MAKING LAND RIGHTS ACCESSIBLE: POTENTIALS AND CHALLENGES OF A HUMAN RIGHTS APPROACH TO LAND ISSUES [*]

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> "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 on 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-descendents, unemployed workers, Dalit communities and other rural communities, the effective access and control over the natural and productive resources that we need to truly realize our human rights."
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> *– 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 Via Campesina and the Foodfirst Information and Action Network (FIAN) among others.*

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I. INTRODUCTION

For organizations and movements of the landless rural poor, land has a multi-dimensional character – land and their connection to it has economic, social, political, cultural, and environmental meaning and importance. [1] In their view, the multi-dimensional significance of land for people can only be taken seriously through the lens of a "human rights" approach. For them, a human rights approach to land is one that *starts* from the recognition of *especially* the most vulnerable humans – that is, the "peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendents, unemployed workers, Dalit and other rural communities" whose representatives are speaking in the above quote -- as "rights-holders" with respect to land.

This understanding of the right to land (and other productive resources) differs fundamentally from what can be called a "(private) property rights" approach to land, which starts from a much narrower, un-peopled and uni-dimensional understanding of land as a commodity or financial instrument, and then assigns rights according to who can go to the market and buy land. Yet the idea of *land* as a human right is today being invoked, whether explicitly or implicitly, by a wide range of people in a variety of structural, institutional and cultural locations and settings across the globe. This includes – but is not limited to -- the rural poor, who are increasingly invoking it to claim rights previously denied them (whether collective or individual, customary or statutory, user/stewardship or ownership rights).

Land is important to different people for different reasons. As a result, land rights in reality tend to be a highly contested matter, with no consensus on the underlying question of who ought to be given priority in the authoritative determination of land rights. Instead, as land reform scholar Saturnino Borras Jr. explains, "[p]roperty rights involve dynamic power relations between contending groups of people that are not reflected in national official statistics". [2] On the stage of dynamic power relations, it is, in the end, the strategic interaction of the competing "claim-making" efforts – each framed by a distinctive set of values, beliefs and meanings -- that will determine who has land rights in reality. Success depends on how well-organized and well-framed the effort is. For those concerned about ensuring the land rights of the rural poor, it is vitally important then to be clear about what is meant by a specifically *human* right to land.

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[1] For the parallel forum's final declaration in full, see www.icarrd.org/en/news_down/IPC_en.pdf. According to the Foodfirst Information and Action Network (FIAN), the Food and Agriculture Organization (FAO) considers the following categories of people as landless and thus "are likely to face difficulties in ensuring their livelihood: (i) agricultural labour households with little or no land; (ii) non-agricultural households in rural areas, with little or no land, whose members are negaged in various activities such as fishing, making crafts for the local market, or providing services; (iii) other rural households of pastoralists, nomads, peasants practicing shifting cultivation, hunters and gatherers, and people with similar livelihoods" (FIAN, *The Right to Food: A Resource Manual for NGOs*, 2004: 14).

[2] Borras, S. (2006). "Redistributive land reform in 'public' (forest) lands? Lessons from the Philipines and their implications for land reform theory and practice" in *Progress in Development Studies*, 6 (2): 126.

II. A HUMAN RIGHTS APPROACH TO LAND

A human rights approach to land is one that is anchored firmly in the human rights tradition. The most basic elements of this "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. [3] 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. [4] 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 Status;
- 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.

It bears pointing out that 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

[3] 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 last March 20, 2006 at the Wageningen International Conference Centre, Wageningen University.

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

obvious. This is because 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 Foodfirst Information and Action Network (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 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." [5] 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 because of the underlying controversy and 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." [6] 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). [7]

[5] Monsalve, "Justiciability of Economic, Social and Cultural Rights: Progresses, State of the Debate" in *Right to Food Journal*, No.2, December 2003. Heidelberg: FIAN: 1.
[6] Monsalve, "Justiciability …": 4.
[7] 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.).

Article 11 of the ICESCR (1966/76)	"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. 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: (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; (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."
General Comment 12 of the Committee on ESC Rights (1999)	"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)."
Voluntary Guidelines on the Right to Food adopted by the Council of the FAO (2004)	"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 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, the matter is not so easily resolved. As important as these various international legal instruments are – and there should be no doubt that they are important, 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". [8] 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.

Take the case of the Philippines, which has had a relatively progressive land law in place since 1988 called the Comprehensive Agrarian Reform Law that has led to the redistribution of an unexpectedly impressive amount of farmland to several million rural poor households over the past nearly 20 years. Most of this land redistribution occurred during the 1992-2000 period for several reasons that have been discussed extensively elsewhere. [9] Briefly, the rise of what is known as the "*bibingka* strategy in land reform", a strategy that emphasised strategic interactions between well-placed reformists within the state and well-organised movements of landless rural poor land rights claimants, contributed to greatly boosting the redistributive potentials of the 1988 law and its related implementation program. [10] But although gains in *real* land redistribution have been made in relation to struggles around the 1988 law, it bears remembering that the successes were usually very hard-won.

One underlying source of institutional discontinuity and significant legal tension has been (and remains) the co-existence of two contending bases of legal interpretation, the 1950 Civil Code on the one hand, and the 1987 Constitution and 1988 Agrarian Reform Law on the other. The 1950 Civil Code takes evidence of title (e.g. absolute deed of sale, tax records, etc.) as the legal basis of ownership, whereas the 1988 Agrarian Reform Law takes personal cultivatorship as the legal basis for land ownership. And while the 1987 Constitution defines property in terms of its social function, there is no such concept of land under the Civil Code. These legal considerations have been found to be important factors in the land reform implementation process. In particular, the continued existence

[8] 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.
[9] See especially Borras, S. (1999), but also more recently Borras and Franco (2006, forthcoming).
[10] See Borras, S. (2004). *Rethinking Redistributive Land Reform: Struggles for Land and Power in the Philippines*. Doctoral dissertation. The Hague: Institute of Social Studies.

of the Civil Code has provided landlords a possible and ostensibly "legitimate" way out of the government's own land reform program. [11]

Meanwhile, another recent development in the Philippines that is relevant to discussion of the extremely unsettled nature of the idea of the right to land in practice is the Land Administration and Management Program (LAMP). The LAMP is a World Bank funded, 25-year land titling programme, the stated aim of which is to generate individual private titles in some 5 million hectares of land to about 2 million individual title holders. It was pilot tested in the Philippine province of Leyte from 2002 to 2004, and became a full-scale programme last year. According to one close observer, "…the programme is not placed within a land reform framework, and so the main basis for the land titles being generated is the existing formal claims by any persons – rich or poor, landed or landless, actually cultivating the land or not". [12] Preliminary investigation in fact casts serious doubt on the LAMP's potential to connect with the landless rural poor and enhance their effective control over land, since in the pilot area it clearly did not. [13]

What these experiences from the rural Philippines suggest is that a purportedly "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. This is a critically important insight that ought to be heeded in countries like the Philippines, where the majority of the poor are *rural* poor and effective control over productive resources, especially land, is crucial to the rural poor's capacity to construct a rural livelihood and overcome poverty. For this reason, linking the discussion of land rights with the human rights tradition can be seen as a much-needed step forward. If our starting point is the search for a land policy that is truly *pro-poor*, and it is framed unambiguously in these terms, then a human rights approach is a powerful tool – precisely because it *does* take sides: it is not pro-elite.

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[11] Rural poor claimants seeking land reform are obliged to mobilize the Comprehensive Agrarian Reform Law administratively through the Department of Agrarian Reform (DAR) or the quasi-judicial DAR Adjudication Board structure. But forum-shopping landowners often try to activate the more conservative Civil Code by mobilizing the trial courts to defend their claim to property threatened with redistribution and to harass peasant claimants, wither by filing dubious criminal charges aimed at weakening their resolve and eating away at scarce financial resources, or by launching a kind of legal blitz intended to confound and overwhelm. In mobilizing the regular courts, landowners have a better chance of influencing the outcomes of legal proceedings, since judges are often landowners themselves (and thus more sympathetic to a fellow landowner than an "upstart" tenant or farmworker) or they are part of the extensive elite patronage networks that play a role in judicial appointments to begin with.

[12] Borras, 2006: 137.

[13] According to Borras, "In the pilot municipality visited for the study, official LAMP records show that *majority* of those that have put forward claims were: (i) middle and upper class families, (ii) not living in the villages where the claimed lands are located but in distant town and city centres, (iii) most of whom are not working the land, and (iv) many of whom have multiple land claims. The programme implementers have not required the 'residency' of the land claimants because this would 'complicate and slow down' the implementation process. Yet, the official claimants regularly paid the municipal land tax (*amelyar*) – which is one of the formal bases for property rights claims, though in practice, seems to be the main basis. In the same pilot sites, tenant-farmers and farmworkers who have been cultivating the lands being claimed by others were not even part of the LAMP project in any way" (2006: 137-138, emphasis in the original).

With these considerations in mind, then, 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 two, interrelated dimensions. First, from a political-economic livelihood perspective, it refers to the "*actual and effective control* over the land resource – meaning, the power to control the nature, pace, extent and direction of surplus production and extraction from the land and the disposition of such surplus". [14] Second, from a social-environmental cultural perspective, this right also involves land that is 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).

What does this understanding of the human right to land imply for duty-bearers (e.g., what are the obligations of governments)? For advocates of the human right to land, 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 more recently 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 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*". [15]

It is important to note that the *obligation to fulfil* means *effecting the transfer of power to control* land resources from landed elites to landless and land-poor people precisely through redistributive land reform. The significance of truly *redistributive* land reform from this perspective cannot be overstated. As Borras puts it, "[r]edistributive reform is achieved only when there is actual net transfer of (power for) effective control over the land resource to landless and land-poor … regardless of whether it is in private or public lands, or whether it involves a formal change in the right to alienate or not, ie, full ownership or 'stewardship'/lease, or whether it is through individual or collective/community formal rights". [16] Against this backdrop, we now turn the discussion to the next question of how such a transfer might occur and how the human right to land, although not yet fully established in international law, might still be achieved on the ground. Again, the answer is not obvious.

[14] Borras, 2006: 125.
[15] 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.
[16] Borras, 2006: 125.

III. MAKING POOR PEOPLE'S LAND RIGHTS ACCESSIBLE

The "real world" of course is teeming with struggles – played out on the ground, in courtrooms, in legislatures, etc – between competing interpretations of the meaning and purpose of the right to land, and over the outcomes of official land law/policy making and implementation. This is because, simply put, no law or policy -- especially one that aims to redistribute power -- seamlessly or flawlessly arises and then goes on to "self-implement" effortlessly in a power vacuum, no matter how hard some might wish. This observation is certainly not new, but perhaps it bears repeating today amidst growing interest in land rights and the "legal empowerment of the poor".

Indeed fifty years ago, the economist J.K. Galbraith remarked that discussions of land reform tended to "proceed as though this reform were something that a government proclaims on any fine morning – that it gives land to the tenants as it might give pensions to old soldiers." That was half a century ago, but the point is still relevant. Today, land reform remains the "revolutionary step" that Galbraith (and others) knew it then to be; one that "passes power, property, and status from one group in the community to another …." [17] For those concerned about guaranteeing poor people's land rights, what immediately follows is a two-stage political problem. The first stage of the problem involves establishing the legal right and can be summed up using Galbraith words: "The world is composed of many different kinds of people, but those who own land are not so different …. that they will meet and happily vote themselves out of its possession." The second stage involves ensuring effective access to that legal right.

In societies marked by skewed land distributions, fully redistributive land reform laws and policies may be the exception to begin with. But where they do emerge, even partially redistributive land laws and policies must then still be implemented within an overall inequitable balance of power between *those who have* (landed elites) and *those who have not* (landless and near-landless rural poor). Land reform laws and policies often end up as incomplete interventions that have become altered and been improvised in the course of implementation over time. This is because they are implemented by real people located at different levels of a polity, who are themselves: (i) embedded in power relations and *differentially* endowed with power resources and (ii) bearers of contending cultural and institutional frames of reference.

But contrary to what one might expect, the outcomes of this process have not always been *lack* of redistribution, as the case of the Philippines, among others, suggests. The underlying issue is under what conditions can the human right to land be realised?

I was recently involved in a research project sponsored by the Institute of Development Studies (IDS) in Brighton, England and funded by the British Department for

[17] Cited in Peter Dorner, *Latin American Land Reforms in Theory and Practice*, University of Wisconsin Press, 1992.

International Development (DfID), which attempted to address this issue of rural poor people's effective access to legal land rights, by taking stock of the obstacles but then trying to identify social-political factors that may contribute to overcoming those obstacles. The central questions of the research were: How do rural poor people experience and use state law? When do rural poor people use state law? When do rural poor people succeed in making state law a progressive force for social change? In particular, when do they succeed in making it work for them in claiming land rights?

The Philippines is a good place to explore these questions because unlike in the past, many rural poor Filipinos since the 1990s have actually been trying to use state law to claim land rights. But in spite of the availability of a much heftier set of specialised legal resources than ever before, claiming legal land rights for them remains extremely difficult, for a combination of reasons that have to do with both the nature of Philippine state law and the nature of landlords' anti-reform resistance. In the Philippines, historically, landlord resistance to land reform has tended to take both legalist and extra-legal forms. In recent years, this situation seemingly bolstered the position of pro-market scholars, who cited difficult legal problems in calling internationally for the replacement of the current state-led redistributive land reform by the so-called "market-assisted land reform" (MALR) model. The suggestion has been met with strong opposition by civil society groups working on land reform issues.

Against this backdrop, a team of local researchers and I conducted extensive field work in two regions of the Philippines (Bondoc Peninsula and Davao del Norte), using a combination of data gathering methods. We surveyed and coded some six thousand court records at different levels of the judicial and quasi-judicial system (municipal and regional). We also conducted key informant interviews with numerous individuals in both regions, including officials from the Department of Agrarian Reform, the regular trial courts, the police, and the local government, as well as numerous non-governmental activists and peasant movement leaders. In addition, we conducted lengthy, in-depth focus group discussions with various kinds of village-level civil society organisations in forty-two villages (twenty-one per region). Finally, we studied the political-legal strategies of several rural poor people's organisations that were involved in land conflict cases in varying types of crop/farm system: (i) a modern export banana plantations in Davao del Norte (ii) a private coconut hacienda in Bondoc Peninsula and (iii) a "privatised" coconut hacienda (e.g., on public land) also in Bondoc Peninsula.

The cases and our findings are discussed extensively in a working paper published in 2005 by the IDS. [18] The key findings regarding political-legal strategies and when they work for the rural poor may be summarised as the following:

[18] See Franco, J., 2005, "Making Land Rights Accessible: Social Movements and Legal Innovation in the Philippines." IDS Working Paper Series, no.244 (June 2005), Brighton, England: Institute of Development Studies (IDS) (for PDF version, see www.ids.ac.uk/ids/bookshop/wp/wp244.pdf).

First, national constitutional-juridical changes in the Philippines in the 1980s created unprecedented opportunities for landless rural poor Filipinos to claim ownership rights on land they tilled as tenants and farm workers even in the most politically contentious landholdings. Specifically, these changes were embodied in the 1987 Constitution and the 1988 Comprehensive Agrarian Reform Law (CARL) and Comprehensive Agrarian Reform Program (CARP).

Second, related institutional reforms expanded landless rural poor people's access to that part of the state most directly responsible for implementing new land reform legislation -- namely, the Department of Agrarian Reform (DAR). But other "institutional access routes" (e.g., the regular trial courts) remained closed or immune to social change pressures. This finding is significant for what it implied in terms of political-legal strategy.

After the 1987-1988 changes, there were now two contending legal frameworks on land: namely, the 1950s *Civil Code* (which takes evidence of title – e.g., absolute deed of sale, tax records, etc. -- as the legal basis for land ownership) and the 1988 *CARL/CARP* (which takes personal cultivatorship as the legal basis for land ownership). Rural poor claimants seeking land reform are obliged to mobilise state law *administratively,* through the DAR or quasi-judicial DAR Adjudication Board (DARAB) structure. But forum-shopping landowners often try to activate the more conservative Civil Code by mobilising the trail courts to defend their claim to property threatened with redistribution and to harass peasant claimants, either by filing dubious criminal charges aimed at weakening their resolve and eating away at scarce resources, or by launching a kind of legal blitz intended to confound and overwhelm. In mobilising the regular courts, landowners have a better chance of influencing the outcomes of legal proceedings, since judges are often landowners themselves or they are part of the elite patronage networks that play a role in judicial appointments to begin with.

Third, whether or not rural poor rights-holders in hostile political situations took steps to claim their land rights depended on their having access to a support structure for political-legal mobilisation – specifically, a *"rights-advocacy organisation" with the political resources and interpretative capacity* to help prospective rural poor claimants to maximise the political-legal possibilities using the new law. Underlying this particular capacity is not a "naïve belief in the rule of law—akin to Scheingold's 'myth of rights'", but rather a determined understanding of how state law can be used *strategically* by social movements of the rural poor and their rights-advocate allies in society. [19]

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[19] For this distinction, see Garth, B.G. & Sarat, A., 1998, 'Studying How Law Matters: An Introduction' in Garth and Sarat, eds., *How Does Law Matter?*, Northwestern University Press and the American Bar Foundation: 7-8.

But trying and succeeding are two different things. And so the *fourth and final* point is that whether or not they actually made any gains depended on their adopting what I call a "proactive, integrated political-legal strategy". This means a strategy that is capable of: (i) *activating* a pro-poor interpretation of the law, (ii) *exploiting* the independent initiatives of state reformists, and (iii) *resisting* the legal and extra-legal efforts of anti-reform elites within the state and society. Central to such a strategy is a recognition of the fundamental value and necessity of the autonomous mobilisation of social pressure from below by the rural poor in order to "work the system" to make it work *for* (rather than against) them.

IV. CONCLUSION

In summary, even in what can be seen as relatively more advantageous political settings (e.g., where there is a "good" law, highly mobilised social movement actors, active state reformists, and constructive state-society interactions), the implementation of redistributive land laws (or making legal land rights accessible to the landless rural poor) has proven to be complicated, messy and extremely difficult. In the Philippines, this is partly because of the existence of contending legal frameworks (1950s civil code versus 1980s agrarian reform code), and partly because of strong anti-reform elite resistance. It is important to emphasise that elite resistance to land rights claim making by the rural poor often takes the form of both legal (or "legalist") *and* extra-legal resistance. This has clearly had dire consequences for the whole range of human rights of rural poor claimants and potential claimants -- not only their economic and social rights, but also their civil and political rights as well.

And yet in spite of the formidable obstacles and hostile social-political conditions, our research confirms that many disadvantaged and vulnerable rural poor people *still choose* to take action as rights-holders, usually by banding together to press their claims. By no means are their efforts to do so always or automatically successful; indeed, many of those who dare to petition for land rights through the government land reform program are at risk for getting stuck for long periods of time in an "in-between" stage (prior to actual land transfer), where they become even more vulnerable to summary dispossession, livelihood deprivation, criminalisation, and physical harm by landlords. [20] However, the Philippine case also suggests that under certain conditions, disadvantaged rural poor people have a better chance of succeeding in making gains toward gaining effective access to their land rights if they can use a proactive and integrated political-legal strategy.

[20] See Lanfer, Anne (2007). *The Philippine Land Reforms and their Impact on Rural Households.*Bachelorarbeit. Institut fur Ernahrungswirtschaft und Verbrauchslehre, Agrar- und Ernahrungswissenschaftliche Fakultat, Christian-Albrechts-Universitat zu Kiel.

More generally, this study suggests that a human rights approach to land issues has great potential precisely *because* it is anchored in an *unambiguously pro-poor* perspective. But for those interested in fully realising a human rights approach to land, the challenges are many. The first challenge remains putting it on the official agenda of governments. This in itself is a Herculean task because at the moment the level of advocacy is still relatively low, engaged as it is in debates on the Voluntary Guidelines on the Right to Food and not yet on the right to land (see Monsalve 2006 and the Preamble of the ICARRD 2006 Final Declaration). And then, once a pro-poor human rights approach to land does make it onto the agendas of governments, the next challenge has to do with actual implementation, as shown by the Philippine case.

All of these tasks are very difficult, but they are certainly not impossible to achieve. In the end, much will depend on the efforts and strategies of the rural poor and their movements, and their rights-advocacy allies in civil society and in government. Those interested in contributing to the eradication of rural poverty and rural poor people's political empowerment, at least in the Philippines, but perhaps elsewhere too, would do well to support these kinds of proactive, integrated initiatives – that is those that confront, rather than back away from, the formidable political-legal obstacles to redistributive land reform. This may well mean putting more public resources into supporting a more determined and sustained kind of integrated state intervention in favor of specific well-organised landless rural poor social movement groups, around their rightful land rights claims.