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Access in Land Disputes Arising in the Context of the Commercialization of Agriculture in Sumba (Nusa Tenggara Timur)

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Access in Land Disputes Arising in the Context of the Commercialization of Agriculture in Sumba (Nusa Tenggara Timur)

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The central question addressed in this working paper is whether and how the poor and disadvantaged in Central and East Sumba have access to redress mechanisms when the land that they cultivate or live on becomes contested. Criteria for 'being disadvantaged' include poverty in an economic sense, but also low position in the social hierarchy, and criteria related to ethnicity, education, and other forms of social and cultural capital. The dominant normative framework in Sumba is customary law (adat). Clan chiefs have the largest say in decision-making on how natural resources are allocated and distributed, but there is not always consensus on who is the legitimate chief. Moreover, state law provides alternative rules for justice seekers in dealing with land and addressing labour issues. The paper presents an analysis of the current adat-dominated system of land governance, in which elements of state law are integrated. We look at how this hybrid system functions in practice, because it is in this context that land disputes occur and are resolved. Ten smaller empirical examples provide insight into everyday implementation of law in relation to land. Two recent cases in which large plantations are being established on Sumba – where large scale commercial agriculture is just in planning or starting phase – indicate how this hybrid legal system functions in response to agrarian change. A third case involving contested mining activities indicates how power differences can block access to justice. Millar and Sarat's dispute resolution pyramid provides a useful explanation of how Sumbanese use redress mechanisms, but choice of mechanism does not depend on the type of dispute only. In line with the 'forms of capital' model for explaining differences in power (or disadvantage), it appears that available forums of redress are only accessible for justice seekers with a sufficient amount of economic, social and cultural capital.

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1. Introduction

This working paper presents the results of a case study on Sumba (in the province Nusa Tenggara Timur) regarding access to justice for the poor and disadvantaged who are involved in disputes or conflicts concerning land. Since land is the main source of livelihood for over two-thirds of the population in Sumba, losing access to gardens and rice fields is a big problem. Disputes over land have always been common and frequent on the island, amongst neighbours and between neighbouring communities. Yet, several recent developments have increased the competition over land, changing the character of disputes and possibly the way they are solved. Firstly, agribusiness companies have been entering the area in search of thousands of hectares of uncultivated land that they can convert into plantations. Secondly, recent administrative developments, in particular the creation of new districts in the context of decentralization (*pemekaran*), have stimulated development of the local land market. There is a growing demand for land for housing and offices in and around administrative centres, and government officials and their relatives as well as entrepreneurs have started to buy land from farmers, not only for housing but also for growing rice on their own paddy fields, or speculating on further developments.

Compared with East Java, which is the focus for other case studies in this series, Sumba is a new area for large scale agro-industrial exploitation. There is no long-standing history of dealing with plantation labour issues, nor with involving local farmers in agro industrial enterprises. The initial negotiations now taking place between plantation companies, district governments and local populations reveal an encounter between different normative systems. While land governance used to be a matter for customary practices and rules, state law is now gaining importance. In practice, Sumbanese deploy strategies to integrate elements of the state legal system in their customary land law system when they believe it will bring them a beneficial result.

This paper's central question is whether and how the poor and disadvantaged in Central and East Sumba have access to redress mechanisms when the land that they cultivate or live on becomes contested. First, we had to find out who these poor and disadvantaged are, which normative frameworks shape their access to justice regarding land issues, which redress mechanisms are available to them, and which categories of justice seekers are able to access which redress mechanisms? The answers to these questions describe the context in which new plantation developments have occurred. Second, we tried to find out how the poor and disadvantaged are affected by land grabbing and how they have access to redress mechanisms in those situations.

The paper starts by identifying, in Section 2, the 'poor' and 'disadvantaged' in rural Sumba and the problems they experience (which we refer to as 'real life problems') in relation to land. Statistics show that the proportion of poor people in Sumba is much higher than in other areas in Indonesia. Internal criteria, based on traditional stratification according to class, generation and gender, provide greater differentiation. The real life problems of those who are at the bottom of this traditional hierarchy concern basic survival: food, shelter and health. The definition of poverty applied in this section emphasises local indicators of poverty and disadvantage, showing that those who belong to the lowest social strata, and those who rely on subsistence agriculture for their livelihood, have the weakest voice in decision making concerning land use and the distribution of benefits from development. Among these, ethnic minorities, youth and women are in the worst position.

Section 3 addresses the normative frameworks that shape access to justice regarding land issues. In rural Sumba, the most important legal system is customary law or *adat*. Discussion of *adat* in academic literature often relates to the experience of indigenous people whose rights – especially rights relating to culture and land – are threatened by outside forces.¹ As a minority within a larger administrative polity, indigenous people often play the role of a disadvantaged party facing a more powerful outside party, which is usually supported by the state. This debate concentrates on how the

¹ Jamie Davidson and David Henley (eds) (2007), *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*. London: RoutledgeCurzon.

rights of the indigenous community can be protected² and whether or how the community's rights can be recognized within the statutory system.³ However, the Sumba case is different. The natural boundaries of the island coincide with the territory of the Sumbanese people, who can be seen as composing one *adat* community (*masyarakat adat*). Land conflicts on Sumba do not fit the national Indonesian typology of an indigenous community versus outsiders, but rather concern the internal dynamics of Sumba's customary legal system. Of course, Sumba is not isolated from the nation-state, and therefore Indonesia statutory law also applies. Section 3 analyses customary land law and dispute resolution in Sumba, and goes on to examine how and in which situations state law or state institutions are used in disputes concerning land.

The box inserts in this paper serve to illustrate how customary rules and procedures, or combinations of customary and state law, affect or protect the disadvantaged in cases concerning land. They also demonstrate the dilemma of normative pluralism: where people living in customary communities are aware of the alternatives to their own customary norms, and believe that applying those alternatives would improve their own situation.

Section 4 considers recent developments which have led to further commoditization of land. The section includes two cases concerning plantations: the first involving negotiations between the local population, the district government and a biofuel company in Central Sumba; and the second involving a cotton and maize plantation in East Sumba on idle but privately owned land. The section includes a third case concerning contested mining activities in the forest interior of East Sumba, for indicating how local population, who experienced the mining company threatened their livelihood, sought access to redress mechanisms. Two rather alarming conclusions arising out of these cases are that the process of accessing justice did not appear to progress further than the phase of voicing grievances, and that poor and disadvantaged people are not involved at all in the initial negotiating with plantation companies.

If justice seekers do not progress beyond voicing their grievances, does that indicate a lack of mechanisms for redress? Section 5 describes which forums of redress are available in Sumba, and how they have been used in the resolution of land conflicts. The main conclusion is that land problems are usually resolved through traditional negotiating methods (*secara keluarga*), in which the poor have very little power. For those who can afford it, dispute resolution through the local government – from the village head up to the district head – is becoming more popular as a forum in which to appeal an adverse result obtained through the *adat* system. Political actors, religious authorities and other brokers between the population and companies have a mitigating or mediating role. Only a tiny proportion of land disputes are brought before a court, and these typically include criminal cases (murder because of a land dispute), or involve local elite or wealthy businessmen as plaintiff.

In summary, it is possible to conclude that the poor and disadvantaged will be able to improve their access to the land they rely on for their livelihood if their negotiating power in disputes increases, and if a land law system is applied that includes the option for all individuals to get access to land. The findings in this case study do not support policies aimed at strengthening customary law regarding land in general, since many customary rules discriminate against women, those of lower class, youth and migrants.

2. The poor and disadvantaged in Sumba and their real life problems

Any ethnographic study within this Access to Justice research program begins by asking who should be defined as 'poor' or 'disadvantaged', because the answer defines the characteristics of the justice

² Sandra Moniaga (2007), From Bumiputera to masyarakat adat: a long and confusing journey. In *The Revival of Tradition in Indonesian Politics*, Jamie Davidson and David Henley (eds). London: RoutledgeCurzon. pp. 275-94.

³ Kurnia Toha (2007). *The struggle over land rights; A study of indigenous property rights in Indonesia*. Ann Arbor: University of Michigan.

seekers who are central in this program. The question can be answered in several ways in this study about Sumba. The purely statistical answer defines 'poor and disadvantaged' by reference to a number of different statistical measures. However, this answer does not account for the internal social differentiators that prevail in Sumba. Therefore, this section considers Sumba's customary social stratification, revealing that 'being disadvantaged' has many dimensions. These are analysed using Pierre Bourdieu's concept of forms of capital.⁴

2.1 Measuring poverty

Several institutions publish statistics on poverty levels in Sumba. Results differs according to measurement methods and various criteria, such as per capita gross domestic product.⁵ Table 1 presents some statistical data that clearly indicates that Sumba is very poor compared with other areas of Indonesia, with a vast majority of the population depending upon agriculture for their livelihood. For comparison, similar data for the province of Nusa Tenggara Timur,⁶ and for Indonesia as a whole are included.

Table 1. Population and poverty levels in Sumba, compared with the province Nusa Tenggara Timur (NTT), and Indonesia as a whole.⁷

	West ⁸ Sumba	East Sumba	Nusa Tenggara Timur (NTT)	Indonesia
Population in 2005	404,000	206,000	4,260,000	219,205,000
Surface area, in km ²	4,051	7,000	49,880	1,919,317
2005 Gross Domestic Product, Per Capita (in US dollars ⁹)	\$239	\$368	\$360	\$1,320
2002 UNDP Human Development Index Ranking ¹⁰ (scale from 1 = best)	339 (out of 341 districts)	329 (out of 341 districts)	30 (out of 30 provinces)	108 (out of 177 countries worldwide)
Percentage of the working population engaged in agriculture as the main economic activity (<i>tani</i>)	87 (in 2002)	84 (in 2002)	78 (in 2005) ¹¹	44 (in 2005) ¹²

⁴ Pierre Bourdieu (1986), *The Forms of Capital*. In *Handbook of Theory and Research for the Sociology of Education* [1983], John G. Richardson (ed.). New York: Greenwood Press. pp. 241-259.

⁵ See Friedhelm Betke and Hamonangan Ritonga (2004), *Developing a local-specific approach to poverty monitoring in rural East Indonesia: who are the poor in East Sumba?* In *Poverty Monitoring in Asia*, Hand Gsänger and Miryam Fernando (eds). Colombo: Center for Poverty Analysis. pp. 117-46. See <http://www.cepa.lk/uploads/pubs/poverty%20monitoring%20in%20asia.pdf#page=126> (last accessed on May 19, 2009).

⁶ The province which consists of Indonesia's South-Eastern islands, including Sumba, Timor and Flores.

⁷ BPS Statistics Indonesia, see www.bps.go.id/ and <http://ntt.bps.go.id> (last accessed on March 13, 2009); BPS-Statistics Indonesia, BAPPENAS and UNDP *National Human Development Report 2004: The Economics of Democracy: Financing Human development in Indonesia*, see http://www.undp.or.id/pubs/ihdr2004/ihdr2004_full.pdf (last accessed on March 13, 2009); and the CIA's world fact book, see <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (last accessed on March 13, 2009).

⁸ Until May 2007 Sumba was administratively divided in two districts, West Sumba and East Sumba. Central Sumba was part of West Sumba.

⁹ For comparative purposes, the income figures are given in US dollars, using an exchange rate of 1 US \$ = Rp. 9,000.

¹⁰ The HDI combines indicators on life expectancy, education and income. UNDP *National Human Development Report 2004*, p. 208.

¹¹ <http://ntt.bps.go.id/mploy/mp02.htm> (last accessed August 13, 2007).

¹² <http://www.bps.go.id/sector/employ/table2.shtml> (last accessed August 13, 2007).

The general conclusion that may be drawn from Table 1 above is that, on a variety of statistical measures, a high proportion of people in Sumba would qualify as 'poor'. Of all the Indonesian districts, East and West Sumba are at the very bottom of the Human Development Index (HDI) ranking, which measures life expectancy, education and income. The high percentage of people in Sumba who rely on subsistence agriculture for their livelihood is also an indication of poverty.

Given that almost the entire Sumbanese population could be classified as poor, we must be more precise as to who, within this society, we label as the 'poorest' and 'most disadvantaged'. One of our research questions was therefore to discover internal criteria of poverty and disadvantage that apply within Sumba. Box 3 provides an example from one Sumbanese village.

Box 1. Internal criteria for poverty and disadvantage

One village secretary explained about the criteria used in his village to decide who is eligible for a government programme to provide financial compensation in respect of fuel price rises (BLT, *Bantuan Langsung Tunai*). Nearly all the people in the village depended on agriculture for their livelihood. Most did not have regular cash income, and what they earned was not registered anywhere. Since they were subsistence farmers the larger part of their agricultural produce never entered the market but was used for their own consumption. In the absence of the usual statistical criteria, the village administration decided to assess the villagers' relative wealth in terms of material assets: people who owned more than one head of livestock (buffalo, horses or cattle), a motorcycle or a car, a television set with parabola antenna, or a permanent house built with stone walls and tiles, could not enter the government programme.

While practical and easy to apply, these are relatively subjective criteria of welfare. They reveal only economic wealth, and only for households as a whole. If we interpret 'being poor' in the broader sense of 'being poor and disadvantaged', we must also consider non-economic criteria and intra household distinctions. An "emic" definition of being disadvantaged is in terms that are meaningful (consciously or unconsciously) to the actor, and comes from within the culture. In Sumba, being 'disadvantaged' can be defined as belonging to the lower strata of society. The next section provides background information on Sumbanese society and its stratification, and assists us to understand the importance of land and the way in which this essential resource was traditionally governed and distributed.

2.2 Sumbanese criteria for being disadvantaged

Sumba has a hierarchical society. This creates a fundamental problem in addressing questions of access to justice, since that concept is associated with equality before the law. Likewise, social justice relies upon equality amongst individuals. By examining the criteria on which this hierarchy is based, we reveal what a seminal study on legal empowerment calls the 'systemic pathologies that limit access to rights possession and rights enforcement'.¹³

2.2.1 Traditional distinctions

Sumba is essentially an agricultural society. The large majority of the population makes a living through subsistence agriculture, producing rice, maize and other food crops for their own consumption, with the surplus being sold in the market. In East Sumba and the drier northern plains of the island, animal husbandry is another main economic activity. In Sumbanese rural society, a person's wealth is linked to the possession of livestock. In the past, traditional elites had large herds of horses, cattle or water buffalo, grazing free in the uncultivated lands. Pigs and poultry were found in nearly every home yard. Livestock is very important on Sumba as a sign of status, as the prime commodity in ceremonial exchange, as a necessary ingredient for all social events (since consensus is

¹³ John Bruce (2007), *Legal Empowerment of the Poor: From Concepts to Assessment*. See http://www.bizclir.com/galleries/publications/Legal_Empowerment_of_the_Poor.pdf (last accessed on August 25, 2009).

expressed through sharing a meal with meat), and also as economic capital that can be sold in times of trouble.¹⁴ The poorest of the poor have no livestock at all, not even a dog or a chicken.

Ethnic criteria are used to create 'insider-outsider' distinctions. Over 90 percent of the population on Sumba is ethnic Sumbanese. There is greater ethnic heterogeneity in Sumba's towns, and along the coastline of East Sumba there are many settlements of people originating from the nearby island Savu, whose prime occupation is fishing. Sumbanese also make sub-ethnic distinctions, according to the geographic place of origin, the territory of related clans, of which there are sixteen in West Sumba and eight in East Sumba.¹⁵ In the early twentieth century, the colonial government elevated traditional domains into self-governing sub-districts (*zelfbesturende landschappen*), and appointed one of the main clan leaders as king (*raja*) of each. This reinforced the power of the *raja*'s clan and its claim to the land, and its domain became integrated in the colonial maps of the island. In turn, the *rajas* were incorporated into the colonial structure of governance, with the formerly autonomous domains becoming subordinate polities within the nation-state, via a system of indirect rule.

Traditional social stratification within clans on Sumba divides the Sumbanese population vertically in three classes: the nobility, the free men and the slaves. Horizontally, society is divided into patrilineal clans (*kabihu*) that are mutually dependant because of the strict rule of exogamous marriages. Relationships between clans, and subsequently between members of various clans are expressed in terms of being either bride-giving or bride-taking, and this definition of positions determines proper conduct, and the appropriate type of ceremonial exchange commodities. Every major life cycle event requires a ceremony in which the wider social community attends. Such a ceremony reconfirms the members' identities within the community, along with their rights and obligations. Together those rights, obligations and positions in the social hierarchy constitute a very strong normative system, with consequences for the distribution of access to natural resources and mutual support between members of society. Opportunities for those who occupy low positions in the traditional social hierarchy to move upwards are very small. Changing the system or its rules is difficult for those of lower status – unmarried men and women ('youth'), women in general, slaves – because they have very little say in internal clan decision making. This traditional normative system, usually called *adat*, thus provides resources and protection for those in lower positions (the disadvantaged in this sense) but also entrenches their limited decision making power and their dependence upon clan leaders.

2.2.2 Modern distinctions

For many people living in the interior of Sumba, *adat* is still the dominant normative context. Yet, historical forces on Sumba have shaped a modern society that interacts with the traditional one, and most Sumbanese have and use a double identity: one based upon traditional kinship, one modern identity as an Indonesian citizen and adherent to a major world religion. Among these historical forces are: the development of the modern state in an agricultural society; the economic importance of the state in towns; the role of the Christian religion; and the detachment of the aristocracy from their village setting. The result is an alternative social hierarchy in which the top layer, the political class,¹⁶ consists of people whose primary source of livelihood comes from the state. They are employed by the state as civil servants, or provide paid services to the state, such as businessmen who execute state-financed construction projects. The main criterion for membership of the political class is practical, namely real influence on decisions regarding the allocation of state resources such as money, jobs, permits and violence.

¹⁴ Louis Onvlee (1980), The significance of livestock on Sumba. In *The flow of life, essays on eastern Indonesia*, J. Fox (ed.). Harvard University Press, Cambridge.

¹⁵ Taro Goh (1991), *Sumba Bibliography*. Department of Anthropology, Canberra: The Australian National University, p. xii.

¹⁶ Jacqueline Vel (2008), *Uma Politics; An ethnography of democratization in West Sumba, Indonesia, 1986-2006*. Leiden: KITLV Press. pp. 16-8.

In modern, political-economic terms, the lowest layer in society consists of farmers (*tani*). *Tani* is an emic term for people who work on the land and also for all other people without salaried employment or other clear means for generating income.¹⁷ Many members of the traditional class of nobility belong to the category of *tani*. They enjoy their high social rank, but have no other capital upon which to rely: no higher education, no paid employment, and no access to the right social networks. In between the *tani* and the political class is a small intermediate group that we refer to as the 'political public', 'consisting of persons of a middle range of political effectiveness, persons outside the political elite who nevertheless saw themselves as capable of taking action which could affect national (district) government or politics.'¹⁸ Typically, this class includes members of NGOs, well-educated people who are yet to have found steady employment, as well as retired government officials and most members of the clergy.

2.2.3 Practical aspects of disadvantage

Being a member of a disadvantaged group in Sumba – such as a low traditional class, women and migrants – has significant practical implications. People who belong to the middle or lowest traditional class can own livestock, but whenever clan members of higher social status need it – for example to meet their *adat* obligations in marriage negotiations – they can easily claim their subordinates' possessions. People of lower status are also obliged to work on fellow clan members' land, and provide other services as decided by the clan leaders. Although this traditional pattern is not as strong as it was in the past, it still exists.

Women traditionally have an inferior position in relation to decision making within a clan. Marriage is regarded as exchange between patrilineal clans; after the wedding the bride moves to the house (and clan) of her husband. There she enters into the internal hierarchy in a position that is initially determined by her traditional social rank. Her status can improve over time, for example, after she gives birth to her first child. In the rare cases of polygamous marriages, the first wife enjoys a higher status than the second. The private assets that women are permitted to own are 'female objects' such as jewellery, small livestock, pigs and hand woven cloths. Traditionally, women not permitted to own land except for land that is given to them at their wedding, as part of the dowry. However, this traditional scenario applies to differing degrees across Sumba, with some women living a more individualized lifestyle in which they are less restricted by the traditional system.

People originating from other islands are also disadvantaged in their access to land, because they are not members of the Sumbanese clans who own the land, although there are avenues by which non-native Sumbanese can be adopted into the traditional system (see Section 3.3.5 below). As members of a minority group, people with non-Sumbanese ethnic backgrounds are disadvantaged in *adat* dispute resolution, because *adat* rules specify that the will of the majority prevails. However, not all non-native Sumbanese are disadvantaged, particularly those who work in sectors independent of the traditional framework, including government services such as the police force and the army, or in trade.

2.2.4 Analytical model for indicating relative power positions

The internal criteria and practical aspects of poverty and disadvantage can be summarized analytically by using Bourdieu's concept of 'forms of capital'.¹⁹ As described above, being disadvantaged is not just a matter of having little money, but also refers to a lack of other assets and capacities that can be regarded as types of capital. Cultural capital refers to knowledge and education; economic capital to money but also access to resources and labour; social capital indicates relations with other members of society, and membership of social networks. In Table 2, we apply Bourdieu's concepts to the Sumbanese context. Each of Bourdieu's three forms of capital is discussed in its traditional and modern manifestation in Sumba, with a fourth form – 'legal capital',

¹⁷ Emic means: defined by the actors themselves in a way that is meaningful in their socio-economic and cultural context.

¹⁸ Herbert Feith, quoted in *Uma Politics*, Jacqueline Vel (2008). p. 17.

¹⁹ Pierre Bourdieu (1986), *The Forms of Capital*. pp. 241-259.

actually a sub-category of cultural capital – discussed separately because of its importance for this study. This model can be used in other contexts, with adaptations as required. For example, knowledge of *adat* might be replaced with knowledge of religious law if that is more important than *adat*, or knowledge of the history of migration in cases where rules of prior occupation apply.

Table 2. Specification of forms of capital in context of Sumba

	Cultural capital	Legal capital	Economic capital	Social capital: networks
Traditional	* Position in <i>adat</i> hierarchy (incl. gender and ethnicity)	* Knowledge of <i>adat</i>	<ul style="list-style-type: none"> • Food • Land, • Livestock • Labour (number of people in the house, subordinates) 	<ul style="list-style-type: none"> • Kinship • Marriage alliance
Modern	<ul style="list-style-type: none"> • Modern education • Office in bureaucracy or non state institution • Gender 	<ul style="list-style-type: none"> • Knowledge of state law • Knowledge and skill in legal and bureaucratic procedures * Knowledge of church rules 	<ul style="list-style-type: none"> * Money (salaries, profits, illegal income) * Assets (houses, cars, tv sets, aircon, children with higher education) 	<ul style="list-style-type: none"> • Church • Organizations • Political parties • Functional / bureaucratic inside and outside Sumba

In general, the ‘poorest’ or ‘most disadvantaged’ are those who lack all types of capital. The most powerful are those who have the optimal amount and combination of various forms of capital. The amount of capital a person possesses is not static: capital can be acquired through education or exchange. The challenge is to find opportunities for converting one type of capital into the other, so that it has a positive influence on the welfare or power position of the owner.

For this study, we also refer to forms of capital to explain how people involved in land disputes make choices about redress mechanisms. Our limited research suggests that parties who have accumulated more capital are better able to progress their case in the hierarchy of redress mechanisms. We will come back to this point in Section 5.

2.3 Real life problems and injustices

Real life problems differ according to a person’s position within the social hierarchy and their level of material poverty. For those at the bottom of society – lacking all types of capital – the biggest real life problem is basic survival, in terms of food, health and shelter. The main determinants of whether a person can produce enough food to survive are access to sufficient labour and access to land. In Sumba, the poorest of the poor can still grow their own food on dry land. Box 2 presents an extreme example of the real life problems faced by disadvantaged people in Central Sumba.

Box 2. Widow’s problems in a land dispute

Ina Modi had four young children when her husband died, 5 years ago. They were farmers, living in the village of Ina Modi’s husband, close to his relatives. Her husband had a paddy field and dry land gardens that were ‘individual *adat* land’: clan land that within the clan was considered to be individual property of her husband, and for which he paid tax. After her husband’s death, his cousins had an eye on the land. One of them also planned to take Ina Modi as his wife, which is a traditional way of caring for a brother’s widow, and which does not require any additional bride payments. Ina Modi did not like the prospect of becoming a second wife at all, and she refused. Moreover, she insisted on continuing to live in her own house with her children, and to work on her late husband’s land until her son was big enough to take

over. However, the cousins did not want to give Ina Modi any assistance with labour. She asked the village head for help with settling the dispute, but his advice was that the dispute should be settled within the family (*secara keluarga*). Unfortunately, this method did not work in Ina Modi's favour. When she scolded the cousins for not treating her well, and thus not honoring her late husband, they beat her up. Hurt and afraid she ran off to the closest police station, about 12 kilometers from her village. The police did not do much for her either, and Ina Modi did not have money to persuade them to act. She then stayed at the office of a women's NGO for a while and they helped her to get her eldest children into the nearby orphanage, where they received shelter and education. With occasional help from other villagers and moral support from the NGO staff, she has managed to return to her house, but the land dispute with her husband's cousins remains unresolved.

For households that have enough to eat and a house in which to live, but still have very little capital, financing the children's education is the principal real life problem. In this context, agricultural produce can be sold to pay for schooling, in effect converting economic capital into cultural capital. Education is the first step towards obtaining wage-based employment and the possibility of escape from low-yield agriculture as a main source of income. The ideal arrangement for many Sumbanese is to have a close relative in a wage-earning position, and then share the monetary income with a larger group in return for food, labour and ceremonial services. Networks connect rural and urban Sumbanese, and younger and older generations, and these connections allow food and domestic labour to be brought to town, with money and luxury goods being returned to the village. Urban professionals can rely on their village partners to organize weddings and funerals in the ancestral village, while villagers have a base in town for their children's schooling and for medical care. For villagers, land is the critical economic asset (economic capital) that enables them to create social networks with people in town. The poorest people in Sumba are those in the rural areas who lack these networks.

Another category of real life problem directly related land is when people are faced with 'urgent financial needs' (*kebutuhan mendesak*). The first major cause of such sudden large expenditures is severe illness. Medical care is now available on the island, but hospital treatment is expensive, and there is no health insurance system that is accessible for the poor. The second most common cause of urgent financial needs is the death of a close relative, in particular close family-in-law. *Adat* rules require that the son-in-law bring a water buffalo to the funeral. Water buffalo have become relatively scarce, compared to 20 years ago, when they were used in agriculture to trample the paddy fields. This has resulted in the price of buffalo increasing markedly. In both situations, the only way out is often pledging a piece of land, as described in Box 3 below.

Box 3. Land and indebtedness

Lewa is an area in the middle of Sumba that is known as one of the island's rice-producing areas. Recently, migrants from the more densely populated areas in West Sumba have migrated to Lewa, trying to find employment. They start as petty commodity traders and work as agricultural labourers. An NGO worker who has lived in this area for decades and cultivates rice fields (*sawah*) himself told us that many farmers who originate from this area have lost their land to these new migrants and to other traders. When the farmers suddenly face high expenditures (due, for example, to severe illness or the death of a relative) a migrant or trader may lend them money, and in 'borrow' a patch of their land.²⁰ The initial terms on which these agreements are negotiated may become less favourable for the landowner when additional expenditures force him to seek assistance again from the land borrower. In this way, a sequence of transactions takes place and can eventually force the owner to approve the issuing of a certificate of land ownership in the borrower's name. Most land that is borrowed never returns to the owner. Although state law says that after 7 years, the harvest serves as repayment of the debt, this is not accepted on Sumba.²¹ Instead, *adat* rules for pledging provide that the land can only be returned to the original owner once the loan is actually repaid. This usually means perpetual indebtedness (or permanent loss of assets) for the poor.

²⁰ Individually cultivated part of clan land (*tanah kabihu*), which will be explained in Section 3.

²¹ See Section 3.3.3.

Do the people facing these real life problems relating to land perceive them as injustices? This is not an easy question to answer. In the case described in Box 3, the original owner of the land will face a real problem in trying to produce enough food while his rice field is pledged. However, he was perfectly aware of the customary pledging rules and accepted those when he pledged his land. Perceiving a problem as an injustice implies comparison with a normative standard, whereby the situation is seen to fall below the standard. In Sumba, this happens when outsiders violate *adat* norms – the violation of the traditional norm is immediately regarded as an injustice. People who are from an outsiders' point of view disadvantaged by *adat* norms may also come to regard their problems as injustices when they learn about the options provided by alternative normative systems, of which state law is the most relevant in Sumba. The next section of this paper explores the normative framework pertaining to land in Sumba. It is on the basis of this framework that a person will or will not regard their problem as an *injustice*. Identifying a problem as an injustice is a critical step in determining whether a person will seek redress, or merely accept their fate. Many of the boxes in this section also hint at the potential local people's perceptions on what is fair and just to change. For example, education, the media and NGO activities can increase people's awareness of civil and human rights. However, more research would be needed in order to draw any conclusions about how such abstract concepts influence people in Sumba.

3. The current land regime in Sumba: analyzing the hybrid

3.1 Introduction

Boxes 2 and 3 provide two examples of land conflicts affecting the poor. In both cases, the land rights in question were subject to customary law. In Sumba, the population, as well as the government and judiciary, regard customary law as the primary source of law for the regulation of land rights. However, exceptions to this rule are becoming more frequent. In residential areas where people build permanent houses, individual property of land – documented by way of a state issued land certificate – is increasing. There are a number of what could be called 'market forces' that are driving the individualization of land property. Relatively wealthy people who have bought high value land are increasingly relying upon non-customary legal means to secure those transactions. Forces within the customary system are also eroding the authority of customary rules and institutions. For example, we were told that well-educated members of a clan (*kabihu*) often find it difficult to accept the decision-making power of their less educated relatives who, according to *adat*, have the status of clan elder. In this section we describe the current regulatory regimes regarding land in Sumba, starting with the traditional status of clan land (*tana kabihu*), discussing the various types of land transaction and finally examining the acquisition of land by government for commercial purposes.

3.2 *Tana kabihu*: clan land under customary law

Traditionally, Sumbanese land is clan property, *tana kabihu*. The Sumbanese think of their island in terms of domains, and their personal identities are linked to these domains.²² The early ancestors distributed land within their domain, and the way in which they did so demonstrates the way in which land distribution and use was linked to mutual cooperation and rituals (see Box 4 below). The legitimacy of *adat* is based upon a belief in the authority and power of the deified ancestors.

²² Rodney Needham (1987), *Mamoru: History and Structure in a Domain of Northwestern Sumba*. Oxford: Clarendon Press, pp. 6-8.

Box 4. Land distribution in the far past

Before the colonial period, domains were delineated by reference to the territory first occupied by a certain ancestor. The clan of that ancestor was the lord of the land (*mangu tana*).²³ Onvlee argued that ties to the *mangu tana* determined unity of the people and clans within a certain domain. Clans with a clear and acknowledged link to the *mangu tana* identified themselves with the domain in terms of social organisation and territory. The *mangu tana* would divide responsibility for performing rituals amongst the other clans in the domain. For example, one clan would do the rituals for fertility, another for rain, a third for blessing and protection in case of war, one for purification and a fifth – “those who command lightning” – for punishment in case of theft or other offences.²⁴ This cooperation between these clans would guard the wellbeing of all who lived in the domain.

Ouwehand²⁵ wrote in 1951 that both the colonial government and the Indonesian government after independence acknowledged that whatever the official state law would be, in practice access and control over land in Sumba would be ruled by the existing customary law.²⁶ He added that the continuation of this policy after independence was in no small part attributable to the fact that the island’s highest government officials were members of the indigenous nobility, whose local authority was grounded in principles of customary law.²⁷ The classic assumption is that the chiefs represent the community in dealing with outsiders, and that internally they have the authority and responsibility to regulate how community members use the community’s resources.²⁸

In the interview we conducted with the Deputy District Chief of Central Sumba – who is one of the traditional nobility in that district – he confirmed the assumption, adding that there is no problem with access to land because clan leaders will always take care of their clan members and provide them with a part of the clan land (*tanah kabihu*). The case in Box 5 demonstrates how state courts recognize customary land rights, and also reveals that the chiefs’ land management does not always coincide with the common people’s interests.

Box 5. State court confirms status clan land (*tanah kabihu*) in Prai Liu

Kampung Prailiu, close to East Sumba’s capital Waingapu, is the core residential area of the former king (*raja*) of the traditional domain and (colonial) sub-district *swapraja* Prailiu. In the 1990s the head of this kampung, Umbu N, wanted to build a house just outside the traditional village on a piece of land that was being cultivated by a man of lower traditional social status called Hina. Hina objected to the building plans and argued that the land was not Prailiu clan land (*tanah kabihu*). Instead, he argued that it was his own land, because his grandfather had opened it for cultivation in 1956 and both his father and Hina himself had cultivated the land ever since. The tombs of Hina’s father and grandfather are located on that land, which is a traditional sign of an individual’s claim to land, or at least a sign of the absence of protest by any other potential land owner. He said that up to the moment Umbu N wanted to build his house, there had never been any objection to Hina using and claiming the land. Umbu N’s counter argument was that his father had in fact instructed Hina’s grandfather to open the land, and that it used to be the place where guests visiting kampung Prailiu would keep their horses.

Hina refused to surrender and brought the case to the court. The judge faced a problem because it was very hard to find witnesses to give evidence regarding the history of the land in the 1950s. Moreover, the witnesses who did testify gave inconsistent accounts. Umbu N was supported by a petition signed by 98 persons originating from 48 clans in Sumba that at one point²⁹ comprised the traditional council of clan representatives that used to rule on matters that were beyond the domain of a single member clan. This council is referred to as ‘a series of clans, a row of houses’ (*ndalar*

²³ Louis Onvlee (1973), Cultuur als antwoord. In *Verhandelingen van het Koninklijk Instituut voor Taal-, Land-, en Volkenkunde* (66). The Hague: Martinus Nijhoff. p. 125.

²⁴ Louis Onvlee (1973), Cultuur als antwoord. pp. 126-7.

²⁵ C. Ouwehand (1951), Adatrecht en daerahwetgeving met betrekking tot bosbescherming op Sumba. In *Indonesië* (4). p. 539.

²⁶ Sumba was under indirect rule of the colonial regime. See Section 3.4.2.

²⁷ C. Ouwehand (1951), Adatrecht en daerahwetgeving. p. 542.

²⁸ Kurnia Toha (2007), *The struggle over land rights*. pp. 51-2.

²⁹ During the period Lewa-Kambera was one administrative area (*swapraja*) (1917-1960).

kabihu juru watu uma'), meaning that they are members of one ancestral village.³⁰ The petition declared that (A) Hina's clan was not a member of the council, (B) thus he and his fellow *kabihu* members do not have rights to claim land in and around Prailiu village, (C) his arguments for claiming the land were false, and (D) as members of the '*ndalar kabihu juru watu uma'*' they solemnly declared that the land belonged to Umbu N and his *kabihu* already for at least six generations.

The judge decided that the land was *adat* land (*tanah adat*) that Umbu N had inherited from his forefathers. Hina appealed the decision, but subsequent verdicts were also in favour of Umbu N.

Sumbanese customary law does not rely upon any written documentation for evidence or legitimacy of assertions. In rare cases, there are documents that support a person's claim to land, for example a will. However, territorial claims are usually supported by oral narratives that connect the land to a person's genealogy, and preferably indicate a direct link between the claimant and the clan's founding ancestor, the lord of the land (*marapu kabihu*). In addition, the presence of an ancestor's tomb on land the subject of a claim is a clear sign of ownership. Sumbanese feel connected to their land – it is part of their identity – and they are therefore often offended when the connection is contested (see Box 9 below).

A common myth about *adat* land in Indonesia concerns communal tenure. Kurnia Toha stressed that indigenous property regimes comprise bundles of rights possessed by both customary law communities as a whole, as well as by their members individually.³¹ Toha argued that the practical rule is that the longer and more intensively a community member uses a parcel of land, the stronger is his or her individual property right. According to this rule, residential plots and permanently cultivated or high-yielding agricultural parcels would logically be seen as individual property. However, the case in Box 5 showed that this 'practical rule' does not apply in all cases, and that there is ample room for negotiation regarding individual *adat* claims to land. Cultural capital in the form of high (traditional) social status and legal capital – knowledge of *adat*, skill in constructing the historical arguments and ritual techniques – are powerful assets in *adat* negotiations. Poor and disadvantaged people usually lack these forms of capital.

Two other myths about *adat* concern the non-transferability of land rights and the exclusion of outsiders. The next section dispels these myths by describing the range of land transfers that can occur in Sumba, and the types of land disputes they often create.

3.3 Customary land transfer

Indonesian students who study land law or agrarian law learn that indigenous property rights cannot be transferred, but according to Toha there is no evidence for this general statement in practice.³² In this section, we argue that land transfers should be divided into (i) transfers within the customary community and (ii) alienation to outsiders. Within a community, land may be transferred in a variety of ways, ranging from the most general arrangement of giving-borrowing to the most definite arrangement of selling-purchasing. Each of these arrangements gives rise to distinct types of conflict, as discussed below. For each type of conflict, we highlight the role of the 'poor and disadvantaged' with illustrations from our field research. A general remark at the outset is that land is seldom transferred to the poor; instead, it is inevitably the poor who are losing their fields. Moreover, conflicts in which poor people lose their land often fail to evolve into open disputes, because the poor often find themselves forced to surrender their rights at the very early stages of the process.

3.3.1 Division of land within the clan (*kabihu*): conflicts about inheritance

According to *adat*, the only land that is by definition 100 percent communal is the land of the spirits (*tana marapu*), or holy land, that cannot be cultivated and is subject to many restrictions.³³ All other clan land is distributed internally amongst members of the clan. State tax invoices are used as

³⁰ Louis Onvlee (1984), *Kamberaas (Oost Soembaas) – Nederlands Woordenboek*. Leiden: KITLV/Fortis. p. 118.

³¹ Kurnia Toha (2007), *The struggle over land rights*. p. 56.

³² Kurnia Toha (2007), *The struggle over land rights*. pp. 57-62.

³³ C. Ouwehand (1951), *Adatrecht en daerawetgeving*. p. 540.

evidence of this internal distribution, which is one of the reasons why most people are eager to pay land tax. Land that is subject to an individual claim can also be inherited. Generally, only sons can inherit land, with older sons usually receiving a larger share than the younger. Likewise, if a deceased man had more than one wife, the sons of the wife with the highest status will inherit more than the sons of the other wives. A wife's status depends upon her traditional social status (which is reflected in the bride price paid for her) and seniority ranking (ie. sons of the first wife generally inherit more than those of the second and third). Preferential marriage (which means the wife is her husband's mother's brother's daughter) is also a reason why the sons inherit more land than their half brothers in such a polygamous household. Despite these 'objective' inheritance rules, in practice men often bequeath the larger share of their property to the sons of their most beloved wife. Inheritance issues can often result in true injustices for poor Sumbanese, as Box 6 illustrates.

Box 6. A young single landowner among many poor relatives

Umbu Mabi (UM) had lived in the hamlet (kampung) Parikatoda since he was a young man. He moved there when the founder of the hamlet Umbu Rosu (UR), needing labourers to work on his lands, asked him to move to his house to live permanently. Later on, UM married, built his own house in the kampung and obtained land from UR 'to grow his own food'. Umbu Mabi's status was not that of an officially adopted son, but rather that of a subordinate 'person in the house'. People with such a low status cannot own land, but may only work on the land of their master.³⁴

UM and his wife had five sons. None of them went to school longer than a few years, and all stayed in the kampung and tried to find a living in agriculture or herding other people's livestock. UR's own son, who was about ten years younger than UM, grew up, married and had four children: three daughters and one son. He cultivated his father's rice fields and had good yields for many years. He could afford to send his children to school and all of them graduated from at least secondary school. The daughters married men with salaried jobs and went to live with their husbands elsewhere.

Last year UR's son suddenly died, leaving an only son 18 years of age and, according to *adat* rules, the single heir to all of his father's land. However, he could not cultivate all the land on his own. Seeing this situation, UM's sons claimed their right to cultivate some of UR's land, as their own individual share of the clan land. They all lived in the village and needed land to sustain their households. This gave rise to a dispute between UR's son's widow and heir on the one hand and UM's sons on the other. The widow and heir rejected the claims, because they were afraid that upgrading UM's sons' rights from a mere favour enabling them 'to grow their own food', to become individual use rights over clan land would mean permanent loss of access for themselves. At the time of writing, the dispute remained unresolved.

According to *adat* inheritance rules, the young heir in Box 6 was the owner of the land. However, one could wonder whether, as the grandson of UM's patron, he was also under an obligation to provide UM's sons with a means by which to grow their own food. UM's sons could not base their claims on land on *adat* rules, but their appeal to UR's grandson's obligation can be seen as grounded in the human rights to life and to not be treated as a slave.

3.3.2. Lending land: unclear arrangements

As demonstrated in Box 6, land conflicts often develop after a person lends a piece of land to someone else. There are no fixed or explicit commitments for return services by the borrower, nor statements concerning the period during which the borrower can use the land. The words commonly used to describe these arrangements are 'giving' (*kasih*) and 'borrowing' (*pinjam*). Though no commitments are made express, many are implied. Borrowing a piece of land means accepting a relationship of general reciprocity – in other words, opening the door for a potentially endless series of requests by the lender for money, food, or other types of material support.³⁵ In Sumba, borrowing

³⁴ Y. Argo Twikromo (2008), *The local elite and the appropriation of modernity: a case in East Sumba, Indonesia*. PhD Dissertation Radboud University Nijmegen. Yogyakarta: Kanisius Media. pp. 170-7.

³⁵ Jacqueline Vel (1994). *The Uma economy: Indigenous Economics and Development Work in Lawonda, Sumba (Eastern Indonesia)*. Wageningen: Agricultural University. pp. 63-6.

land carries with it a connotation that the borrower is accepting a subordinate position regarding the owner of the land.³⁶ The borrower often provides the lender with resources they need, such as labour. The children of borrowers often stay at the landowner's house to provide domestic help. Borrowers who are comparatively more wealthy may also provide the landowner with meals, money and other services such as transport. When the land is a rice field, they are also obliged to give the landowner part of the harvest.

Conflicts about borrowed land often occur when the original conditions of the transaction have changed over time. For example, the borrower builds a house on a borrowed dry land field that was meant for growing corn and other food crops, or a borrowed piece of dry land suddenly increases in value because it is located along a new road, or because a plantation or other commercial activity is planned for the area. Box 10 (in Section 5 below) provides an example of a conflict about land that started with a lending arrangement.

3.3.3. Pledging (*menggada'i*)

We have already provided an example of pledging in Box 3 above, regarding 'Land and indebtedness'. This is a very common type of land transfer for the poor. As discussed, pledging usually occurs where the landowner needs money or livestock, and so grants usage rights over his land to the person who provides what he needs. The land will only return to the original owner after the debt has been repaid. In Sumba this *adat* rule is apparently more valid than the state legislation, which stipulates that after seven years a pledged parcel should return to its owner.³⁷ There is no fixed price for these arrangements, and the terms depend upon the social distance between the owner and the borrower, the quality and size of the land (which determine expected yields), and the urgency of the owner's credit needs. For poor landowners, it is very hard to regain their land. Usually pledging arrangements are in place for many years, which also creates an opportunity for differences of opinion concerning the initial terms of the arrangement.

For these reasons, many land conflicts relate to pledged land. When seeking a resolution for such a dispute, both parties find it difficult to present convincing evidence, as pledging agreements are usually made orally, and without witnesses. To cope with this problem and 'avoid too much head ache', one village government in Central Sumba decided in 2008 to start registering pledging contracts. However, the village secretary admitted that only a very small percentage of pledgers wanted to register, because registration involved paying administration fees to the village secretary, increasing costs for people already in urgent need of money.

3.3.4 Selling land to fellow community members

The concept of selling land to fellow community members is alien to Sumbanese *adat*. *Adat* does not allow permanent alienation of land, and the close social distance between fellow community members means that 'giving – borrowing' would be the appropriate arrangement. Selling land implies cutting ties with the history of the land, and cutting the links between the owner (and their clan) and the land. This construction is hardly conceivable for traditional Sumbanese. However, it is now becoming a reality, as transfers of land that traditionally would be seen as 'lending' for an open period of time are now being registered through the state administrative procedures of titling, registering, certification and notary deeds concerning sale and purchase.

The cases we encountered involved sellers who were in urgent need of money or livestock, in a similar way to those described in Box 3 above, and in Section 3.3.2 on lending land. The cases concerned relatively high-value land, and as such only relatively wealthy purchasers could afford the price. Moreover, purchasing requires sufficient legal capital in the form of knowledge about the administrative procedures by which the required documents could be arranged. Jurisprudence in the

³⁶ Gregory L. Forth (1981). Rindi - an ethnographic study of a traditional domain in eastern Sumba. In *Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde* (93). The Hague: Martinus Nijhoff. p. 253.

³⁷ Article 7 of regulation-in-lieu-of-law 56/1960(PERPU 56/1960, PENETAPAN LUAS TANAH) PERTANIAN, see http://hukum.unsrat.ac.id/uu/perpu_56_1960.htm (last accessed on May 19, 2009).

coming years will reveal whether state law, which is more protective of purchasers, will be upheld over *adat* law, which is more protective to the seller. Box 7 presents an example involving a relatively wealthy but female (and thus disadvantaged in *adat*) purchaser.

Box 7. Security of tenure regarding land purchased from a relative

Ibu Tina is an unmarried 65-year old lady who lives in a nice house close to the main road connecting the capital town of Central Sumba, Waibakul, with the capital of West Sumba. She retired a few years ago from her position as a civil servant. In 2006, she heard that a relative urgently needed money for the wedding of his daughter, and that he wanted to sell a piece of land along the main road. As a woman without a husband, purchasing was the only way she could obtain land property. Ibu Tina took this opportunity and negotiated with the owner. She could only afford it if he would agree to let her pay in instalments, and as they were relatives, he agreed. Ibu Tina paid accordingly and arranged the legal documents.

In January 2009, Ibu Tina heard that the former owner intended to retrieve the land he sold to her, because he needed a piece of land on which to build a house for his son. Rumour had it that the former owner even planned to bring the case to the State Court. In spite of the fact that she held all legal documents, Ibu Tina did not feel comfortable about the prospect of her ownership being contested. The sale of land to a relative leaves open a number of *adat* arguments, which would undermine her rights over the land, and as such she was unconvinced that her official legal documents would provide full tenure security.

3.3.5 Transferring land to strangers

A traditional way of providing land access to strangers – people with whom no prior kinship or marriage ties exist – is by granting them a position within the kinship system. The landowner will act as if he is the bride giver, and the ‘tenant’ as if he is the bride taker. At the time of the initial transfer, the ‘tenant’ gives bride wealth-type goods, such as horses and golden pendants, to the land owning clan.³⁸ These goods are not regarded as a payment for the land, but rather as a confirmation of the new social relations. According to the new relationship between the landowner and ‘tenant’, general reciprocity is the proper mode of exchange. The landowner anticipates that he will benefit from the transfer, for example, by receiving assistance from the ‘tenant’ to meet any sudden ‘urgent needs’ (*kebutuhan mendesak*). This construct was, for example, used to allow non-local NGO staff to settle down in the rural area in which they work, as described in Box 8.

Box 8. Legal construct for access to *adat* land by non-locals

In the 1980s, Ibu Yuli and Pak Okta wanted to build a house close to their NGO office in a village in Central Sumba, where they worked as senior staff members. Ibu Yuli was Javanese and Pak Okta Sumbanese, but not from this village. At the time, it was not possible to purchase land in the area. However, the owner of the land adjacent to the NGO office was willing to provide the land Pak Okta had in mind for building a house. The landowner acted as if he was the bride giving party – implicitly adopting Ibu Yuli into his clan – and consequently asked Pak Okta to bring him horses and buffalo for the transfer ceremony. After the ceremony, the land was considered individual *adat* property of Ibu Yuli and Pak Okta. They built their house, and when their youngest child died in 1989 at the age of only two weeks, they buried her in a tomb close to the house. The house had a large yard and Pak Okta planted many trees. When he died in 2003, he was buried in a large tomb close to the house. In 2007, the village was included in a national government programme for measuring land parcels and registering land rights. Ibu Yuli was eager to have her residential plot measured and registered, and the fact that the officer of the National Land Agency who was in charge of measuring and registering was a fellow Javanese helped to get the job done quickly and without any payment. Ibu Yuli arranged a land ownership certificate on the name of her eldest son. When we asked what would happen to the land if she and her son would decide to leave, all Sumbanese present agreed that the son would not be entitled to sell, and that the land would return to the original landowner. Another, more junior staff member of the NGO used the same construct but was less successful. He was not able to give the

³⁸ Gregory L. Forth (1981). Rindi - an ethnographic study. p. 253.

number of horses and buffalo the landlord expected to receive at the initial transfer, and thus had a concrete debt to the landowner. When he died, his widow was not allowed to put up a tomb close to the house, and the landowner also refused registration during the PRONA program. Apparently, they did not have enough capital (social, economic and cultural) to be adopted into permanent positions within the landowner's clan.

We recently came across a similar construct, when a potential plantation owner told us about the negotiations he had with 'local leaders' about access to land for the plantation company.³⁹ One of these local leaders had told the businessman that he would not have to pay for the land in cash, but that he could get access by giving a number of horses or buffalo to the land-owning clan. Without background knowledge of these types of arrangements, it is difficult for outsiders such as plantation owners to understand the implications of such an offer, and the extent of tenure (in)security involved.

3.3.6 Land for women

Several of the above cases have shown that access to land for women is very limited in Sumba. Traditionally, a widow is only entitled to take care of her husband's or her son's land (see Box 2). Relatively wealthy women can purchase land, but their tenure may never be entirely secure (see Box 7). In general, women cannot own *adat* land, and daughters cannot inherit land. However, there is one exception, the single option within the *adat* system for fathers who want to give their daughters land just like their male siblings: land given to a woman as part of her dowry. This land is referred to in ritual speech as 'a pig that won't grow old, a cloth that will not wear out' (*wawi da kaweda, kaba da kapuga*), meaning land that will provide for the daughter's needs in perpetuity. One informant told us that the type of land that could be given in this way includes land that a father had purchased, and which was never a part of the clan's land. Despite this exception, our general conclusion is that women in Sumba are disadvantaged when it comes to access to and control over land.

3.4 Applying state law to land

In Section 3.2 above, we have explained that land on Sumba is traditionally regarded as clan land. However, state law is increasingly being applied. Two developments regarding state title to land are particularly important for this paper: the development of the land market and the acquisition of land for large scale plantations. Both developments have created tensions between original landowners, state institutions and businessmen. The critical question is who has the authority to make decisions about the distribution and use of land: market forces, the state or the customary chiefs?

3.4.1 Developing land markets in Sumba

With increasing differentiation of economic activities and a growing political class with purchasing power, the land market in Sumba is developing rapidly. In a land market, parcels of land are differentiated according to their market- or exchange value. Intense competition over a parcel of land results in high value, whereas land that interests no one has the lowest value. Land values are highest in and around centres of economic activity, and decrease according to the distance from that centre (physical and ease of access). On the map of Sumba, some high value land is found along the main roads connecting the capital towns, with larger areas around the business and administrative centres of these towns. These are areas in which land is titled and registered, both by individuals who want to obtain documents that increase their security of tenure over their residential plots and paddy fields, as well as through government registration programmes. Box 7 ('Tenure security concerning land purchased from a relative') and Box 11 ('Good government officials do not encroach') illustrate these processes. Registering low value land is not necessary – since there is not

³⁹ Skype conversation Jacqueline Vel with Gary Turner, Green Resources, April 26, 2008.

much competition over such land – and is considered too costly in light of the low yields obtained from such land.

However, land that is not cultivated, and only occasionally used for herding livestock always had a very low value, but now that value is increasing because such land is attracting interest from plantation developers. With this development, marginal areas of ‘sleeping land’ (*lahan tidur*) are suddenly turned into centres of economic activity. Because low value land is usually not registered and no one claimed the land before there were plans for plantations, there is ample opportunity for land grabbing.

3.4.2 Defining plantation areas as ‘state land’ or people’s property

Whether land that is not cultivated, or has not been cultivated for a long period, can be considered state land is a very old debate in Indonesia. This distinction was formalised in law during the colonial era with the Agrarian Law of 1870, in particular its first article, the Domain Declaration, which declared all uncultivated lands the domain of the state (in directly ruled areas). Many indigenous communities contested this declaration, claiming their customary rights to the land, whether it was cultivated or not. After independence, the Basic Agrarian Law aimed to unify the land law system by transforming all land claims into rights as defined by this law. However, this was never fully realised, and in Sumba, *adat* rights regarding non-cultivated land co-exists with potential state claims.

With the recent move towards regional autonomy, it is now the district government that is in charge of state land within its district. The first regional autonomy law (Law No 22 of 1999) completely devolved authority over land affairs to the district governments, each of which had a new Land Board (*Badan Pertanahan*) to manage land affairs. This represented a severe reduction in the powers of the National Land Administration Board (NLA, *Badan Pertanahan Nasional*), and a great opportunity for district governments to use their local natural resources as political assets. However, this aspect of regional autonomy did not last long. One month after the regional autonomy laws had been implemented, President Wahid issued Presidential Decree No 10 of 2001, which stated that all existing land related legislation would remain in force (unaffected by regional autonomy) until implementing legislation had been enacted. Two years later, this implementing legislation was created in the form of Presidential Decree No 34 of 2003. Article 2 of that Decree limited authority of district or municipal governments to nine areas of regulation:

1. the issuing of location permits;
2. land clearance in the interests of development (*pembangunan*);
3. settlement of disputes over farmed land (*tanah garapan*);
4. settlement of disputes related to compensation and aid money regarding land clearance for development;
5. determining what land is available, and who is eligible, for land redistribution;
6. compensation for land exceeding the maximum plot size and neglected land (*tanah absentee*);
7. settlement of problems related to communal land (*tanah ulayat*);⁴⁰
8. use of and settlement of problems related to empty land (*tanah kosong*), and granting permits to open/develop new land, and;
9. spatial planning.

Missing from this list are the politically sensitive functions of land titling and registration, mapping and conflict resolution. The NLA has retained those functions, and thus that part of land management remained integrated into the vertical, sectoral structure of administration, instead of being devolved to the district governments.

⁴⁰ The concept *tanah ulayat* is translated as communal land, and derived from the Minangkabau land ownership system. It refers to the land that is claimed by *adat* communities, hence the translation as ‘communal’. See Bakker 2008:1.

In Sumba, most of the land that is considered for large scale agribusiness activities is not registered as private property (ie. there are no land certificates), and it is not cultivated. The district government's most important function is issuing location permits for companies. If a district head wants to provide land to an agribusiness for plantations, he can either declare the land state land, or arrange negotiations with the local population in order to try to persuade them to hand over the land to the state (*pembebasan tanah*) so that the company can commence the procedure to obtain cultivation rights from the government (*hak guna usaha*). The process for issuing location permits should involve public participation. The cases in Section 4 show how the degree to which public participation in fact took place.

When there are no individuals holding landownership certificates, past experience teaches that negotiations between government, business and the 'local population' only involve the customary chiefs, instead of all clan members who have an individual right or claim to the clan land. Box 9 below gives an example of one such negotiation process. Discussions we had with potential investors indicated that they were always in search of the 'local kings' with whom they could settle land affairs. Local lower status customary landowners in the northern coastal area of Memboro told us that they had very little information about the content of the negotiations concerning plantations in their areas, and that up until February 2009 these meetings only involved chiefs, many of whom reside in the capital town and have a position in the bureaucracy.

One of the primary reasons that local people obtain landownership certificates is due to government incentives for plantation companies. Various regulations issued by the Ministry of Finance have introduced subsidised credit schemes for biofuel plantations, on the condition that the credit receivers are farmers who cooperate in or with the plantation,⁴¹ and the farmers hold formal land titles. In such cases, the financing strategies of the plantation are the driving force behind registration and titling of farmers' land.

3.5 The current hybrid system

Section 3 and the empirical examples in the boxes above illustrate the extent to which people in this *adat* dominated island deal with issues pertaining to land in changing circumstances. They have created a dynamic and practical hybrid system, in which elements of various normative systems are combined. The widow in Box 2 did not accept the consequences of the customary way of taking care of a widow and sought assistance from police and NGO workers. The indebted landowners in Box 3 would get their pledged land back sooner if state law were to be applied. The lower status person in Box 5 who had built a house on the land his grandfather cultivated felt he had a rightful claim, and dared to oppose the *adat* leaders, although in this case he did not succeed, and the *adat* leaders were able to confirm several *adat* rules through the state courts. Box 6, about Umbu Mabi, also hints at changes in the perception of injustice in favour of equity and against the norms set by *adat*. Box 7 and 8 show examples of alienating land, by either ignoring *adat* rules or by stretching them up to be able to include new circumstances. In both cases, there is no real security of tenure because it is uncertain which rules will prevail in the end.

How does this hybrid legal system apply when companies want to set up large plantations in Sumba?

4. Regional autonomy, plantations and commoditization of land

Capturing complex processes of change in a few words is always very difficult, and is made more so because we know that there has never been an 'ideal' past in Sumba when all matters were resolved according to a 'pure form' of *adat*. Further, changes do not occur all of a sudden. Commoditization in

⁴¹ Ministry of Finance Regulation (MFR) 117/PMK.06/2006 and MFR 79/PMK 05/2007.

Sumba for example has been occurring for at least a century.⁴² Yet, since 2001 there have been two major changes that have affected land issues in Sumba dramatically and will continue to do so in the near future: regional autonomy and the rise of large scale (internationally financed) agribusiness activities.

4.1 Regional autonomy's consequences for the land market

The landmark in administrative decentralization came in January 2001, when the laws on regional autonomy (Laws No 22 of 1999 and 25 of 1999) began to be implemented. The most important aspects or consequences of regional autonomy in the context of this case study are the following three developments.

First, regional autonomy stimulated demand for land for residential purposes in strategic locations. Decentralization resulted in an increase in the district government budget in Sumba of about 300 percent. The formula by which regional budgetary allocations are determined gave resource-poor areas with low locally generated government income a greater share than they received before regional autonomy.⁴³ As a consequence, the district government had much more to spend, and the purchasing power of the political class increased accordingly. This led to an increase in private demand for land to build houses.

Second, public demand for land also increased. Law No 22 of 1999 and Government Regulation 129 of 2000 introduced the option of creating new districts (*pemekaran*). Accordingly, in 2007, West Sumba was split into three new districts, 'bringing the government closer to the people'⁴⁴ and giving a boost to local economic and infrastructure development. The new districts needed a whole new bureaucratic infrastructure, including many new offices. It is interesting to note the strategy and terms by which land is acquired for these 'public purposes', as compared to the previously discussed acquisition of land by investors.

Box 9. Losing land to 'public interest' projects

When in December 2006 the final decision was made to create a new district, the government had to find a suitable location for the new district government's offices. As Waikabul had already been designated as the capital of the district the offices needed to be in or close to Waikabul. This area is within the traditional domain Anakalang. The first (temporary) district head of Central Sumba, as well as the second (elected) district head were both noblemen from this traditional domain. In traditional terms, their status was so high that they could simply use their authority and relationships to allocate part of the land for this public purpose. However, their traditional leadership was not uncontested, and as heads of the (modern) state government, they were also expected to at least consider the payment of compensation to the clan whose land it was. Eventually, an area south of the capital that had been a contested area for centuries was chosen. The area of 110 ha was located amongst paddy fields and was actually a swamp. Some members of the surrounding population say it is an area of the spirits (*karamat*) where no human activities should take place; others that it is an area vulnerable to lightning. Others trace the status of the land back to a dispute between several forefathers over who was most entitled to occupy the land. The temporary and the recently elected district head together organized a ceremony – preceded the night before with an *adat* ritual – in which the three main *kabihu* of the area offered the land to the government. There was no public information about whether there would be a transfer of money from the government to the clans or their leaders.

Another related consequence of the creation of a new district was the increase in sales of land between fellow community members in the capital of Central Sumba, Waikabul. Because of the sudden influx of money and government officials, and the corresponding increase in purchasing

⁴² J.D.N. Versluys (1941), Aanteekeningen omtrent geld- en goederenverkeer in West-Soemba. In *Koloniale Studiën* (25). pp. 433-83.

⁴³ BPS-Statistics Indonesia, BAPPENAS and UNDP *National Human Development Report 2004: The Economics of Democracy: Financing Human development in Indonesia*, p. 60. See http://www.undp.or.id/pubs/ihdr2004/ihdr2004_full.pdf (last accessed on March 13, 2009).

⁴⁴ This was one of the slogans during the campaign for creating the new district. (Vel 2008. p. 172).

power, many newly assigned government officials needed land for building a house. Having for several years anticipated these developments, people had started purchasing strategically located land, close to the main road and to offices. As elsewhere in Indonesia, the same forces exclude the poor from these locations.⁴⁵

The third aspect of regional autonomy that has had direct consequences for the development of the local land market, and thus for land disputes, is the district's government active search for private sector investments in the district, particularly in the agricultural sector.

4.2 Linking rural Sumba to global markets

The world-wide processes of agrarian change that have taken place (and are continuing to do so) as a consequence of globalization also have affected the rural areas of Sumba. For example, in August 2007 a headline in the national newspaper Kompas reported that a Swedish company would invest one trillion Rupiah in a plantation for producing energy crops (biofuels) in Central Sumba.⁴⁶ The stakeholders are no longer just the local population and government; these plans also involve international companies and national intermediaries. The negotiations over land – and possible land disputes – deal with tens of thousands of hectares at once.

District governments in Sumba applaud these developments, actively seeking investors and companies to start agribusiness activities.⁴⁷ These activities can lift the rural economy, creating employment for the rural population and making land that was not cultivated economically productive. Governments are also keen to receive the taxes and levies these companies will pay, since each district must reach a certain level of locally generated income (*pendapatan asli daerah*) to legitimise their autonomous status.

Stimulating investment in the rural sector is also in line with national policies of President Susilo Bambang Yudhoyono's government, since he was elected in 2005. Presidential regulation No 5 of 2006 made cultivation of biofuel crops part of the national energy policy. The new investment law (Law No 25 of 2007) facilitated foreign investment in the agribusiness sector by shortening procedures, providing tax incentives and extending the maximum period for which a company could hold a land lease (*hak guna usaha*, HGU) to 90 years.

The downside of these rapid developments is that commercialization of agriculture and further commoditization of the rural areas creates dependency on the world market, and dependency on companies that supply agricultural inputs and often have ample opportunities to create local monopsonies.⁴⁸ Farmers in Sumba have already experienced problems of this kind with many crops, especially vanilla and shellac (*kutulak*). These two commodities had a few boom-years, in which prices were high and people could make money fast and easily. Then both markets

Photo 1. The new district government's office under construction in February 2009 (photo by J. Vel).



⁴⁵ Tristram Moeliono, forthcoming, PhD dissertation. Leiden: Van Vollenhoven Institute.

⁴⁶ Kompas, August 16, 2007, see <http://www2.kompas.com/kompas-cetak/0708/16/daerah/3765820.htm> (last accessed on May 19, 2009).

⁴⁷ See also the website of the Investment Coordination Board (BKPM): <http://www.bkpm.go.id/index.php/main/content/81> (last accessed on May 19, 2009) and Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo and Herbert Pane (2006). *Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples*. Bogor: Forest Peoples Programme, Sawit Watch, HuMA and ICRAF. p. 51. See http://www.forestpeoples.org/documents/asia_pacific/bases/indonesia.shtml (last accessed on May 19, 2009).

⁴⁸ Monopsony is a market with only one buyer.

collapsed, totally beyond the control of local producers. In this background of changing circumstances, the local population in Sumba sees their land occupied by (international) companies.

The next three sections describe cases in which large areas of land were claimed for commercial exploitation. Initially we thought these all concerned land conflicts. Yet, in-depth interviews showed us that there was a more elaborate pattern of stakeholder interests, and that for some of the 'poor and disadvantaged' involved, their main goal may not be obtaining access to land but rather access to income-generating opportunities, and their main barrier their lack of decision making power within the process. The elaborate description of customary land tenure and social stratification in Section 3 must be kept in mind when reading about the new developments in the next three cases.

4.3 Negotiating the terms of a biofuel company's land use in Central Sumba

In 2007, representatives of the company PT Cecilisarah Abadi from Jakarta came to Central Sumba to start the process of establishing a jatropha plantation in this district.⁴⁹ According to the interim district head of this new district, Umbu Saga Anakaka,⁵⁰ he had provided the company a temporary permit, because it had already arranged permits from higher levels in the bureaucracy. The district government encourages large investments in agriculture that will develop the district's economy and yield government income. However, it expects companies to implement 'corporate social responsibility' by undertaking a number of (actually state) activities, like building roads and providing electricity. In 2007, many other plantation companies entered the area to do feasibility studies, and usually they would disappear again, leaving the impression that their studies had a negative result.⁵¹ PT Cecilisarah liked the area south of Central Sumba's capital town Waibakul, where they were told that a large acreage of uncultivated land was available. Part of this area was land in the village (*desa*) Tana Modu. This land was not as empty as it seemed, especially according to the local population, who already had some experience with cultivating jatropha.

The West Sumba government's Agricultural Service had been promoting jatropha cultivation since 2005, following the national policy to stimulate production of energy crops. In Tana Modu, farmers were urged to plant jatropha on an area that in 1992 had been turned into a cashew plantation.⁵² Before 1992, the land was not used for agriculture, but it was part of the grazing land used by the local population for their livestock. At the start of the cashew project, the land was registered with the National Land Agency and participating farmers had received land certificates. In 2005, the Agricultural Service sent large tractors to prepare the land for jatropha cultivation and to clear all remaining cashew trees. Afterwards the farmers were expected to plant and care for the jatropha themselves, and every three or four months they received herbicides to clear weeds. When we interviewed members of this group in November 2007, they told us they did not have information about the herbicide or how to apply it safely. They did not have information about current prices of jatropha seeds, nor about who would be willing to buy their crop. One farmer brought a bag with jatropha seeds to town, where he received only 500 Rupiah (0.06 US \$) per kilogram. This did not even cover the costs of his transport to town and back. The farmers in Tana Modu were thus not motivated to continue this cultivation, which explains the poor condition of their jatropha fields in November 2007.

The farmers in Tana Modu were organized in a farmers association, in cooperation with a local NGO. In November 2007, the chairman of their association told us they had recently received a

⁴⁹ This is a plantation and oil palm processing company active in Banten, West Java. See <http://biofuel.indonet.work.or.id/profile/pt-cecilisarah-abadi.htm> (last accessed March 27, 2009), with 'Jatropha Plantation now operating in Eastern Indonesia, seeking investors to expand to 300, 000 hectares'. See <http://www.alibaba.com/member/gbatchelor/aboutus.html> (last accessed on March 27, 2009).

⁵⁰ Interview Jacqueline Vel with Umbu Saga Anakaka, November 2007.

⁵¹ One elaborate feasibility study was done for Indonesia – including Sumba – by GFA Consulting group for the German KfW Entwicklungsbank with the title 'Development of Jatropha Curcas Oil for Bio-Energy in Rural Areas'.

⁵² Field visit to Tana Modu and interviews with chairman and some members of the Tana Modu farmers' group were conducted in November 2007 and February 2009.

visit from PT Cecilisarah Abadi, accompanied by their American investor, and a local supporter who intended to run as candidate in the September 2008 district head elections. The investor set his hopes on the present *jatropha* fields, and offered the farmers a price of 110 US \$ (1 million Rupiah) per hectare for a whole period of 25 years. The farmers felt strong with their land certificates and rejected this offer. According to the interim district head, all decisions regarding *jatropha* plantations should be included in a memorandum of understanding (MoU) between three parties: the government, the local producers/landowners and the company. However, a sound procedure that would ensure these MoUs provided protection for the interests of the local producers was not yet available.

In April 2008, a 'coordinating meeting' was held as part of the procedure for granting a location permit to PT Cecilisarah. The director of the company, with one staff member, eleven state officials from Waibakul and two officials of the National Land Agency in West Sumba were present, as well as fourteen local leaders (*tokoh masyarakat*) and the village heads of the four villages (*desa*) on which the plantation was planned. The minutes of the meeting do not report any discussion, except that the document mentions 'other interests' in the land: that the local population uses it as grazing land for livestock, and that part of the land had already been registered for local people, some with certified ownership. Nevertheless, the permit (*izin lokasi*) was issued on 2 May 2007 through a letter containing formal decision No 46 of 2008 of the district head of Central Sumba. That permit implied that the company could make preparations for starting a plantation: make a plant nursery, obtain land from the local population, negotiate an agreement with them and conduct an environmental assessment.

When we visited Tana Modu again in February 2009, there had been some progress. There were two nurseries, and a field of about two hectares had just been planted with *jatropha*. The members of the farmers group argued that they did not want to lease their land. They thought the amount of money offered was just a symbolic gift to underline good relations (*uang sirih pinang*), as would have been appropriate according to adat (see Section 3.3.5). The farmers group thought this was by no means fair compensation for offering such a large acreage of land. The company representative, on the other hand, argued that they would provide employment opportunities for the local population. However, the landowners said they did not intend to work as plantation labourers. They wanted to get rewarded as landowners, preferably in a profit (and risk) sharing arrangement with the company.

Local people who would be willing to work as plantation labourers seemed absent in all of these negotiations. They could be indirectly affected by these developments, since the uncultivated lands are traditionally accessible to low status community members when their superiors within the clan allow them to open up a field to grow their own food. When part of this reservoir is occupied by a plantation, land will become scarcer. Further, if negotiations between landowners (not the poorest people) and the company were to fail and the company withdrew, it could mean the loss of employment opportunities for the landless.

Photo 2. PT Cecilisarah *jatropha* nursery in Tana Modu shows progress in February 2009 (photo by J. Vel).



This case of the *jatropha* plantation in Tana Modu is still in the planning or exploration phase. The next section describes a plantation with a longer history, for which there is more information on the way land was acquired.

4.4 Dispute prevention regarding a cotton plantation in East Sumba

In February 2009, the cotton and maize plantation PT Ade Agro Industry (AAI) was already in operation in East Sumba. The national government supports the development of this type of agribusiness in order to reduce the country's dependence on imported cotton.⁵³ AAI, an affiliate of textile company PT Adetex in Bandung, started operations in East Sumba in 2006. The company cooperates with investors from Australia, and with Australian Seed breeding research institutions like the Cotton Research and Development Centre (CRDC).⁵⁴

AAI has three plantations in East Sumba, located on the flat plains along the east coast: the first, and at around 6000 hectares the largest, is situated in Laipori (sub-district Pandawai), a second in Ngohung (sub-district Kahaungu Eti) and a third in La Wila (sub-district Pahunga Lodu). In February 2009, the only plantation that was operational was in Laipori.⁵⁵ According to the chairman of PT Adetex, Tjahyadi, 'the company utilizes marginal land for the cotton plantations in East Sumba, and the plantations are expected to turn out 1.8 tons of cotton per hectare annually'.⁵⁶

In February 2009, AAI had not yet completed the whole legal procedure for starting a plantation. It had not yet been granted cultivation rights (*Hak guna usaha*) or building rights for the necessary offices. All it had was a formal district head's decision (*Surat Keputusan Bupati*), which apparently served as a temporary permit for their operations. Further, the environmental assessment had not yet been conducted. Despite not having secured all the legal authorisations, the company already started operations. In 2007 and 2008 they grew a mixture of maize and cotton on 90 hectares, and used four hectares for trials of different varieties of cotton and maize seeds.⁵⁷ The yield for cotton was 6 to 7 ton per hectare and the harvest was shipped to PT Adetex in Bandung.

The plain in Laipori where the plantation is now located used to be 'empty' land used by local people for herding livestock. Most people who live close to this plantation site are Savunese, an ethnic group originating from the nearby island Savu. When in 2005 the company's first plans became public, there was protest among the local population, directed at the district government. They argued that the land was clan land (*tanah suku*), but had no strong evidence to support their arguments: no clear history of clan ownership, no land certificates, just the common practice of herding their animals.⁵⁸ Nevertheless, the district government and the company organised a meeting aimed at preventing further escalation of the conflict. They chose the local church as the venue and addressed all invitees as brothers and sisters within the Christian family. The owner of PT Adetex in Bandung happened to be Christian himself. A church is a house of worship, where people are not supposed to argue with each other, and therefore it was an excellent place for conflict prevention. The government and company representatives addressed the audience, saying that the plantation would bring economic prosperity to the region. They argued that higher incomes would also benefit the church and the quality of the congregation. In a second meeting, also in the church, the company gave the congregation cloth to make new cloths for the reverend, and promised providing free bus transportation for schoolchildren. The protest faded out.

In the second location, Ngohung, the situation was different.⁵⁹ Around 75 land certificates, each covering one to two hectares, had already been issued in respect of the land in question before the arrival of AAI. These certificates were issued in the 1980s, when a company (Balai Anakardia) wanted to start a cashew plantation. Obtaining land certificates was one of the preconditions for the company getting a bank loan. The company went on to plant cashew trees, but the plantation failed.

⁵³ At the moment Indonesia imports almost its entire cotton requirement - around 560,000 tons of cotton a year - to feed its cotton yarn factories.

⁵⁴ http://ditjenbun.deptan.go.id/semusimbun/semusim/index.php?option=com_content&task=view&id=137&Itemid=37 (last accessed May 23, 2009).

⁵⁵ We visited this plantation on February 4, 2009. Interview with Stuart Grey, plantation manager.

⁵⁶ http://www.yarnsandfibers.com/news/index_fullstory.php3?id=12435§ion=33&country=Indonesia&p_ty pe=Cotton (last accessed on March 23, 2009).

⁵⁷ <http://www.indomedia.com/poskup/2008/08/04/edisi04/humba.htm>.

⁵⁸ Interview with Uumbu Tamu, local advisor to the director of PT Ade Agro, Waingapu February 6, 2009.

⁵⁹ Interview with local herdsman and a Village Head living close to the Laipori plantation site, February 4, 2009.

Several reasons were suggested for this failure: lack of water, the local habit of burning fields⁶⁰, lack of care for the crop, or simply that the area was not suitable. With the failure of the plantation, the local farmers stopped cultivating cashew. When, 20 years later, AAI entered the area with plans to establish their plantation on the same location, the locals who felt they owned the land feared their land would be occupied by the company, and discussed protest among themselves. AAI's local director – a retired high government official in East Sumba, who also acted as mediator between the local population and the company in Laipora's church meeting – heard about the protest and took the initiative to bring the protestors to East Sumba's district head to discuss the issue. They accepted, and were received by the district head, who was a descendant of one of East Sumba's main *rajas*. Most of the people who held a land certificate for the location in Ngohung were Savunese. Appealing to their ethnic identity, the district head addressed the protesters as members of the ethnic group that, during the era of warfare in Sumba, cooperated with his own forefathers to prevent external enemies from invading Sumba. In this way, he made the protestors feel that they had a special connection to the district head, and afterwards they easily accepted his offer to give them another parcel of land as compensation. He proposed that the protestors themselves would indicate which parcel they would like. According to the mediator who gave us this information, all were satisfied with the result of this meeting.

It seemed like the protestors did not actually care particularly about the land. Rather, their protest was inspired by the hope that they could get financial compensation from the company (or wealthy investors who they associated with the plantation company). Actually, their claims were not very strong. As ethnic Savunese, the only basis upon which they could make a land claim was long term land use. The company did not offer financial compensation, but offered opportunities for (casual) labour at the minimum wage for agricultural labourers in the region. Initially, some people took this opportunity. But recently, many labourers decided they no longer wanted to work at the plantation, because wages were not paid regularly, people were only employed seasonally as casual labourers, and they felt they could earn more in other places in Indonesia. One reason for the poor labour conditions and wages was that in February 2009, the plantation appeared to be experiencing financing difficulties.⁶¹ The global economic crisis had repercussions for the Indonesian textile industry, and since AAI is a subsidiary of Pt Adetex, it suffered flow on effects.⁶²

When we interviewed the local village head, he told us that very recently the issue about the land certificates had re-emerged. A candidate in the upcoming elections for regional parliament (to be held in April 2009) was promising the holders of certificates that he would defend their interests. However, local commentators dismissed this initiative as primarily a strategy to gain support for his own election campaign.

4.5 Killing protest against a mining company

This last case is an extreme example of what can happen when people who believe that an external party has compromised their access to vital resources – in this case to land and clean water – give voice to their claim and engage in protest.⁶³ The core problem in this case is collusion between a mining company and the local customary chief, Umbu Yadar, who is one of the wealthiest livestock owners in East Sumba, and manages a number of businesses in the district capital.

In 2005, PT Artha Sumba (PTAS) started lead mining operations in East Sumba, in collaboration with Shen-Zhen Oxin Resource from Southern China. PTAS had appointed Umbu Yadar as local director. Umbu Yadar was the traditional ruler in the area Nggongi, in the southern interior of East Sumba, where mining operations would take place. Although it only had a permit for exploration, the company started mining. The district government allowed the company to use 240

⁶⁰ Traditionally, at the end of the dry season the uncultivated fields are burnt to clear old and dry vegetation, so that new fresh grass and weeds will grow with the start of the rainy season.

⁶¹ Information from Village Head Ngohung and former employees.

⁶² http://www.yarnsandfibers.com/news/index_fullstory.php3?id=17714.

⁶³ Based on interview with staff members of NGO KOPPELDA in Waingapu, February 6, 2009 and additional information from newspapers.

hectares of land within the borders of Wanggameti National Park for their mining operations. In April 2006, one thousand tonnes of lead ore was exported from this area to China, and local newspapers reported that, upon learning of the exports, the district parliament (DPRD) objected, as the permit had been issued for exploration only.⁶⁴

People living in the mining area saw that the company could freely enter part of the national park, while their own claims to this land – being the original inhabitants of the area – were rejected on the basis that the forest was protected. The chairwomen of one of the NGOs that had been working on issues relating to the national park told us that of the 18 villages involved in negotiations concerning the national park, two villages were particularly hard to communicate with, and these were the villages in Umbu Yadar's territory. People from this territory started protesting in 2005, when some of the rivers in the area fell dry, and some people living close to the mining area started suffering skin diseases after using river water that they said had been polluted by the mining operations. Local protest was led by Umbu M (UM), one of Umbu Yadar's clan relatives of similar nobility status, but far less wealthy. UM voiced the protest through a petition signed by 17 community members and addressed to the company. A copy of the petition was sent to NGOs active in the national park area, and the organizations in their network. Before the protest could evolve into a dispute, protestors found that someone had killed their livestock. They also feared their houses would be burnt, knowing that both types of violence were traditional ways of putting opponents under pressure. Similar events occurred in 2004 to some of Umbu Yadar's political opponents, who did not support his favourite candidate in the district head elections. Afraid of losing their livestock and houses, many protestors withdrew from the action. There was discussion about the signatures on the petition, with some saying that people who withdrew were still on the list, accusing UM of forgery.

When, in 2006, a company truck picked up bags of lead ore for export, some locals threw stones and damaged the truck. The police caught a group of 15 men, including UM. He was summoned to court and accused of criminal offences, whereas the original protest was not discussed. UM was sentenced to two years in prison, along with other members of his group.

In July 2006, the district head summoned the company to stop operations immediately until they had completed the mandatory environmental assessment, showing that the operations would do no harm to the environment. Although Umbu Yadar did not give permission for NGOs to work with the people in 'his territory', protest against mining in this area, and particularly in the national park, continued and was strengthened by the establishment of two community based organizations, Kelompok Masyarakat Pelestarian Hutan and Forum Andali Luku Pala.

4.6 Access to justice for the poor in these three cases

One similarity between these three cases is that, for many of the justice seekers mentioned, the process of getting access to justice did not seem to progress further than the phase of voicing claims based on grievances. The landowners in Central Sumba had not been given an opportunity to negotiate further with the plantation company about the terms on which the land would be used for *jatropha* cultivation. The certificate holders in Ngohung, who protested against the cotton plantation company using their land, seemed satisfied with the resolution offered by the district head, being the granting of (symbolic) compensation by way of alternative parcels of land. This solution could be regarded as successful redress of their grievance. However, it can also be interpreted as a withdrawal of a legitimate claim by a disadvantaged group under pressure from the powerful local elite. A similar situation was experienced by protesters in the third case. Those who did not withdraw, and continued voicing their claims against the mining company, ended up entangled in the justice sector. However, this engagement with justice processes was not a means by which the justice seekers could seek redress for the injustices they experienced, but rather a means by which the company advanced its own interests against the justice seekers.

⁶⁴ 'Ekspor timah hitam, DPRD belum tahu'. Pos Kupang, April 30, 2006. See <http://www.indonesia.com/poskup/2006/05/01/edisi01/0105hum1.htm> (last accessed on March 31, 2009).

The second similarity between the cases is that the poorest or most disadvantaged are largely absent, or at least not the main actors. In the first case, the poorest were probably not the landowners who negotiated with the plantation company, but the people who actually work on the land, and might have been interested in getting employment as plantation labourers. In the second case, the local population of Savunese origin could be regarded as the poor: on the first site, they did not even have sound arguments to support their claims, while on the second site, they held ownership certificates which did not provide actual security of tenure. Without the ability to make a strong *adat* claim, a person in Sumba cannot easily fight a land dispute. In the third case, the extreme power differences between the local ruler and the poor in his area seemed to prevent any of the poor people's real life problems from evolving into claims and disputes.

The third similarity between the cases is that local elite seemed to be able to determine the solutions. It seems clear that a person's choice of redress mechanisms expands in line with his or her capital (all forms). The next section discusses the role played by various forums in solving land disputes in Sumba.

5. Redress mechanisms for solving land conflicts

Three central questions about redress mechanisms should be asked in relation to the cases described in the preceding section. First, which redress mechanisms were used in these three cases? Second, what is the range of redress mechanisms available in Sumba, in what type of land disputes are they used by justice seekers, and why? Third, what factors limit access for the poor to redress mechanisms?

5.1 Redress mechanisms in the three cases

In the first case, a dispute is yet to actually evolve. The type of forum that is required in this phase (a developing conflict) is an impartial institution that can facilitate the negotiations between all stakeholders. The 'coordinating meeting' that was organized by the government, meetings organized by the farmers group, and meetings organised by the company each set the agenda according to their own party's priorities. How to include the poorest of the local population in the negotiations, and give recognition to their interests, is another challenge. According to *adat*, leaders should properly represent their subordinates. However, in this case the interests of the landowners (who are also the leaders) are not the same as the interests of non-landowning members of the community who rely on their labour for a living.

In the second case, the mediator hired by the company to facilitate smooth communication with the local population and the government, effectively repressed or eliminated protests before they could evolve into land claims. The first 'redress mechanism' was the forum provided by the local church congregation. The mediator used religious affiliation to connect the parties, and incorporated religious norms in his speech to undermine the legitimacy of protest. In the second location, where local farmers held land certificates, he directed protestors to the district head. As the district government is in favour of large scale economic activities, its concern was to prevent conflicts that might obstruct such activities. The district head used his position as Sumbanese *adat* chief, employing *adat* rhetorical techniques to construct connectors between the protestors and himself, and in so doing tried convincing the protestors to trust him and accept his leadership. Relocation (replacing the land needed for the plantation by parcels elsewhere) is a solution that resembles the process by which the lord of the land (*mangu tana*) could, in the past, divide land amongst the clans and their members.

In the third case, the protestors did not really get access to a redress mechanism. They filed a petition, and made the grievances they voiced in the petition available to NGOs. However, it appears that there was no mechanism that could protect them from (the threat of) violence, and we have no information as to why they did not report the killing of their livestock to the police. However, this case appears to have indirectly contributed to strengthening farmers organizations in the areas

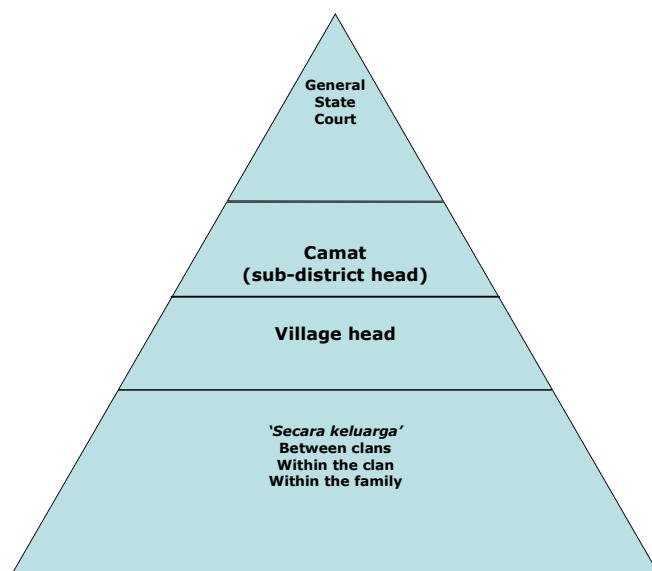
surrounding the national park. In the future, those organisations may be able to improve the access for non-elite community members to redress mechanisms.

5.2 Available mechanisms: dispute resolution pyramid

In this section, we compare the availability of redress mechanisms in these real situations with the repertoire that should be available according to law,⁶⁵ and ask whether there are any other redress mechanisms available, and when they are used. We explored this question by interviewing several key informants: the chairman of the General State Court in Waikabubak, the head of the Legal Bureau of the district government in Central Sumba, experienced in land dispute resolution because he had been a long serving secretary of a sub-district head (sub-district head), several village heads, a reverend, staff members of four NGOs, and several people who were involved in land disputes either as litigants or accused.

The general picture of dispute resolution regarding land issues in Sumba is depicted in Figure 1 as a pyramid. This metaphor was chosen by Millar and Sarat, who place grievances at the base of the pyramid, with the small proportion of the grievances that evolve into legal disputes filed in court at the top.⁶⁶

Figure 1. Land dispute resolution pyramid in Sumba



The large majority of land disputes in Sumba are settled through deliberation 'within the family' (*secara keluarga*). This is regarded as the normal way to settle land conflicts between members of the same clan, and between members of affiliated clans.

The next layer in the pyramid is consultation with the village head. This option may be used where settling within the family does not result in a satisfying solution, or where the parties do not share a common kinship, which makes *adat* hard to apply.

The sub-district head functions as a forum within which to appeal the decisions of village heads in his sub-district. The sub-district head is also the forum for resolving land disputes in which

⁶⁵ Here we use parts of the RoIGom model described in the Conceptual study on Rule of Law and access to Justice as a methodological tool.

⁶⁶ Richard E. Millar and Austin Sarat (1980/81). Grievances, claims and disputes: assessing the adversary culture. In *Law and Society Review* (15:3-4). p. 545.

the village head is a party, or is otherwise not impartial. The sub-district head's office also handles cases of land conflict between inhabitants of two different villages (*desa*).

Neither the village head nor the sub-district head belong to the judiciary, and in land dispute settlements they function as mediators rather than adjudicators. Their 'decisions' are in fact better regarded as advice to the contesting parties on how to settle their dispute. If accepted by the parties, the settlement can either be ceremonially accepted (slaughtering a pig and having a shared meal) or confirmed in a document signed by both parties. The chairman of the General Court told us that village or sub-district level dispute settlement written contracts should be sent to and filed by the General State Court, thus giving them stronger legal status. However, this is not yet common practice.

According one informant (the sub-district head's long-serving secretary), three quarters of the disputes handled by the sub-district head in Central Sumba concern land conflicts. Of all land disputes that occur on the island, very few are handled by the General State Court. This court is the fourth option, generally used only after the other three steps have failed to solve the dispute. The court always asks for evidence that the parties have tried the three other steps prior to instituting formal legal proceedings. Solving land cases is very difficult for the State Court, because written evidence is usually not available and witnesses who might be able to testify how the ancestors distributed or divided the land are hard to find.⁶⁷

As long as the majority of land on Sumba is not registered in parcels, with claims converted into rights under the Basic Agrarian Law (No 5 of 1960), *adat* law will remain the dominant system for land governance. Obviously, disputes can arise in circumstances where an individual holds a landownership certificate (under state law). However, even in these cases, a litigant often argues that this ownership is not legitimate, and such arguments are often derived from *adat*. The four levels in this pyramid, including the state court, thus all use *adat* law for settling land disputes.

When *adat* law is used, the implicit differentiations between individuals according to gender, class and ethnicity become included in the legal system. Further research could investigate whether and how people who belong to groups who are disadvantaged under *adat* law turn to state law as a means by which to improve their rights in respect of natural resources such as land.

Two types of land disputes generally come before the court: disputes with (wealthy) businessmen as the plaintiff, and disputes that concern an 'offence of social status'. Box 10 presents an example of the second type.

Box 10. Justice for a "rolling stone"

In one of the main villages in the traditional domain of Lamboya, two cousins, Ande and Dena, had a dispute about land. Both were fourth generation descendants of the same forefather, both of noble rank. Ande was a Christian religious teacher (*guru injil*) who had left his kampung several decades ago when the church assigned him to work in another part of Sumba. According to Ande's son, his father had offered the land to his relatives for cultivation during his absence. When Ande retired, he returned to his kampung, and lived in a temporary house close to his cousin Dena on their forefather's land. When Ande reasserted his claim to the land, Dena proposed to divide it, but Ande refused, arguing that the land was part of his inheritance. There was a written document, a will dated from 1937, in which Ande's father assigned the land to Ande, and this will was presented as evidence. A conflict thus arose, and Ande was scolded and offended, being called a 'rolling stone' (*lontang lontung*).⁶⁸ The conflict escalated to the point that some of Dena's supporters threw stones at Ande's house, and at this point the police got involved. The village head, the police, and the sub-district head all tried to resolve the dispute, but each time their solution failed to satisfy Ande and his sons. In February 2009, Ande's son, who is a civil servant in town, instituted legal proceedings against Dena in the State Court in Waikabubak. They felt that justice could only be served by the full return of their land.⁶⁹

⁶⁷ Interview with chairman of the General State Court in Waikabubak, February 12, 2009.

⁶⁸ The proverb 'a rolling stone gathers no moss' means that people pay a price for being always on the move, in that they have no roots in a specific place. Having no roots denies one's identity in Sumba.

⁶⁹ Interview with Ande's son at the General State Court in Waikabubak when he was there to submit his charges, February 12, 2009.

At times, members of the district parliament (DPRD) can also become involved in resolving land disputes in their capacity as representatives of larger groups. This occurs when land disputes escalate to the point of communal conflict between traditional domains, often centred upon an area of contested land. In truth, these types of disputes are usually a result of competition between the elites from the opposing domains. In 2006, a newspaper article mentioned four unresolved examples of such conflict, in which the vice chairman of the regional parliament became involved, encouraging the village and sub-district heads to act as neutral mediators.⁷⁰ The vice-chairman added that, if contesting parties could not come to an agreement, the district government could impose a sanction in the form of designating the whole disputed area as a public forest (*hutan rakyat*), making private property claims (including clan claims) impossible.⁷¹

In Sumba, many people like to involve the district head as a participant (or actor) in the dispute resolution process. District heads are popularly regarded as a general superior or chief-of-chiefs. By contrast, sub-district heads, who are seen more as administrative heads, are often bypassed by justice seekers. The former district head of East Sumba, Umbu Mehang Kunda, who died in 2008, and the current district head of Central Sumba, Umbu Bintang, are examples of district heads who reflect the popular view of district leaders. They are sons of traditional kings (*rajas*), and are leaders amongst the landed aristocracy in their districts. Changes to electoral laws in 2004, which provided that district heads must be directly elected, have brought these leaders even closer to their constituency. Many people do not feel any barriers preventing them from going and visiting their district head, preferably at home, and asking for help to solve a dispute.⁷² In these circumstances, the district head is implicitly invited (and expected) to use his powers to arrange a solution in any way possible. The case of the cotton plantation in Section 4.4 demonstrated how a district head can play the role of a superior local leader.

Yet district heads can also perform as actors in the dispute resolution process in their capacity as the local head of the bureaucracy. Box 11 describes a case in which the local elite used their connections with the district head to put pressure on a man who was occupying part of their land.

Box 11. Good government officials do not encroach

In 1980, for the first time in history, the Agricultural Service (Dinas Agraria) registered and certified land in village L in the East Sumbanese domain Mangili. Certificate number 1 belonged to Umbu T from clan Hadapa. In 2000, a dispute over this land arose when a member from another clan, who had already made a garden on part of the land, built a house on it.⁷³ Shortly before, the area in which the contested parcel was located became strategically important when the government implemented road construction programs, so that the contested land was suddenly right beside the main road to the capital town. Both parties had arguments based on past transactions, and on histories of the land that were linked to their own forefathers. Since the disputants were closely related through marriage, the dispute should have been solved within the family, but none of the proposed solutions led to a satisfactory outcome. The dispute faded, especially after both disputants had died, in 2004 and 2005. In 2008, one of the encroacher's sons, Medy, who worked as the sub-district head's secretary, built his own house on the contested land. The children of clan Hadapa took action in January 2009. They felt 100 percent sure of their claims to the land both in terms of *adat* law and state law (they held the landownership certificate for the land). However, the problem was enforcement. The Hadapa clan members submitted a letter to the district head asking him to correct Medy's behaviour. This was seen as the appropriate course of action due to Medy's position as a government official within the district head's district. Clan Hadapa's argument was that 'a good government official should obey the

⁷⁰ 'Kades jangan jadi biang sengketa tanah'. Pos Kupang, May 12, 2006. See www.indomedia.com/poskup/2006/12/05/edisi05/humba.htm (last accessed on August 10, 2007).

⁷¹ idem, 'seluruh lokasi yang menjadi sengketa dijadikan hutan rakyat'

⁷² This was also noticed in the Justice for the Poor case study 'Sumba: groundwork for Legal reform', September 2001, Jakarta: World Bank. p.8.

⁷³ See section 3 for the Sumbanese perceptions of differences between land 'for growing your own food' and land for residential purposes.

law', and they added that shortly after sending the letter they planned to start destroying Medy's house. The letter was not just signed by Umbu T's children, but also by fellow clan members, making the case a matter of broader principle rather than a single dispute. The district head responded in February 2009 by asking his first assistant⁷⁴ to handle the case. At the time of writing (August 2009) the disputants were still waiting for the first assistant to act.

NGO staff are also often involved in dispute resolution. In the case in Section 4.3, an NGO motivated the farmers in Tana Modu to set up their own farmers association. As a result, their group bargaining power in relation to the plantation company has markedly increased. In the third case, concerning mining activities, NGOs morally supported the protestors, had a role in bringing the dispute process before the media, and encouraged the formation of a farmers association. NGOs in Sumba do not have the power to solve conflicts, but they can facilitate dispute resolution processes by bringing parties together and identifying connectors.

The church played a role in the second case described in Section 4, where the mediator of the plantation company used the church building and the Christian (normative) discourse to ideologically undermine protest and prevent escalation of the grievances into a dispute. The church provides an effective repertoire of mediation tools in Sumba, because Christianity offers an identity that can bridge differences in ethnicity and class.

5.3 Access and barriers for the poor: opposite pyramids

The factors that determine whether there are barriers to access to justice include lack of knowledge about justice institutions and law, geographical distance, and costs of the procedures. In Sumba, all of these factors are relevant.

There are two General State Courts on the island, one in Waingapu and one in Waikabubak. Costs of the procedures do not only include official fees and travelling expenditures for the litigant and the accused. In Sumba, it is common practice to attend court hearings with a group of supporters, similar to attending an *adat* event, to which people prefer to arrive as part of a *rombongan adat* (*adat* group). This habit raises costs considerably, as all group members have to eat, and a truck or bus is required for transportation. Moreover, it is proper for every phase in the dispute resolution process to be finalized with a shared meal with meat – slaughtering a pig is a symbol of having reached an agreement. The costs involved in bringing a case to the State Court can therefore be very high, especially for people who reside in remote or less accessible mountain areas.⁷⁵

The question of access to forums of redress can also be answered in terms of the forms of capital theory, as explained in Section 2.3. In Sumba, some degree of each of the forms of capital is required in order to win a land dispute. The first is knowledge about *adat*, and skill in the politics of negotiation and in phrasing arguments – this traditional knowledge includes knowledge of the past and of ritual speech. Second is knowledge about state law and state institutions, for example an understanding of how to get a landownership certificate. Social capital helps disputants to arrange the right type of support, and to shorten procedures. In terms of support, having a large group of supporters seems to assist in converting disputes that are actually between individuals into disputes about group interests. Boxes 4 and 10 provide examples of this strategy. Cultural capital, especially one's position in the hierarchy of *adat*, is important because according to *adat* it is connected to decision making power. Finally, economic capital is necessary to pay all the costs involved.

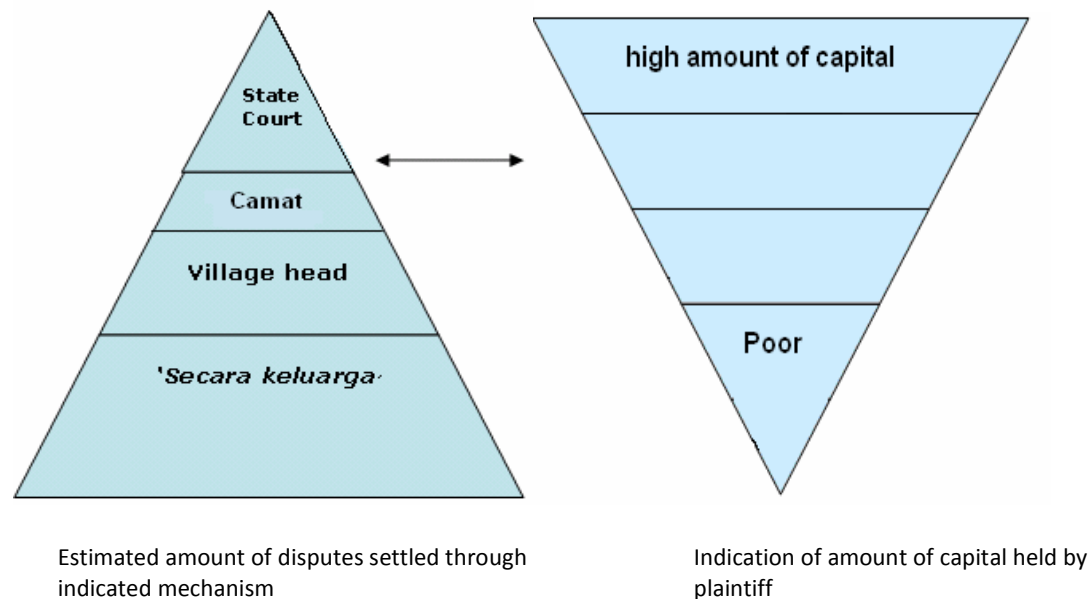
The more capital an individuals hold, the greater their access to and choice of forms of redress. In Sumba, it seems that choice of forum is not always linked to the type of land dispute. Although informal deliberations would seem to be more appropriate in a case in which brothers have a dispute, they might instead fight each other in court, provided they have the means, the knowledge and can mobilise sufficient support to be sure that a decision in their favour would be socially

⁷⁴ 'Surat disposisi kepada asisten 1'.

⁷⁵ One informant told us her experience that a land case in court had cost around Rp. 50 million, including all formal and informal expenditures.

accepted. Figure 2 indicates the relationship between a person's capital and the breadth of their choices in terms of redress mechanisms, showing that the poor generally only have access to deliberation within the family, whereas people with a large amount of capital can settle their dispute in court.

Figure 2. Relation between choice of dispute regulation mechanism and amount of various forms of capital.



As depicted in Figure 2, the opposite is true as well: lack of all forms of capital means limited, or no, access to justice. Access to justice for the poor, even in the restricted sense of access to the justice system, is thus not only a matter of lack of legal awareness that can be solved with legal empowerment. It is also a lack of social, cultural and economic capital. It follows logically then that only a comprehensive programme, addressing all these aspects of poverty, can effectively improve access to justice.

6. Conclusions

The central question addressed in this case study is whether and how the poor and disadvantaged in Central and East Sumba have access to redress mechanisms when the land that they cultivate or on which they live becomes contested, particularly in the context of commercialization of agriculture.

A first cluster of conclusions concerns the functioning of *adat* and the internal definition of being poor and disadvantaged. Sumbanese society is hierarchical, and the poor and disadvantaged are those at the bottom of that hierarchy. Although state law does purport to regulate land in some respects, *adat* is the main legal system that governs land issues in Sumba. In effect, this means that individuals can often claim land according to their position within the *adat* system, including their social rank, clan membership, marital status and gender. Individuals are not equal in *adat* law.

In Sumbanese *adat*, land rights generally only accrue to men. Men of the lowest traditional social rank (the traditional slave class) cannot own land; they only have access to

their master's land. Men who do not belong to the land owning clans, for example people from outside ethnic groups like Savunese, can only temporarily borrow land from ethnic Sumbanese.

Adat is not codified. *Adat* priests have the authority of the deified ancestors to recall the ways of the past, which include the rules concerning land. These rules are not written, nor fixed in any other way, so there is ample room for negotiation and adaptation of the rules to new circumstances. *Adat* rules are meant to be phrased in ritual speech, which requires specialised skill that takes years to acquire. This type of traditional legal knowledge is decreasing, and the most modern families have difficulty in getting their *adat* ceremonies performed.

Social acceptance of the *adat* rules is based on an acceptance of the authority of those who set the rules. This is becoming a problem for several reasons. First, most Sumbanese are now Christians, and no longer adhere to the traditional ancestral religion. The fact that people no longer believe in the power of the ancestors' spirits places the validity of *adat* rules under pressure. Second, many Sumbanese who have enjoyed higher (modern) education find it hard to accept the authority of their *adat* priests and elders, who often have far less education and live in the village in circumstances of relative poverty. Third, state law and other secular institutions provide alternatives to *adat* law in the form of state officials and church or NGO leaders.

A second set of conclusions concerns injustices due to the commoditization of land. When agribusiness or mining companies enter an area, the consequences for the poorest groups, and for landowners are likely to be different. The poorest might benefit from the employment opportunities that accompany the development of an agribusiness project. Their stake in negotiations with the plantation company concerns labour conditions and wages. By contrast, landowners usually do not want to become labourers on their own land, and therefore tend to resist the establishment of plantation projects. Their main interests are to ensure that their land rights are recognised, and that they receive a sufficient return on their land.

The hierarchical structure of Sumbanese society, in combination with the power of the political class, creates the context in which large land transactions become matters dealt with by companies, district governments and local *adat* chiefs, to the exclusion of less powerful groups. The companies and district governments, whose interests are usually aligned, often co-opt these chiefs by offering them salaried positions or treating them as the local population's representatives who are entitled to receive compensation payments for their whole clan. The landowners, who are excluded from these negotiations for big projects, do not have access to any redress mechanism that might hear their grievances and deal appropriately with them. Further, there are not yet any NGOs working in Sumba to assist the landless in protecting their rights as labourers.

A third conclusion is that the district head has a pivotal role in providing justice for the poor by protecting their sources of livelihood and economic opportunities. The district head has the legal authority to enforce decisions concerning land use – both in relation to companies as well as in relation to the local population – while the district government issues location permits, and has the authority to include conditions for the protection of the interests of the local population, including the poor and disadvantaged.

A final conclusion is that the implementation of state law rather than *adat* in the area of land governance would benefit the poor and disadvantaged in Sumba. Examples from this case study are: (a) limiting the duration for which land can be pledged, (b) registering pledging contracts free of charge, (c) developing a comprehensive policy for land reform, registration and titling, and protection of local people's land titles against market forces. Such measures would conflict with *adat* rules and would need careful assessment to minimise unwanted side effects and consequences. However, they would be likely to have a revolutionary impact upon the poor and disadvantaged in Sumba.

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