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**Legal pluralism as a new perspective to
study land rights in Nicaragua.
Two case studies.**

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Outline

OUTLINE	2
ABSTRACT	3
INTRODUCTION	4
1. THEORETICAL FRAMEWORK	5
1.1. DIFFERENT APPROACHES TO LAND RIGHTS	5
1.2. LEGAL PLURALISM AND LAND RIGHTS.....	8
1.3. AGENCY, STRUCTURE AND DEVELOPMENT INTERVENTIONS IN A FRAMEWORK OF LEGAL PLURALISM	10
2. CASE STUDIES: ACCESS TO LAND INTERVENTIONS IN NICARAGUA	14
2.1. THE METHODOLOGY	14
2.2. THE CHOICE OF FIELDS OF STUDY	14
2.3. TWO COMMON FIELDS: THE STATE AND THE PEASANT SOCIETY	16
2.3.1. <i>The state</i>	16
2.3.2. <i>The peasant law</i>	17
2.4. THE INDIGENOUS COMMUNITY	20
2.5. THE PROJECT LAW : CASE OF THE UCOSD	21
2.5.1. <i>General Background</i>	21
2.5.2. <i>Rights and rights holders</i>	21
2.5.3. <i>Linkages and confrontation with other SASF</i>	22
2.5.4. <i>Reflections about the intervention</i>	24
2.6. THE PROJECT LAW : CASE OF NITLAPAN	25
2.6.1. <i>General Background</i>	25
2.6.2. <i>Rights and rights holders</i>	26
2.6.3. <i>Linkages and confrontation with other SASF</i>	26
2.6.4. <i>Reflections about the intervention</i>	27
CONCLUSIONS AND POLICY RECOMMENDATIONS	29
REFERENCES	31

Abstract

The weight of rural poverty in Nicaragua and the very unequal distribution of land in the country mean that the issue of access to land is still a priority in development policies. In spite of several state policies during the last 30 years the problem has not been solved and, therefore, non governmental actors try to tackle the issue by implementing development intervention which aim is to bring access to land to the poor. The objective of this paper is to study two of these interventions in order to identify relevant policy recommendations for non governmental actors. The first intervention studied is a project based on long term leases with purchase option developed by the Union de Campesinos Organizados de San Dionisio (UCOSD). The second example, implemented by Nitlapan, concerns medium term loans and technical assistance to support to buy land and make it produce. The theoretical framework of this study is based on the following aspects. First, we argue that land rights are social constructions and we recognize the existence of a plurality of rights and rights holders involved. This leads us to consider the approach of legal pluralism as a relevant way to handle with the issue of analysing land rights. Finally, we mix this approach of legal pluralism with several intervention methodologies aimed to reach social change: the centralist one where state law is the main driver of change, the Institutional crafting school, where the emphasis is on rules and norms, and the approach based on the concept of Institutional bricolage, where social factors play a key role. In the case studies we identify four normative systems influencing land rights (the state, the indigenous community, the peasant society and the development project in itself) and we confront their norms and rules. This leads us to four conclusions: 1. The approach of legal pluralism is relevant in Nicaraguan context, 2. There is a high tendency to formalization of land rights in development interventions, 3. The concept of Institutional bricolage is interesting in designing development interventions. The previous conclusion result in concrete policy recommendations for practitioners. First they need to adopt a legal pluralist approach and recognize the existence of a plurality of overlapping normative orders that govern land rights relationships. Then, they need to understand that laws and rules are not the only important factor intervening in land access and management. On the contrary, social and power relations are key aspect and they have to gain a deep understanding of these processes if they want their interventions to be successful.

Introduction

According to the World Bank, in 2001, 45% of Nicaraguan population lived in rural areas and 64% of this population was considered as poor (World Bank, 2010). Using other poverty measures, the Nicaraguan government considered that, in 2005, 70.3% of the rural population was poor and 30.5% extremely poor (INIDE, 2007). In addition, Nicaragua is characterized by a very unequal distribution of land and by a huge quantity of rural landless households (Maldidier and Marchetti, 1996, Brogaard, 2005, Pommier et al., 2006). Therefore, access to land is still a relevant issue when dealing with poverty reduction and development policies. However, neither the agrarian reform in the 1980's nor the more liberal policies since the 1990's have been able to bring satisfactory answers to this problem.

The persistence of this issue has led many local institutions and Non Governmental Organizations (NGO) to try to find small-scale solutions to the problem in their areas of interventions. The objective of the paper is to study two of these experiences in order to grasp relevant learnings that could be useful firstly to improve these interventions and secondly, to identify more general recommendations according to this kind of interventions in the Nicaraguan context.

The argument that will be developed in this paper is that, in order to study the issue of land rights in Nicaragua, an innovative analytical approach has to be implemented. At the core of this new approach is the adoption of the concepts of Legal pluralism and Institutional bricolage. The former is considered as relevant to grasp and understand the characteristics of the normative systems that play a role in the definition and exercise of land rights. The later will allow us to bring new insights about methodologies of interventions that could be necessary to reach positive results.

In order to achieve our objective the present paper will be divided in two main section. In the first section, we will describe the theories and concept that will frame our study. We will begin with the opposition between economic and socio institutional conceptions of land, then we will continue with the application of the concept of legal pluralism to land rights and finally we will introduce the concept of Institutional bricolage to reflect on development interventions in a framework of legal pluralism. In the second section, two cases will be studied trying to apply the

theoretical framework developed before. Finally we will conclude by resuming the main findings of the case studies and giving some concrete policy recommendations.

1. Theoretical framework

1.1. Different approaches to land rights

In academic, policy and development arenas two main approaches exist regarding land rights. The first one is influenced by economic theories, argues for the superiority of private individual ownership and emphasizes the necessity to have formal legally recognized rights. This conception is related with modernization theories and what is called by Platteau (2002), the Evolutionary Theory of Land Rights according to which land management has to follow a universal transformation from collective land rights to individualized formalized rights, accompanying the gradual growth of an intensive market based agricultural production. This vision focuses essentially on the economic role of land as a factor of production and has been defended by many economists and policy makers, leading to numerous interventions around the world aimed at the simplification and formalisation of land rights through titling and registration initiatives (De Janvry et al., 2001; Platteau, 2002; Benjaminsen et al., 2008; Sjastaad and Cousins, 2008).

The second approach to land rights is a socio-institutional approach. According to it, land is much more than just a piece of soil with economic functions, and has social and environmental functions. Here, land rights are the result of social processes, they are social constructions, are context specific and they continuously evolve according to the claims and struggles between social actors (Merlet, 2007; Lavigne-Delville and Chauveau, 1998; Le Roy, 1996). This approach brings two main implications. First, it implies the recognition of land as a particular space which contains other natural resources (e.g. water, biodiversity) that are used by human beings as part of their livelihoods (Le Roy, 1996). This aspect suggests that when dealing with land issues it is necessary to take into account, not only the rights on the soil, but also the other rights that exist on one piece of land and which are associated with other resources. Second, considering land

rights as social constructions means that they “refer to relations with other humans who might travel over this space or use its [natural] resources” (Merlet, 2007:8). This leads to the idea that several social actors, whether individual or groups, can have rights over the sama piece of land.

Both previous implications have conducted several authors to introduce the idea of ‘bundle of rights’ to deal with land rights (e.g. Merlet, 2007, Schlager and Ostrom, 1992; Le Roy, 1996). The concept of ‘bundle of rights’ means that land is characterized by a variety of superposed and overlapping rights and rights holders. Therefore land rights are always incomplete, they usually overlap and are socially limited and controlled. One of the most influential works about this, has been done by Schlager and Ostrom (1992) who have identified the existence of five types of rights and four types of rights holders as show in the Table 1.

Table 1: Bundle or rights

	Owner	Proprietor	Claimant	Authorized User
Access and Withdrawal	X	X	X	X
Management	X	X	X	
Exclusion	X	X		
Alienation	X			

Source: Schlager and Ostrom (1992:252)

Schlager and Ostrom’s work has been adapted by several authors to the reality with which they are dealing. For instance, Le Roy (1996) has developed a matrix of study that recognize the existence of 25 types of land control systems according to the use of resources (not only land) and the type of management of these resources (i.e. public, private, managed by one groups, managed by several groups) which is well adapted to the African reality where privatization of land is still a phenomenon in process.

This paper will adopt one of these adaptation, the ‘tenure box’ of Barry and Meinzen-Dick (2008). The ‘tenure box’ recognizes the existence of the same rights as Schlager and Ostrom but does not share the idea of a hierarchical superposition of rights holders. Therefore Barry and

Meinzen-Dick simplify the matrix, putting in the horizontal axis the rights holders and describing inside the table the types of rights hold as shown in Table 2 with some examples.

Table 2 : Tenure Box

		<u>Right holders</u>			
		<i>(e.g. individuals)</i>	<i>(e.g. community)</i>	...	<i>(e.g. state)</i>
<u>Type of rights</u>	Access	<i>(e.g. walk in the forest)</i>			
	Withdrawal	<i>(e.g. timber extraction)</i>			
	Management		<i>(e.g. land management plans)</i>		
	Exclusion		<i>(e.g. allocate areas for cultivation)</i>		
	Alienation	<i>(e.g. sell rights)</i>			

Source: Barry and Meinzen Dick (2008)

Even if the ‘tenure box’ has initially been designed to deal with situations of common pool resources (e.g. forest management), it can be adapted to the situation that will be studied later in this paper. Actually, the advantage of the ‘tenure box’ is that it permits to escape from the possible pitfall of considering the superiority of the right holder that holds all the rights (the ‘owner’) whereas this actor may not even exist.

In sum, in adopting a socio institutional approach to land rights and using the concept of ‘bundle of rights’ this paper embraces a complex vision of the issue, more related to social science than economics. An important question that appears at this point of the work is how to handle with this diversity of rights and rights holders when trying to study land rights in a specific context. As we consider land rights as social constructions, it seems that one key aspect is related with the role of norms and rules that regulate the exercise of the rights. This paper will argue in the next section that the existence of a ‘bundle of rights’ and in particular of a variety of right holders is directly linked with the existence of a variety of normative systems, whether formal or not, and that an interesting concept to deal with this is the concept of ‘legal pluralism’.

1.2. Legal Pluralism and land rights

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

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

Griffiths' conceptualization has several implications. Firstly, it considers law in a very broad sense. F. and V. von Beckmann precise this idea by defining law as "a generic term that comprises a variety of social phenomena (concepts, rules, principles, procedures, regulations of

different sorts, relationships, decisions) at different levels of social organisation” (ibid,2006:13). This definition of law is the one that will be adopted in the rest of the paper. Secondly, it implies that there is no hierarchy between SASF, which means for instance that state law can not be considered as a better or fairer legal order. By doing so, legal pluralism seems to embrace Migdal’s approach of the ‘state in society’ which says that “no single, integrated set of rules, whether encoded on state law or sanctified as religious scriptures or enshrined as the rules of etiquette for daily bahavior, exists anywhere” (Migdal, 2001:11) and that “[s]tates are no different from any other formal organization or informal social grouping” (ibid:12). Thirdly, it recognizes the importance of social factors, such as social relations, in the definition or rules and norms and rejects the idea that state-law can actually be considered as tool for inducing social change (Moore, 1978). Finally, and certainly most importantly, it implies that legal pluralism is not a concept that is only adapted to countries in a context of decolonization. On the contrary, as Griffiths says: “Legal pluralism is the fact, Legal centralism is a myth, an ideal, a claim, an illusion” (Griffiths, 1986:4).

The previous points reveal the fact that legal pluralism has not to be considered as a theory on legal orders and systems but as an analytical approach to study concrete complex situations. This aspect has been highlighted by F. and B von Benda-Beckmann (2006) who argue that legal pluralism allows to reveal different norms and rules according to one same situation and to explain from where they come and the possible social conflicts or struggles that they will bring with them. Concretely, in this paper legal pluralism will imply the following aspects. First, it will force us to identify different SASF in each of the experiences. Second, it will help us to understand that conflictive claims according to rights can actually correspond to different levels of legitimacy, depending on the SASF in which these claims are exercised, and that there is no theoretical hierarchical order between them. Finally, it will oblige us to recognize that rights are social constructions realized in one specific SASF which is influenced by the social context and, therefore, the exercise and design of land rights is a dynamic social process.

The previous section has stated that legal pluralism is an adequate analytical approach to study land rights and deal with situations characterized by a diversity of rights and rights holders. However there is still a missing point in the reasoning realized until now. With the concepts of ‘bundle or rights’ and ‘legal pluralism’, we dispose of a tool for the social analysis of concrete

situations. But, one of the objective of this paper is to find ways of intervention according to land access. In order to achieve this goal, it seems necessary to introduce a tool that allows us, not only to understand what is happening but also to guide us to realize concrete proposals of interventions. This aspect implies that we enter in the field of the role of institutions in social change and that will be tackled in the next section.

1.3. Agency, structure and development interventions in a framework of legal pluralism

When talking about development interventions, one important aspect to tackle is to identify what people can actually do, what they should do to and what role development organizations have to play in this. This brings the reflexion inside the debate between agency, structure and the role of institutions (see for instance Long, 2001; Cleaver, 2007; Appadurai, 2003).

On the one hand, in a legal centralist framework, law is seen as the principal way to achieve social change and as a result it is the major tool to drive people's behaviour (Moore, 1978) and there is then few space for people's agency. In this vision, the existence of a diversity of legal orders is perceived as a problem that has to be solved, for instance through the recognition and final incorporation of other legal system in an unique system managed by the state (Griffiths, 1986). This approach seems to be deeply rooted in people's minds and, even authors that recognize the existence of plural legal orders in societies, such as Le Roy (1996) in the case of land rights in Africa, argue for the necessity to integrate customary law and state law in one whole legal system.

On the other hand, in a legal pluralist approach, we recognize that the state and its legal system is not the main actor to bring social change and that other SASF exist with their own rules and norms. This has two consequences. First, this leads us to go down in the analysis and to start to consider other actors and other ways to intervene than through the state. Second it brings us to study the balance between agency and structure. This is due to the fact that, according to Van Benda-Beckmann (2006), legal pluralism also argues, in an implicit way, that law (taken here in a broad sense, as all norms and rules) is "both an enabling and constraining structure" (ibid., 2006:3). The later is actually a key issue and deserves a deeper study. Three main approaches can be found in the literature according to the balance between structure and agency in legal pluralist

frameworks and each of them can be related with strategies or methodologies of intervention in development arenas.

The first one is related to what is called 'forum shopping'. Forum shopping is defined as the capacity of people to choose between different legal orders the one that will suit better to their objectives (Meinzen-Dick and Pradhan, 2002). This conception gives a heavier weight to people's agency than to structure. However, the characteristics of the institutions are here a fixed factor on which people have little influence and their agency can only be exercised according to the choice of one legal system or another. Interestingly 'forum shopping' is seen both as a positive and negative outcome of legal pluralist situations. On the one hand some authors see it as positive because it gives to the poor a margin of manoeuvre to claim for their rights (Meinzen-Dick and Pradhan, 2002). In this case, development intervention seems to be limited to bring the information of the several different legal systems that exist to people and let them decide which institutions are the most likely to respond positively to their claims. On the other hand, forum shopping can be considered as a negative outcome because it avoids a sustainable resolution of conflicts and brings insecurity. For the defenders of this position, development interventions have to promote the recognition of all the arbitration institutions, the clarification of their respective mandates and the establishment of clear appeal procedures (Lavigne Delville and Chauveau, 1998). We can note here a tendency to fall again in a legal centralist approach where the role of the state is still central but with the difference that the final objective is not to integrate the different social fields but to integrate and organize the different competitive arbitration institutions.

The second approach is based on the idea that, even if the state is not the main driver for change, other institutions can still shape people's behaviour. Therefore, this means an emphasis on structures and not on agency, the later being directly dependent on the norms and rules defined by the former. One example of this kind of approach can be found in the field of natural resources in what is called by Cleaver (2002) the 'Institutional crafting' school. This school is based on the idea that it is possible to design appropriate institutions in order to allow collective action. The question that appears here is what can and has to be considered as appropriate institutions. One of the most influential work according to this are Ostrom's 'design principles' (Ostrom, 1995). According to Ostrom, successful institutions that have been able to allow collective action in

natural resources management exist in several contexts are characterized by eight main principles:

1. Clearly defined boundaries: this concerns the definition of the boundaries of both resources and users (whereas individuals or groups)
2. Congruence between Appropriation and Provision Rules and Local Conditions: this is related to the fact that the rules have to be adapted to the local situations.
3. Collective Choice Arrangements: this has to see with the participation of all local people linked with the resource in the design of the rules.
4. Monitoring: this means the existence of accountable monitoring systems
5. Graduated Sanctions: this principle is directly related to the previous one and states that when there is no compliance with the rules, different levels of sanctions have to exist, corresponding to the seriousness of the situation.
6. Conflict Resolution Mechanisms: these mechanisms have to be low-cost, locally based and of easy-access
7. Minimal Recognition of Rights to Organize: this means that local rights management system have to be recognized by others level of decision making, essentially the state
8. Nested Enterprises: this last principle is related with the necessity to have a coherent coordination between the different layers of rights, rights holders and institutions that deal with them.

The previous principles have actually been widely considered as preconditions to allow collective action, leading to very standardized development interventions. The final objective of these interventions is to design formal, transparent and accountable institutions through the implementations of a logical series of step: the creation of groups composed by people with the same interest or demands and which characteristics are adapted to the surrounding context (principles 1 and 2); the implementation of participatory methods to achieve high levels of participation of all group members (principle 3); the development of democratic and

accountability-oriented functioning norms and rules inside the groups (principles 4, 5 and 6); the formalization of the groups, and their participation in broader and higher spaces of decision making (principles 7, and 8). Thus, the emphasis is here more on institutions and structural factors and not on people's agency.

The last approach, led by Cleaver, appears in direct reaction to the previous one and gives much more importance to the role of agency. Cleaver (2002) criticizes the idea that it is possible to build institutions on the basis of predefined principles and argues for a dynamic actor oriented approach. For Cleaver people are social construction and social constructors. They are a social construction because their agency is actually limited by the social context in which they move (for details about the factors that can limit people's agency see Cleaver, 2007). They are social constructors because they are constantly building the institutional and social environment that surround them using different value systems, both formal and informal. To characterize the later, Cleaver uses the term 'Institutional bricolage' which "suggests how mechanisms for resources management and collective action are borrowed and constructed from existing institutions, styles of thinking and sanctioned social relationships" (Cleaver, 2002:16). When entering in the details of the characteristics of this concept, we can find a very strong linkage with legal pluralism because both of them highlight the importance of social context (power relations, struggles, processes of negotiation) in the definition and enforcement of rules. For instance the study realized by F. and K. von Benda Beckmann (2006) about social change in a framework of legal pluralism, underline the importance of the behaviour of social actors in the evolution of the different social orders (i.e. SASF). According to the authors, these social actors through the implementation of social processes are the one who actually lead to transformations in normative orders, and by the way it can be said that they are the Cleaver's 'bricoleurs'.

The implications that 'institutional bricolage' has on development interventions is explicitly tackled by Cleaver who argues that they "should be based on a socially informed analysis of the content and effects of institutional arrangements, rather their form alone" (Cleaver, 2002:11). For Cleaver, in order to be able to construct appropriate institutions, it is necessary to understand what are the characteristics of people's agency, what constrains or enable them to behave in one way or another (i.e social and economic factors , formal and informal institutions).

In sum, this section has constructed a relevant theoretical framework that will be applied in the next section of the paper. This framework implies the recognition of the existence of multiple normative systems and can give insights according to the design of development interventions regarding land rights.

2. Case studies: Access to land interventions in Nicaragua

2.1. The methodology

In this section of the paper we will draw on the theoretical framework elaborated above to study two cases of access to land at local level in Nicaragua, the UCOSD (Union de campesinos organizados de San Dionisio) in the municipalities of Matagalpa and San Dionisio and Nitlapan in Somotillo and Matiguas. As it will be demonstrated later the cases has been chosen because the have adopted different interventions approaches but with a same goal (i.e. bring access to land to poor households). The information presented in this section comes from sources found in the literature and from an extensive field experience with both organizations (the author has worked during 2 years with the UCOSD and 1 year with Nitlapan).

The methodology will be based on three main steps:

1. Identification of the SASF in which we will frame the study
2. Reflection about land rights in each SASF and their relationships
3. Reflection about the type of approach that has been adopted

2.2. The choice of fields of study

According to the theoretical framework and methodology designed in Section 1, when using a legal pluralistic approach, it is relevant to identify the main SASF in which the rules about land rights are designed, exercised and managed. In this paper four main SASF will be taken into

account: the 'state', the 'peasant society', the 'project' and the 'Indigenous community' (the latter only concerns the UCOSD which intervenes in an Indigenous territory).

The distinction between the state and peasant society as two SASF participating in land issues has been proposed by Bastiaensen and al. (2006), in a study undertaken about property rights practices in the Nicaraguan interior. In this work the authors identify that all the rules and norms that are related with land are not imposed by the state. On the contrary, they say that the normative system that characterizes the context of agrarian frontier "still remain an important reference in everyday life" (ibid:15). Moreover, the choice of the 'project' as another SASF is inspired by F. and K. von Benda-Beckmann (2006) who say that the rules and norms defined by donors and international financial organizations are "becoming part of the complex legal structures in the countries in which they carry out their programmes" (ibid:3). Even if these authors speak about national and international levels, it is considered here that this idea is also true at local level with the rules and norms existing in development interventions. Actually, the point made here is not so obvious and can be challenged by some readers who will consider that project's rules, can be seen as private contracts between the implementing organizations and local people. Even if the content of those contracts is not part of the rules and norms defined by the state, their private dimension makes that they are recognized by the state law as valid until they are questioned by one of the participants. Thus, this kind of arrangement, could be considered as being part of the state legal system. However, in spite of this critique we still consider that separating the project field is relevant in the frame of the present paper where the main objective is to give recommendations to organizations that realize land access interventions at local level.

Before entering in the case studies as such, it is important to precise that we will consider, as an unwarranted simplification, that three first social fields (state, indigenous community and peasant society) are common in the whole territory whereas the project field is specific to each experience. The next section will deal with the common SASFs while the project SASF will be tackled independently in two separate further sections.

2.3. Two common fields: the state and the peasant society

2.3.1. The state

The state legal system is composed by the official legal framework and the corresponding enforcement mechanisms. It would be a huge task to try to grasp the totality and complexity of such a system in this paper. That is why we will limit our study to identify the main norms related to land rights and that could enter directly in contradiction with the norms and rules of the other SASF studied. This information is showed in Table 3 (in the table, the term ‘owner’ refers to the definition implied in Table 1).

Table 3: Some norms and rules according to land rights in the state law

1. General aspects	
Nicaraguan Constitution: Art.5, 44 and 99 and	Definition of forms of ownership (public, private, associative, cooperative, communitarian) Possible limitation of owner’s property rights by the state due to ‘social role of land’
Nicaraguan civil code: Art. 615-621 and Art.108	Recognition and protection of the rights of the owner, in particular those who work productively and efficiently
General law of cadastre and General Regulation of Public Register	Define mechanisms to secure rights through registration: almost all rights can be registered (ownership, possession, rent contract, rights of way, water rights.)
2. Access to ownership	
Nicaraguan civil code: Art. 615	Recognition of access to ownership through : sales, donation, inheritance, all other legal document
Nicaraguan constitution : Art 106-111	Recognition of agrarian reform as a way to access ownership

Nicaraguan civil code: Art. 897-888	Recognition of possession rights to access ownership (after 10 years if a possession title exists, after 30 years otherwise)
3. Leasing	
Nicaraguan civil code: Art.2820	Limitation of rental contract to 10 years in the case or rural plots (20 years for perennial crops)
4. Limitation of owner's rights and recognition of other right holders	
Nicaraguan civil code: Art.1559-1691	Recognition of a series of rights and right holders, both compulsory (e.g. rights concerning water runoff, right of way), and voluntary (e.g. right to have access to a water source)
Environmental law (law 559) and 'Closed forest' law (law 585)	Definition of rules in use of natural resources, e.g. in relation with trees (cutting some species is prohibited in the whole territory, and in general cutting trees is very limited)
5. Indigenous rights	
Nicaraguan constitution (Art. 5) Law of June, the 28th, 1935	Recognition of indigenous forms of property and land management. Protection of communal indigenous property of land against alienation and mortgage lost.

Sources: IRAM (2000), Pommier et al. (2006)

2.3.2. The peasant law

Having access to all the complexity and context specificity of the normative systems that exist locally is a tedious and always incomplete and subjective work. It is not our ambition in this paper to give an exhaustive list, but to identify some of the main features that can have an interest in the case studies. Besides, assuming that these rules are the same all around the country is certainly and exaggerate simplification but it will help us to highlight relevant points for the reflection.

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

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

Thus, in this conception, access to land plays a key role. Drawing on this idea, Bastiaensen et al. (2006) have identified five “socially accepted ‘routines’ [...] that have the potential to create and/or maintain locally legitimated land ownership” (ibid:15):

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

¹ This term has been traduced by the authors from the Spanish term ‘mejoras’ frequently used in Nicaraguan rural areas to refer to the inversions, in money or in labour, that human beings realize on a piece of land to improve its capacity of production.

4. The purchase of property rights

5. The inheritance of property rights

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

At this point of the study it is interesting to compare peasant and state law according to some aspects. We can notice that both Bastiaensen et al. (2006) and Broegaard (2005), think that, even if state law includes several mechanisms to protect and enforce the rights of the owners through formalization and registration, these mechanisms are in general not considered as being source of legitimacy in local society. This point highlights an important contradiction between both normative systems in their conception of enforcing land rights (formal versus social approach). This is confirmed by the fact that, even if some legitimacy processes are shared by both systems (e.g. purchases, inheritance and even processed based on producer's efficiency), the way to deal with them is different. In the state's SASF formalization and registration are the key points in enforcing people rights, whereas in the peasant's SASF the core feature are the social and power relations that characterize the context that surround them.

Finally, there is one important aspect on which the previous study does not give any light and which is actually very important when dealing with land rights: the issue of a plurality of rights and right holders. In the state law it seems clear that even if the state recognizes the existence of the superior rights of the owner, this right is actually limited by several other rights hold by several actors. On the other hand, it seems that the work realized about peasant law let aside this point. It is important to precise that this is not due to the fact that peasant society does not recognize this plurality but rather because this point has not been studied by the literature consulted. In effect, our own empirical perception is that mechanisms that locally give several rights to several rights holders actually exist in the peasant's SASF. This is demonstrated by the non-official/informal arrangements between neighbours about access to land and resources, for

instance for the construction and maintenance of fences, the maintenance of paths, the circulation of cattle or the access to water sources.

2.4. The indigenous community

While the indigenous identity and organization is very strong in the autonomous territories of the Atlantic Coast of the country, this is not the case in the rest of the country, and in particular in the area of Matagalpa where the case of the UCOSD takes place. Monachon and Gonda (2009) argue that in these areas, for the last 500 years, official policies and actual practices in the field have led to the destruction of indigenous organization and institutions. According to the authors, it is only in the last 20 years, that there has been a tendency from the field (with the support of international development organizations) to rebuild indigenous culture and enforce indigenous normative system, essentially regarding land and natural resources management. Interestingly, it seems that for indigenous authorities this process passes through the recognition of indigenous rights in the SASF of the state. Indeed, drawing on the ILO convention No. 169 on indigenous and tribal peoples (ILO, 1989) that has not yet been ratified by Nicaragua, they are looking to ratify a state-law that recognizes the autonomy of indigenous communities in the management of land and natural resources. Their objective is to erase the contradictions that exist between state law and local indigenous laws, in particular the fact that both municipalities and indigenous community share legitimacies to manage land and natural resources.

According to Monachon and Gonda (2009), indigenous law about land is based on the concept of territory. This concept recognizes that rights are social construction and implies that one of the main factors in this social construction is the relation between people and the resources of a delimited territory. Drawing on Monachon and Gonda's work, we can identify an interesting feature of the indigenous law according to land rights. Indigenous land is seen here as a common legacy, which means that its private appropriation is impossible and collective management of land is the rule. Concretely, this means that in indigenous law, the owner of land and resources is the community as a whole and the authorities of the community are responsible to manage the resources to allow the achievement of a 'common good'. In order to achieve this, the authorities give the equivalent of 'proprietor' rights (see Table 1) to people, i.e. life-rights that can be

inherited for the indigenous people and time-limited non inheritable rights for non-indigenous people and have the right to charge an annual fee to holders these rights.

2.5. The project law : case of the UCOSD

2.5.1. General Background

The UCOSD is a local peasant organization that comprises around of 700 active members in 13 communities of the department of Matagalpa. It has implemented since the beginning of the 1990's a project to bring access to land to members of the organization without or with few land. In order to achieve this, the UCOSD bought several large farms, divided them in smaller plots and distributed them to beneficiaries. All the peasants that received plots from one same farm are organized in a group. The access to land is based on a long term lease with purchase option established in a formal contract signed between the UCOSD and the beneficiary. The length of the contract is 13, 15 or 20 years. Nowadays, the project has redistributed 360Ha. to 156 beneficiaries organized in 10 groups (Luna and Merlet, 2008).

2.5.2. Rights and rights holders

Table 4 shows the multiplicity of rights and rights holders in the case of UCOSD using the 'tenure box' tool presented in Section 1.

Table 4: UCOSD's project Tenure Box

	Beneficiary	Group	UCOSD
Access	Access to leased plot Right of way and Water rights in some neighbours plots		
Withdrawal	Realize agriculture activities (no livestock, no perennial crops, no housing) Use of water	Can rent grazing areas as a group when plots are not covered with crops	

Management	Decide on type of crops and investments	Decide the use of land for grazing purposes and organize the rental of grazing areas collectively	Limit use rights of individuals: no withdrawal of soil, timber, no livestock, no perennial crops
Exclusion	Exclude others from areas planted (right to enclose parcel) but not from access to water	Exclude non group members of having Right of way and Water rights	Decide who will become member of the group. Can exclude individuals that do not pay the credit.
Alienation	<i>Before completing the contract:</i> can transfer the rights by inheritance <i>After completing the contract:</i> can rent, inheritate or sell the plot (but can only sell it to UCOSD at a predefined price)		<i>Before completing the contract:</i> forbid lease of land. <i>After completing the contract:</i> is the only buyer possible for the plot and define the price of the land

Source: Luna and Merlet (2008) and field observations

2.5.3. Linkages and confrontation with other SASF

On the one hand, if we compare Table 4 with state law, the following aspects appear as interesting. First, there is an attempt from the project law to try to formalize the relation between the organization and the beneficiary through a private leasing contract realized by a public notary. This is an attempt to legitimize the regulations made by the project law in the state's SASF and to give a state legally-based security to the plurality of rights holders involved in the project. However, when looking in details these regulations, it appears that several points enter directly in contradiction with state law:

- the leasing period defined in the project is higher than the maximum period specified in state law (10 years)
- the constraints according the sale of land after the end of the contract (compulsory to sell to the UCOSD at a defined price) is not compatible with the features of private ownership defended by the state

- according to the state law, the formalization of rights in a private contract is not enough to enforce rights and it has to be complemented with the inscription of these rights in the registry. We do not know if this inscription has been done by the UCOSD, but if it has not been the case this can weaken the rights of the UCOSD in the state SASF and even their challenging if some beneficiary decide to use their long term possession rights to claim for ownership rights.

On the other hand, comparing the project law and the indigenous law reveals another contradiction. In the indigenous law, as the land and resources are part of a territory which is under control of the indigenous community, the UCOSD should not have been able to buy and transfer land. This leads to the question of knowing which kind of rights are actually trespassed to the beneficiary (using the distinction made in Table 1: Is the UCOSD selling owner or proprietor rights to the beneficiary?). This point has been underlined by a conflict that confronted the UCOSD and the indigenous community. Two or three years ago, in a clear example of ‘forum shopping’ process, some beneficiaries have claimed at the indigenous authorities that the contract signed with the UCOSD was not respecting the indigenous law. Their objective was to have their rights managed inside the indigenous SASF instead of the project SASF essentially because the annual fee charged by the former is smaller than the annual lease fee of the latter (0,5 US\$/year against 33.6US\$/year). The conflict has been solved through negotiations realized between UCOSD and indigenous authorities, reaching an agreement according to which the indigenous authorities recognize the project norms and the UCOSD accept some indigenous law by paying the annual fee for all the plots of land of the project.

Finally, project law is also challenged by some features of the peasant society law. The several limitations imposed by the UCOSD during and after the leasing contract are in clear opposition with the cultural model of the ideal type vision of the ‘campesino-finquero’ and specially with the ‘improvements’ way to legitimize people’s ownership (especially the sale constraints² and the limitation about the use of the plot). This could actually be another reason for the process of ‘forum shopping’ explained above: by trying to switch from project to indigenous law, people could seek to have less limitations imposed to their rights. More precisely, the rights that can be

² This aspect has become important because the price of the land has increased a lot for the last 20 years. Selling to the UCOSD at a limited price can therefore be perceived as a huge constraint.

achieved through the project law are proprietor rights during the contract and limited owner rights after the end of the lease. It seems that in the present case, some beneficiary considered that, even if the rights given by the indigenous community are also proprietor rights, they are more advantageous at this moment to reach their objectives.

2.5.4. Reflections about the intervention

The first aspect to highlight is that it seems that UCOSD's methodology can be categorized as belonging to the Institutional crafting school and the similarity with some of the Ostrom's design principles (1995) is striking (i.e. construction of strong institutions and of an intensive normative system).

The second important aspect is that the previous study confirms several points highlighted in the theoretical framework. First the notion of 'perceived' in opposition to legal state-based tenure security seems valid. This is confirmed by the beneficiaries' attempts to strengthen their rights, not by having state-recognized registered rights but by referring to different SASF (first of all the UCOSD and later the Indigenous community) at different moment depending on the evolution of social context. In the beginning of the 1990's, the Indigenous community was certainly a weaker actor in the area than the UCOSD. Thus, it seems that UCOSD had enough legitimacy to enforce land rights locally. However, with time the power relationship between UCOSD and Indigenous community seems to have been balancing. Therefore, the later has gained legitimacy to manage land rights for some beneficiaries. Second, the social construction and constant struggles about the evolution of land rights is confirmed in this case. For instance, the resolution of the conflict between UCOSD and Indigenous community has necessitated a negotiation between both actors which has led to the adjustment of both normative systems in order to reach an arrangement. In addition, the norms and rules inside the political and social arena of the project's SASF are constantly negotiated between the actors depending on the changes in the authorities of the organization, or the support received by external organizations (e.g. an attempt to renegotiate rules is actually in process in the frame of a change in UCOSD's authority and the support received by an international NGO). Third, the processes described above where norms and rules are continuously shaped by different social actors based of social and power relationships, both inside and between SASF, confirm the existence of Institutional bricolage.

In sum, the UCOSD shows the example of an intervention based on a complex internal normative system to govern land rights. This approach has been able to redistribute an important area of land and have existed for a long period of time which demonstrates the high level of legitimacy of the organization. However, this situation is not a fixed feature, it is constantly challenged by changes in social relationships inside the organization and with external actors. In order to continue with this type of intervention, the UCOSD has to be able to maintain its position as important social actor, and therefore to have a high understanding of the social processes and changes that occur exist in the area.

2.6. The project law : case of Nitlapan

2.6.1. General Background

Nitlapan is a research and development institute that intervene in the whole territory. It has been implementing since 2007 two experiences of access to land, called Land fund in order to facilitate the access to land to women and young people. The methodology draws on the idea of bringing to people an integral support that comprises: Credit to buy between 0,7 and 2,1 Ha of land; Credit to buy inputs; Technical assistance for the production; Legal support for formalization and registration of rights. The beneficiaries are organized in groups in each community of intervention in order to facilitate the processes of finding available plots of land and technical and legal support. Nowadays, the project is composed of 5 groups, and has beneficiated to around 90 producers.

2.6.2. Rights and rights holders

Table 5 shows the multiplicity of rights and rights holders in the case of UCOSD using the ‘tenure box’ tool presented in Section 1.

Table 5: Nitlapan’s Tenure Box

	Beneficiaries	Group	NITLAPAN
Access	Access to water and rights of way		
Withdrawal	Agriculture, livestock, withdrawal of wood and water		
Management	Decide what activities will be realized and how		Formalize water and pass rights
Exclusion	Exclude others from his/her plot		Decide who will have access to land Exclude individuals who do not pay credit
Alienation	<i>Before paying the credit:</i> no rights <i>After paying credit:</i> Rent, sell and transfer land through heritage		<i>Before paying the credit:</i> recuperate land from beneficiaries who do not pay the debt <i>After paying credit:</i> no rights

Source: field observations

2.6.3. Linkages and confrontation with other SASF

Table 5 shows that Nitlapan’s project law is quite similar to the state law. Actually, the project has been constructed based on the formal state legal system with a high emphasis on formalized and registered rights according to the state legal framework. For instance, it is striking to notice that the group of beneficiaries play no role in the management of land rights.

The relationship with peasant law is more ambiguous. On the one hand, the tendency to consider only as legitimate, the formalized and registered rights ignores the argument made by Broegaard (2005) and Pommier et al. (2006) about the necessity to understand and take into consideration the social factors that leads to the concept of perceived tenure security. This aspect obliges Nitlapan to intervene only with land that has already been registered before, neglecting the local and socially embedded processes of legitimization of rights and limiting enormously the scope of intervention. Moreover, other project rules that are not related directly with land rights enter in contradiction with peasant law. The most relevant is certainly the prohibition that existed at the beginning of the project (and which was rapidly abandoned³) to finance sales of land between family related people whereas interfamily transfers are actually one of the main way of land transfers inside Nicaraguan peasant society. In effect, most of the processes presented in Section 2.3.2 that legitimate land rights are based on social factors that accompanied relations of truth and confidence, and we can argue that family is a privileged space where these factors exist..

On the other hand, despite this high conformity with state law, some beneficiaries' practices which are in contradiction with state law, are actually accepted and even promoted. This aspect was obvious in the case of the opposition between the 'improvement' legitimisation process and the state environmental law. For example, the land bought by some beneficiaries was covered by forest and in order to transform it in productive plot they had to deforest the area. In the same way other plots were crossed by a river and beneficiaries have cut the trees that bordered the river. In both case, peasant practices were prohibited inside state law, however they are legitimate and recognized in the peasant law and were seen by project officials as the proof that the beneficiaries were able to be efficient producers. Therefore, it seems that the linkage between project and peasant law is varying, sometimes in opposition and sometimes in concordance.

2.6.4. Reflections about the intervention

Nitlapan's case is very insightful because the existence of legal pluralism seems not to have been taken into account in the design of the intervention. Nitlapan puts high emphasis in the respect and concordance of project activities with the state law and there is almost no specific regulation

³ In total, 47 transactions have been made, 2 of them between one owner and groups of beneficiaries and the rest between one owner and one buyer.

from the project according to land rights, the only regulations that exists concerns the inclusion of beneficiaries (essentially women) and rules concerning the sales processes. We have seen that this type of approach enters in contradiction with the peasant law and, actually, people adapt to this situation, mixing the different normative orders, in order to achieve their goals, in a clear example of Insitutional bricolage. This aspects can be illustrated by two examples. The first concerns the project's policy to beneficiate women in order to allow them to have access to land. When checking the list of beneficiaries and the list of land owners that have sold the land to them, it is striking to notice that in three cases women have bought some of their husband's plots. Actually, when visiting one of this cases, it has been seen that this process was not accompanied with a change in the productive system of the family or in a real transfer of the possession of the land to women. It was only a strategy of the household to have access to a credit with more favourable conditions than in the microfinance market. The second example is related with inheritance processes. We have identified 13 cases in which the land rights transfers were inter-generational. In Nicaraguan rural areas most of the young households have access to pieces of land lent by their parents. Our hypothesis is then that some of the project's land transfers have not represented a real change in the possession of the land, they have just been seen as an opportunity to validate some arrangements of the peasant's SASF into the state's SASF.

The previous points actually challenge the conception that a project of the type of Nitlapan's can actually induce social change. The inscription of the project only in the state's SASF without any attempt to recognize the social processes that govern the design and evolution of property rights of the peasant's SASF, limits the scope of intervention in order to achieve its goal (i.e. empowering women and Young through their access to land). However this does not imply that local people will not be able 'bricole' the project rules, their own social norms and the state law in order to develop their own livelihoods strategies. But, if Nitlapan wants to achieve a social change, it seems that the argument of Cleaver (2002) about the necessity to understand the social reasons that govern people's behaviour is a accurate way to improve the intervention.

Conclusions and Policy recommendations

This paper has demonstrated that using the lens of legal pluralism in an adequate and relevant approach to analyse land rights issues in Nicaragua and to assess development interventions in this field. Actually, the case studies carried out permit to identify some interesting conclusions.

First, they stress the usefulness of the recognition of a legal pluralist situation and the relevance of identifying different SASF as social spaces to frame the study of land rights. By forcing ourselves to consider, as the basis of our reflection, the existence of a plurality of rights and of right holders and the existence of a plurality of overlapping and competing normative systems we have been able to grasp the complexity of the situation faced by individuals, policy makers and practitioners regarding land rights. We have also demonstrated that the theoretical framework is relevant to identify elements of contradiction between different normative systems and possible future conflicts between social actors.

Second, both cases demonstrate a high tendency to the formalization of rights through the elaboration of signed document containing the rules of the game. This aspect is very relevant because it could be an indication of the existence of a predominant ideology that gives high strength to written document whether formal or informal. This could be confirmed by the following example. When speaking with peasants in Nicaraguan rural areas, they often refer to 'papelitos' (i.e. little piece of papers) to demonstrate their rights on the land. These 'papelitos' are unofficial (at least in the SASF) pieces of paper on which are stated land rights transfer (through purchase, inheritance or any other mechanisms) but they are very valuable for peasants. Actually it seems that what is important is not the paper in itself but the social legitimacy that corresponds to the paper.

Third the reflection realized about the methodology of the interventions has highlighted interesting features about how to reach social change. UCOSD's case has demonstrated the limitations of a social engineering process based on the design of appropriate institutions from the top, whereas Nitlapan's case has shown the problems of constructing an intervention only according to the law of the state. As a result, we are likely to argue for the necessity to understand precisely the social and institutional context before designing any intervention. In other words,

the adoption of the approach of Institutional Bricolage seems relevant to grasp all the conditions that actually can constrain or enable people's behaviour and by the way lead to social change.

Nevertheless the present study still leaves some shadow points that call for further research efforts. It is obvious that the study realized here is just an exploratory work based on our field experience with both UCOSD and Nitlapan and on a literature review. But, in order to really grasp the details of the social context and how people's behaviour is shaped by it, it seems necessary to deepen the investigation process and to realize an extensive and more systematic field work (for instance to understand the functioning of the peasant SASF and to identify and study power relationships inside and between the different SASF).

As a conclusion, we would use the work realized above to provide some policy recommendations for local organization or NGOs that are willing to implement interventions related with access to land or improving tenure security in Nicaragua. Firstly, there is a necessity for these organizations to recognize that Nicaragua is characterized by a situation of legal pluralism. This means that they have to recognize that the state and, more generally formal institutions, are not the unique or even the most important actors for social change. The tricky point here is to define what their role has to be. In Nicaragua, the fact that the state seems to be an important actor and that people still give importance to written papers tend to confirm that formal institutions still have a role to play. However, this role will depend on the local social context in which they are embedded. Secondly, in order to develop an efficient intervention, the understanding of the social context seems to be an obligation. This means that, a social inquiry has to be done to understand the power relationships that exist locally and that can play an important role in the exercise and claims about land rights. Without this it will be difficult to understand all the possible consequences, both direct and indirect, that an intervention can actually trigger on the field. Thus, both previous recommendations seem to argue for the necessity for the practitioners to adopt an approach based on Institutional bricolage. That means that both the agency of people and the structural constraints that limit this agency have to be recognized. This approach obliges then to understand what are the social and economic factors that influence people's choice and not to think blindly that the design or norms and rules is not enough to produce social change.

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