the 4,068 covered under FLAP1). Three especially crucial aspects of CIRUM’s intervention were identified. The first had to do with initiating a land-related conflict resolution mechanism that brought together state and community in a participatory process. The second had to do with working to increase the community portion of the total allocation, which indeed went up from a mere 189 hectares under FLAP1, to 2,047 hectares under FLAP2. According to Borrás, “[t]he dramatic increase in community allocation is perhaps one of the most important features of the CIRUM work in Bac Lang because it can potentially address possible problems in the strategy of full-blown ‘private-household allocation’ which tends to run counter to community and communal traditions in resource access, control and (re-)allocation” (Borrás, 2007b: 27). The third had to do with working to expand the pool of those who actually received land allocations (and reducing the size of the lands allocated). The results of their efforts were impressive: “a total of 261 households and 10 communities got their red books by 2007. All households got land allocation, and only 21 out of the total 261 households got between 21 and 30 hectares; the overwhelming majority, or nearly 80 percent, were in the range of 10 to 20 hectares” (Ibid.: 28). As of May 2007, FLAP2 implementation was 92.85 percent – less than the FLAP1 100 percent completion rate that was reported by district officials, but certainly more substantial and more effectively pro-poor. Borrás’s study goes on to show how these achievements were made possible by CIRUM’s alternative approach, which emphasized (i) involving multiple actors as equal partners in program implementation, (ii) subordinating technical matters to socio-cultural and political issues, (iii) following bottom-up, participatory and transparent processes, and (iv) integrating community and state conflict resolution mechanisms (Borrás, 2007b: 29).

Case 5: West Bengal/ India: State seeks cooperation of the community in managing state-owned forestland for mutual benefit

Our fifth and final case comes from the federal state of West Bengal in India and is related to forestland management. In India forestland belongs to the state. Disputes between state and

forest dwellers concerning access to forestland are common in the country. Marginalized communities like Dalits and Tribal people often inhabit the forestlands and they have no other alternative livelihoods than depending on forest products for survival. The Forest Law in the country is complicated and does not adequately recognize the rights of the forest dwellers on forestland and forest resources for earning a sustainable livelihood. However, with time the state has realized that ignoring people's rights over forest would only lead to destruction of this valuable resource and that violation of the human rights of poor local communities would further intensify. Therefore, several experiments were conducted at the grassroots, involving communities and government jointly managing the forest resources in such a fashion as to ensure the rights of forest dwellers and to protect the forest. Arabari is the leading example of a successful practice of community forest management in West Bengal and it has inspired the state and central governments to replicate the same model of community forest management in other parts of the country. This case exemplifies how state land could be used in harmony with community demands and needs, resulting in a sustained and profitable use of the forest resource and enhanced food security of the community living close to forestlands. It thus constitutes an example of 'good practice' in state land management in West Bengal and should inspire more initiatives of this nature.

*Arabari: The innovative experiment*³⁰

By mid -1970s, the West Bengal Government realized that, if the people's needs were ignored, it would be impossible to save the forests. The National Commission on Agriculture (1973) strongly recommended, among other things, "social forestry" on state land unsuitable for agriculture to help in soil and water conservation and to develop livelihood opportunities in rural belt. The success of social forestry programme, in which community participation is adequately incorporated at all levels, has demonstrated that it is a viable land use system and an important tool in development of rural areas where large scale employment generation is possible through it.

Arabari is a forest range in West Midnapore district of West Bengal, India contiguous with the Dalma range of East Singhbhum, Jharkhand. Arabari development block is an area constituted by small forest-fringe villages. The villagers are mainly poor caste and tribal. Their main source of livelihood is agriculture and collecting forest produce. The centre of the range is 30 km from Midnapore town.

In 1972, Arabari became famous as a successful case of state land management, in which peoples' participation was the driving force. The state actors initiated the joint planning and decision-making processes with the villagers regarding forest management in Arabari development block. This pilot project was a participatory initiative involving the government and local communities for regeneration of degraded forests through effective protection and improving the socio-economic condition of these communities through forestry activities. The villagers were encouraged to protect forest proactively and to derive their livelihoods from minor forest products legally (which earlier was restricted by law). The new plan involved local villagers in protecting coppices of *Sal* (*Shorea robusta*) trees in return for free

³⁰ This case was documented by Ujjaini Halim, FIAN West Bengal/India.

usufructuary rights on all non-timber forest products, additional employment, and a promise of 25% share of the net cash benefits from the sale of short rotation *Sal* poles. About 1,270 hectares of degraded *Sal* forests were taken up for revival on a pilot basis. Initially, 618 families, comprising a population of 3,607, were involved through "forest protection committees".

Sal and its associates in forests yield many non-timber forest products like *Sal* leaves and seeds, mushrooms, Tasar silk cocoons, medicinal plants, edible roots and tubers etc, which motivates the poor villagers in protecting the coppices during their gestation period. This cooperative action allowed the villagers living on the fringe of the forest, to perform grazing activities, which further ensured the food security of the poor households.

Encouraged by the experience of the Arabari experiment, the State Government decided in 1987 to encourage forest-fringe population to actively participate in managing and rehabilitating degraded forests all over south-west Bengal. This movement spread like a wild fire. Though informal and voluntary at first, it acquired the character of a formal institution when, in 1990, the State Government officially recognised the forest protection committees (FPC) in south-west Bengal. Based on the Arabari experience, more than 1250 village forest protection committees spread over an area of 0.152 million hectares of degraded forests were formed during the next eight years in the state. Today, over 2090 rural communities in the state participate with the government to manage 0.3 million hectares of natural forests.

Peoples active participation in managing state forestlands commonly known as "Joint Forest Management" (JFM) is a concept started from Arabari in West Bengal and has become quite successful with few exceptions. The Arabari case is a positive example of state land management with people's active participation in local governance and decision making, regarding their local development priorities. It resulted in people's participation in planning and implementation of wasteland development programmes, through definitive institutional arrangements involving sharing of benefits, and it brought significant improvement in the status of land and forest cover. Some poverty alleviation programmes were simultaneously developed which helped in generating income of the rural poor households in forest-fringe villages.

Arabari clearly demonstrated that a genuine pro-poor land reform policy is imperative to encourage resource-poor villagers, with state assistance, to undertake development of wastelands under their ownership into farm forests, group farm forests etc. for ensuring individual and household food security. Moreover, Arabari example showed that effective interaction with *Panchayati Raj* (local self-government) institutions would be crucial in dispelling apprehension from the minds of villagers about the JFM system and the role of the Forest Department, and help in conflict resolution at the local level. Finally and most importantly the large-scale participation of village women in Arabari experiment also recognized the significant role of village women as principal forest users, and proved that they suffered most when forest are degraded. Arabari made it clear that without active involvement of village women, forest management's success would be very limited. It has also been observed that ensuring peoples effective participation in state land management like the joint forest management is a slow process. The basic problem is getting attitudinal changes in the local state representatives (like staff of forest department in Arabari) and policy makers.

Village communities also need orientation to this new approach of joint resource management.

Gradually the attitudinal changes among state actors (towards inclusiveness) should be institutionalized in the system and people's participation at local governance should be prioritized. The potential of Arabari is immense and similar initiatives should be supported by the state on a regular basis. Such initiatives should be grounded on sound policies and programmes. Revisiting Arabari is particularly important in the present era when land-grabbing policy is replacing land reform measures in the state, thereby jeopardizing livelihoods of thousands of poor. Thus in the present day when Special Economic Zones (SEZ) policy dominates the regime, cases like Arabari will show us the 'alternative' to existing development paradigm which looks after the interests of few at the costs of livelihoods many. Arabari will remain as a glorious example of achievement based on participation and cooperation of local poor and the state actors in West Bengal and will inspire the policy makers, state actors and common people always.

SECTION 6. CONCLUSIONS AND RECOMMENDATIONS

In the preceding discussion we have tried to show why and how the issue of land policymaking – broadly understood – is both important and urgent in the specific setting of state/public lands. We have also tried to show in some detail why and how the conventional thinking on land policy interventions in state/public lands is fundamentally problematic, tending to lead to crooked processes and less than pro-poor, if not wholly anti-pro-poor outcomes. In general terms, the conventional thinking suffers from the fatal flaw of treating property rights narrowly as static and ahistorical “things”, rather than as multi-dimensional and dynamic social relations involving numerous and diverse actors in society and the state over time. Conventional thinking suffers from another fatal flaw as well – its inability or unwillingness to see, understand, appreciate, and take fully into account the actual diversity and complexity of the reality that obtains and persists in state/public lands. This complex reality that must be acknowledged and considered in policymaking broadly understood is shaped and marked by class, gender, ethnic and historical fault lines and forces. “One-size-fits-all” and top-down type policy “solutions” may be full of pro-poor intentions, but ultimately are vulnerable to elite capture at numerous points and multiple levels along the way, and thus are bound to fail to be pro-poor in effect.

Alternatively, we have argued that what is needed at minimum are for basic pro-poor principles to be built into policy frameworks, as well as explicit articulations of exactly how a given policy aims to be pro-poor. These basic principles involve a human-rights approach to land, as well as commitments to protecting and fulfilling the rights of the rural poor and most vulnerable, especially women and indigenous peoples. We have tried to show, through a combination of references to FIAN action cases and also through a series of more detailed case studies, how such an approach is difficult but not impossible. In addition to a basic recommendation that this civil society perspective and its attendant lessons and insights, discussed above, be taken seriously by policy makers, we conclude by specifying a few additional general recommendations. First, if effective state/public land policy involves

understanding the underlying complexities of diverse local situations (and then allowing this understanding to inform the effort to devise truly pro-poor land policies), then it follows that substantial and significant resources must go into sociological-anthropological research and grounded knowledge accumulation, involving a wider range of data-gathering/analysing actors and processes than is usually done in policymaking circles. Second, given the importance of sustained and systematic rights-advocacy from below by civil society organizations in supporting rural poor peoples' rights claim-making efforts, it follows that substantial and significant resources must also go to expanding civil society rights-advocacy work. Finally, given that competing interests and conflict *in the context of real power imbalances* are part of the reality inside state/public land (much like in private land settings), it also follows that policymaking broadly understood cannot ignore or shy away from this fact of life; it must fully acknowledge it in order to face it creatively and confront it head-on. Policymaking initiatives that fail to do so are likely to fail to make a positive difference in effecting truly pro-poor change.

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