

**African land tenure:
Questioning basic assumptions**

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INTRODUCTION

Keen attention has been paid for some time to development narratives. Various writers have demonstrated how such narratives, even when proved wanting, contribute to standardise, package, and label development problems and justify very simple and standard off-the-peg solutions (Roe, 1991; Hoben, 1995; Leach and Mearns 1996). Narratives are based on assumptions of certain causal relationships and subsequently used to justify interventions, privilege certain institutions and favour certain groups, and they are therefore often peddled by specific stake-holders. This is also true for the domain of land tenure in Africa and in the Sahel. One of the central issues of land tenure in the West African Sahel is the confrontation and mutual emulation between customary tenure systems and the statutory or formal land laws (IIED, 1999; Lund, 1998: 9-19). The construction of a 'modern' and a 'traditional' realm both veils very complex historical and socio-political realities, and constitutes an institutional reality with political ramifications. One of the results has been the construction of conceptual dichotomies which have given rise to essentialist as well as teleological assumptions. Two assumptions stand out as particularly persistent and influential. First, it has often been argued that private property is inherently un-African. Second, it is often claimed that private property is a prerequisite for investment and development. Both statements purport to explain the 'absence' of development through property - or rather lack of property. In a simplified form, one might put it like this: 'One of the reasons why agricultural development is so unsatisfactory in sub-Saharan Africa in terms of productivity and sustainability is that there is no investment; this is due to the lack of security of tenure which, in turn, is due to the absence of private property'. The problem is, obviously, that if these underlying assumptions are wrong or only have circumstantial validity, policies based on them may not only fail to achieve the expected results, they may actually amplify the problems they seek to address.

The objective of this chapter is to give examples of policies that illustrate how these lines of reasoning inform and fashion development efforts. I shall then point out some of the weaknesses in the underlying assumptions and implied causal relationships in these policies. The ambition is not to replace one set of assumptions with another, merely to point out that the multiple, shifting, recombining and constantly-negotiated practices of rural Africa warrant empirical validation. Most of the contributions in the book of which this paper forms a chapter (see note 1) bear witness to that. My argument is thus intended to be polemical rather than a comprehensive effort to establish new theories. I shall

simply argue that we do actually have evidence of privatisation processes of African rural land, including in the Sahel, and that we do have evidence to suggest that the linkage between security of tenure and private property is circumstantial and in many cases not as simple as suggested. Indeed, privatisation often seems to hamper rather than enhance land tenure security.

ASSUMPTION 1, 'PRIVATE PROPERTY IS INHERENTLY UN-AFRICAN'

'Land is not sold in Sub-Saharan Africa'. This could be the opening line of an essentialist argument, which might continue like this: 'Land is distributed according to a system of caste, seniority and gender. The land can only be transferred while observing certain clauses and it cannot be attributed permanently to someone outside the clan'. An influential variant of this sees the 'village' as the primary socio-political unit for land tenure and other political decisions. While acknowledging the existence of units within the village (individuals and families), entities which overarch the village, such as the state; and political structures such as churches, political parties and ethnic groupings which cut across villages; are accorded secondary importance. This approach has been taken by various authors. Belloncle (1982) sees this as a potentially democratic advantage for African rural communities:

'African villages ... generally have democratic power structures. This is particularly evident in the existence of a council of household heads assisting the village chief (the first among equals), and by the consultation surrounding public decision making. It is never sufficiently recognised what a trump card this may constitute from the perspective of 'contractual' development. ... In general, African villages still exhibit a great deal of economic homogeneity. And primarily, but for a few exceptions, the general rule is equal access to land' (Belloncle, 1982: 76-77, my translation).

This type of statement seems to justify a particular type of developmental intervention. By stressing the local community's inherent democratic polity and the egalitarian economic structures, development efforts based on 'participation' and 'community projects' are favoured, and in terms of natural resource management certain approaches seem particularly obvious, as I shall illustrate below. Belloncle is, however, not alone in arguing that land in sub-Saharan Africa is so imbued with the intrinsic and ineffable identities of their owners that it is virtually inalienable. For instance, one of the most influential French writers on

African land tenure, Étienne Le Roy, argued together with two colleagues, Karsenty and Bertrand, that:

‘It is fundamental, in the French understanding of a good, for it to be valued in terms of money. This is not the case in Africa, at least not generally, since all things are not considered goods because they are considered as at times outside the realm of commerce and at times transferable though without complete alienation. In the absence of such full command the thing is, in the strict sense, not a good. Still, land is not only an anonymous and interchangeable thing. It is not only riches but also at times “a person” (in the traditional sense) which can be made to talk (like the dead). It was also (at least sometimes) a deity holding vital powers which should be dealt with with precaution. It is in this sense that we propose to use the concept of “common patrimony”’ (Le Roy et al., 1996: 52).

‘Common patrimony’ indicates a common heritage, which though not equally distributed, makes an argument for communal or communitarian rather than individual management. However, ‘land’ contains a rich variety of important cultural connotations in most parts of the world, not just Africa. Moreover, dismissing private property in Africa in the across-the-board manner described above is an unnecessary and unpromising analytical path. I shall shortly present some evidence to support this, but let me first illustrate how these ideas translate into policies.

Policy

The village development perspective has been operationalised in several different forms. The best-known is the ‘*gestion de terroir*’ approach which ‘holds out the promise of integrating the social and the physical environment in a meaningful way, particularly as seen from a village community’s perspective’ (Painter, 1991: 14). As Degnbol explains:

‘When reference is made to “the terroir approach” a common understanding of the phenomenon is often taken for granted. It obviously has to do with the management of natural resources, and in the general debate the concept has acquired a sense of grassroots initiatives, democracy, the transfer of authority and the empowerment of local populations. ... The *terroir* is an area of which the limits are recognised by a given local (agrarian) community and which is customarily used by community members for their livelihoods. The land is rarely the private

property of the individual community members, rather, they have a sense of collective claim to the area and exercise some degree of control over access to its resources' (Degnbol, 1997: 3).

This development approach grew very popular with governments and donors alike during the 1980s and 1990s in the Sahel in particular. In 1994, the United Nations Soudano-Sahelian Office (UNSO) attempted to summarise these experiences and outline recommendations for operationalisation. The report addresses the question of land tenure from two perspectives. First and foremost, control over resources must be wrested from the state's hands and placed in the hands of the local people.

'Affirming the rights of local populations to control resources takes power away from the state administration and allocates this power to a particular group of rural producers, which tends to be sedentary farmers. The reform of tenure and shift of power towards local people should therefore prevent more powerful interest groups from seizing resources over which, until now, ownership rights have been confused and difficult to assert' (UNSO, 1994: 13).

Second, the report argues that once land rights have been taken out of the hands of the state, they are negotiable at village level; that the village polity (either traditional chiefs or village committees) could and should control allocation and land use.

'Throughout Sub-Saharan Africa, there is great diversity regarding rules of resource tenure, the persistence of customary controls, and their relative effectiveness. In some places, customary management systems remain largely intact and can provide a very useful basis for future systems of management. For example, the "chefs de terre" amongst the Mossi of Burkina Faso, and the Bambara of Mali retain considerable moral and religious authority over local people and outsiders, and hence, can get their decisions respected. In other places - such as areas of in-migration, resettlement or conflict - customary systems may command little adherence from any party. In such cases, Gestion de Terroirs projects must help support the evolution of a local decision-making body capable of discussing the interests of different, possibly conflicting groups, and arriving at decisions which will be supported by this heterogeneous group of resource users' (UNSO, 1994: 6-7).

The thrust of these efforts to promote the 'gestion de terroir' approach and the attempt to outline representative village bodies often means that very little

attention is paid to private land, or rather land undergoing forms of privatisation either because this tenure form is not considered relevant or because this process could and should be countered by communitarian measures. The 'gestion de terroir' approach has been criticised by various commentators (see e.g. Painter et al., 1991; Degnbol, 1996; Marty, 1993), but let us in this context focus upon the evidence concerning some of the assumptions relating to land tenure.

Some evidence

Let us first confront the ideas of equal access to land and the democratic polity in African villages as expressed by Belloncle with evidence from various researchers. Historically, people's access to land and other natural resources depended on their membership to and status within a particular group wielding political control over the land. Neither the state nor the market channelled the distribution of land - on the contrary, kinship and ethnic adherence along with status, gender and seniority determined access and use rights (Berry, 1989; Migot-Adholla and Bruce, 1994: 5). This does, to a certain extent, support aspects of Belloncle's view. The general principle of land allocation seems to have been inclusion rather than exclusion. However, membership of villages or other organisations does not guarantee access to land, and indigenous land tenure systems neither were nor are characterised by egalitarianism or collective land management. They were and are often quite hierarchical and management by individuals and households is often secured by a range of more or less extended use-right arrangements.

Moreover, it has been documented how social identities and prerogatives are negotiable, and hence access based on social identity is far from being a timeless and secure right (Berry 1993; Moore 1986; Shipton and Goheen 1993). One cannot help wondering about the coincidence that the chiefs were the key sources on customs when these were first recorded by the colonial authorities, and that these customs generally forbid the sale of land while placing it under the control and authority of the chiefs. It would seem that Belloncle's perspective is rather one-sided and at best, when generalised, only partially reflects the situation.

Concerning the idea that land is inalienable in Africa, there is evidence of processes contradicting this. Privatisation processes have been unfolding in many parts of Africa for a long time (Shipton, 1989a). Land tenure denotes certain rights to land. Basically, these may range from short-term use rights, to permanent rights, to the right to complete alienation. Various writers have tried to

distinguish between different types of land tenure (Place et al., 1994: 19-28; Le Roy et al., 1996: 59-76; Hanna et al., 1995; Schlager and Ostrom, 1992). These approaches agree that there are different degrees of command over the resource which they term tenure security. Generally, the weakest right is considered to be simple use right; shared use rights being weaker than exclusive use rights; and temporary and short-term use rights being weaker than long-term or permanent use rights. A stronger command and hence a higher degree of security is assumed to prevail if, in addition to the use right, the holder enjoys the right to transfer the land to someone else. Again, rights of permanent transfer represent stronger command than temporary transfer. Finally, concerning permanent transfer rights, the right to sell is considered to represent a stronger command over the land than the right to give, which in turn is superior to the right to bequeath. In addition to this, Shipton operates with 'rights of administration' (Shipton 1989a: 8).

By conceptualising land rights in terms of degrees of use and control, it is possible to see privatisation as a process rather than a situation. Privatisation may thus signify an increase in the right of the right-holder to restrict others' access to, use of or control over land or to transfer rights over it (Shipton 1989a: 13). Just as rights can be graded, so can right-holders ranging from large groups to the individual, and the process of privatisation seems to be paired with the process of individualisation. This approach enables Shipton to identify reports on processes of privatisation of land in much literature on Sub-Saharan Africa. He argues that population pressures, high-value cash cropping and privatisation of land are closely connected. What is particularly interesting in this context is that Shipton observes that these features of privatisation often occur regardless of legislation. That is, undirected, 'autonomous' and directed forms of privatisation seem to differ more in speed and degree than in kind. In these observations, Shipton is largely in line with the *Property Rights School*, which I shall return to in the following section.

As population densities rise, certain anticipatory measures are taken such as the symbolic cultivation of fallowed land or the lending of land to kin while living temporarily away. Individual and group claims tend to sharpen. This often leads to more frequent and bitter conflicts over land, and at the same time it challenges the capacity of the dispute management institutions such as chiefs, local administrators and the legal system. Shipton (1989a: 30) suggests that their direct control over land tends to erode, but his and other studies also point out that the increase in land litigation widens the scope for exacting payments (fees and bribes) in dispute resolution and brokerage (See Lund, 1998).

The increasingly exclusive private holding is, of course, also reflected in the character of the transfers. Transfers may take many forms, as Shipton points out:

‘for instance by loan, swap, inheritance, devolution *inter vivos*, gifts, barter, pledge, share contract, encroachment, rental, or sale. These English terms do not reflect the variety, the flexibility and inventiveness, and the possible re-negotiability inherent in land dealings in many parts of rural Africa. Terms like “market” can become cognitive straightjackets for the analyst. Across the continent, local people do engage in land deals, whether by sale or not; and frequently these fail to show up in survey results because researchers are not asking the questions in the right way, or in enough different ways’ (Shipton, 1989a: 58).

In some societies, rural land sales are forbidden by law and custom alike. Either the law simply does not allow it or does so in the most complicated and cumbersome way, and customs as interpreted by chiefs may be used to prevent people from asserting themselves as owners. People’s practices may, nonetheless, undermine, circumvent and neutralise legislation and reified customs. Not forcibly through organised and well-prepared actions but through the daily pursuit of interests by individuals and a common-sense negotiation of their situation. Thus, loaned, rented and pledged land may become unredeemable (see Reenberg and Lund, 1997; Platteau, 1995: 13); land may be *de facto* mortgaged for a loan and hence alienable; and ‘pledges are sometimes disguised forms of sale, where sales are more strictly prohibited’ (Shipton, 1989a: 67). Such practices have been observed as far back as the 1920’s in Ghana. Another process of privatisation and individualisation reported from Nigeria is triggered off when the custodian of the family estate mortgages it in times of financial stress.

‘He may become unable or unwilling to redeem it, in which case any member of the family is free to redeem it and to retain it as his personal property until the custodian or his successor(s) reimburses him ... In very many instances such reimbursement is never made. Rather, the custodian may borrow additional money from the redeemer with that same piece of land as security. The reimbursement price on the land may then become so high that succeeding custodians let their claim rest and the redeemer retains the land indefinitely’ (Mbagwu, 1978, quoted from Shipton, 1989a: 69).

This case from a densely-populated corner of Nigeria should not lead us to believe, however, that individualisation and privatisation are the preserves of the

high population density areas. Benjaminsen's research from southern Mali as well as Bolwig's and my own research (Lund 1999) from the Seno province in northern Burkina Faso illustrate this.

A brief example: Two groups primarily occupy the area: the *Fulbe* and the descendants of their slaves, the *Rimaibe*. Historically, a particular division of labour evolved between the two groups: the masters, the *Fulbe*, owned cattle and controlled the land, and while the *Fulbe* tended the cattle, their slaves, the *Rimaibe* cultivated the land. However, the *Rimaibe* became emancipated during the first decade of the 20th century with the French colonisation. While social ranks were formally levelled, relationships of affection between former masters and slaves persisted and still exist to a significant degree. Every *Fulbe* knows 'his *Rimaibe*' and every *Rimaibe* knows 'his *Fulbe*'. However, the emancipation of the *Rimaibe* freed them to migrate and sell their labour, and especially in the wake of the Second World War both younger and older men travelled to Ghana and Côte d'Ivoire to work. On their return, many of them bought the land they had cultivated from their former masters and became absolute land owners despite the fact that the existing legislation did not accommodate such arrangements. Thus, land locally *recognised* as sold is as unredeemable as 'a goat sold on the market place'.

In the words of Paul Mathieu, these practices take place at the margins of the law. That is, they do not conform to the legislation but are tolerated and at times legitimated by government institutions. In Côte d'Ivoire, for example, government personnel sometimes act as witnesses, and at other times they validate and confirm informal land transactions like sales which the law does not cover. In Rwanda (before 1994) Mathieu reports that illegal land sales between farmers were verified, recorded, and subsequently recognised in a 'formally informal' way through an '*attestation de notorité*' (notary's declaration). In such cases, one could argue that peoples' practices are ahead of the law; a law which does not correspond to the actual circumstances (Mathieu, 1997: 40-41). Bruce complements these observations from countries with a French-inspired legal and administrative system with observations from Ghana and Nigeria:

'A striking aspect of the west African experience, particularly in Ghana and Nigeria, has been the role played by the courts in developing new legal concepts to facilitate tenure change. Through lawmaking by decision in the specific case, in the classic common-law mould, the courts have recognized the shift of control of land from larger kinship groups to the more immediate family and defined a tenure called "Family Land"' (Bruce, 1988 :33).

Clearly, the privatisation process is somewhat ‘fuzzy around the edges’, it is not clear cut and once-and-for-all but rather a continuous negotiation. As Breusers (1998) observes in his study of Mossi land holdings in Burkina Faso and Côte d’Ivoire, contrary to the argument that individualisation and privatisation are inevitable and ‘natural’ processes, it may well be that what nowadays is the private property of the buyer in Côte d’Ivoire will be transformed into corporate property in the future because the ‘owner’ will be unable to refuse his kin’s ‘legitimate’ claims to have access to his land. Moreover, privatisation processes coexist with many other forms of tenure:

‘Pledging, rental and other locally acceptable African forms of land transfer can turn, in time, into customs of outright sale. But an increase in sales never fully eliminates other forms of land transactions, such as gifts, loans, share contracting, or barter. These other forms of exchange remain more convenient than sales in many situations. Barter remains important where those losing land rights prefer compensation in illiquid forms to guard against inflation or claims from other family members’ (Shipton, 1989a: 61).

Obviously, many of these transactions do not take place as ‘village events’; they may involve individuals or groups (from the same or different villages) and not be the object of village consultation. This does not invalidate community-based development efforts as such, but it should limit the scope of what is defined as an object of village-wide negotiations. Let me now turn to the other influential assumption.

ASSUMPTION 2, 'PRIVATE PROPERTY CREATES SECURITY AND LEADS TO INVESTMENT'

One of the approaches which has exerted most influence over the politics of African land tenure is the so-called *Property Rights School*. Its ideas and assumptions have received much qualified criticism over the years. I shall not deal with the *Property Rights School* or its critique in its entirety here, but merely focus upon two elements. One is the problem of its sweeping assumption that property and investment are causally connected when it is used to frame policy; and the other is the problem that different concepts are often conflated, resulting in unwarranted simplification. I am thinking here in particular of the concepts of *tenure security* and *tenure certainty*.

This theory has a series of important adherents, amongst which Demetz (1967) may be considered as one of the central ones. Platteau has summarised their contributions on the issue of land in Sub-Saharan Africa and termed it the *Evolutionary Theory of Land Rights (ETLR)*. As the name suggests, it is a theory of changes in land tenure, and it combines two fundamental assumptions: 1) social and economic institutions adapt to circumstances in order to be as economically efficient as possible; 2) the property form which generally implies the lowest transaction costs (in terms of addressing 'free-rider' problems and the like) is private ownership. Broadly, the theory argues that increasing population pressure and the commercialisation of agriculture create a need for investment in agriculture and land development and hence profound pressures for changes in property regimes. It is argued that the absence of legal land titles reduces the value of land as collateral and thus increases the price of capital and reduces the value of investments. With an increasing need for investment there is therefore a pressure (the character of which is not described) for a change in property regime towards something which provides a higher degree of tenure security. Then the farmer will be able to balance a higher rate of return over time from a slowly-maturing investment in the farm against possibly lower-yielding but quick-turnover investments and to balance appreciation in the value of his capital assets against immediate income. Security of tenure is, according to the *Property Rights School*, generally best secured through private ownership with formalised, government-sanctioned private titling. Strictly speaking, the theory itself argues that this change will be produced by the system itself; that population pressure and/or market conditions will bring about private rights independently of policy. Policy makers, on the other hand, use this line of thinking to justify that by legislating for private property and titling they are merely accelerating the inevitable (See Bruce; Migot-Adholla and Atherton, 1994). This produces a

reasoning where private land ownership increases tenure security and hence investment (and thereby productivity):

private property -> security -> investment

As mentioned above, there is evidence of a coincidence of higher population density, commercialisation and privatisation, as pointed out by Shipton (1989a). However, the interpretations of the *Property Rights School* go one step further, arguing that a specific and dominant causal relationship exists between property form and investment. It is this unsophisticated line of reasoning which has found its way into policy, including in the Sahel.

Policy

The best-known reform, based upon the chain of assumptions that private property leads to security which in turn leads to increased production/investment/protection, is the Kenyan one (Shipton, 1989a, b), but the same line of reasoning can be found in and around the most recent version of the Burkinabè *Reorganisation Agraire et Foncière* and the Nigerien *Code Rural*.

Burkina Faso - Réorganisation Agraire et Foncière

In Burkina Faso the reasoning behind the land reform has changed from 1984 when only the state could assure the rational use of the nation's resources, to 1996 when individual private property was only gradually being rehabilitated. The benign effects of 'private property' are therefore not (yet) used to justify the reform. The interesting point is, however, the firm linkage between security and productivity/protection. At a national seminar preparing the reformulation of the land law in 1993, the Minister of Planning stated:

'The land tenure reform, RAF, aims among other things at the rational use and management of the national space; protection of the environment; increasing productivity, in particular in the rural zone with the objective of food self-sufficiency, ... The reform operates with the aim of achieving justice in access to land and the security of landed property in order to increase agro-sylvo-pastoral production as well as the construction of housing, while respecting natural resources and the environment (Government of Burkina Faso, 1993: 45).

This line of reasoning is reiterated in project documents preparing for donor support to the agricultural sector and preparing for the implementation of the RAF:

‘Securing landed property in Burkina Faso is recognized as an issue of the utmost importance in order to halt the degradation of natural resources and in particular the diminishing of arable land. It is, thus, generally recognized that land tenure security is crucial in order to motivate resource users to invest in the protection and development of natural resources’ (DANIDA, 1997: 13).

For Niger, however, the entire chain of assumptions (private property-security-investment) has only just begun to manifest itself in line with the reform’s precepts.

Niger - Code Rural

A range of observations had been made by the Nigerien state concerning the stagnating rural development, the degradation of the physical environment and the deterioration of long-term productive capacities; and tenure *insecurity* was judged to be a central contributing factor. Hence, a clarification of the modes of tenure and transfer of natural resources - in particular land - was considered an important step towards reversing some of these unfavourable trends (Government of Niger, 1986). The people drafting the reform were very conscious about the importance of its applicability; they recognised the risk of drawing up something very coherent and elaborate but impossible to implement. The ambition was to avoid changes in the actual distribution of land while clarifying the conditions under which land was held. In order to appreciate the different forms of land tenure a series of regional seminars were conducted and a - somewhat sketchy - idea of the complexity of the tenure situation emerged. One important element was the overwhelming desire among the various respondents for private property. It is worth noting here that rural élites generally claimed customary ownership over wide tracts of land. It is therefore not surprising that the élite should prefer private property to be the recognised principle of tenure, since they would become the recognised owners. Hence, it was decided that *agricultural land could become the private property of an individual* (Lund 1998). And, as a World Bank consultant stated some 9 years after the initial considerations about security and its consequences:

‘In this situation [competition over land between farmers and herders and among farmers themselves] the new land tenure reform, the Rural Code, insists throughout on a preference for property. By contrast, the reform

seems almost to ignore the concept of use right, despite the fact that this is among the ways of accessing natural resources and plays a part in agricultural growth. Thus, land tenure security may just as well be the result of a use-right as the result of ownership' (Gastaldi 1995, 14).

Thus, while insecurity was initially seen as uncertainty to be remedied by providing clarity, in the process of preparation and initial implementation insecurity became synonymous with insufficient rights to be remedied by strengthening the rights of some (at the detriment of others). It is interesting to note how Gastaldi reproaches the Code Rural administration for being very one-sided and not paying attention to other property forms, however he himself goes on to reiterate another assumption from the same line of argument:

'Another factor in this development is the land market which assures an optimal distribution of land. In particular if it is linked with a property tax and increasing investment. In effect, *investment presupposes land tenure security ...*' (Gastaldi, 1995: 15, my italics).

However, the causal links between private property, tenure security and investment that justify these policies are more complex than they appear.

Some evidence concerning causality

First, evidence of the link between private property and investment is far from conclusive. In a much-quoted article, Feder (1989) examines the relationship between these factors in three provinces in Thailand and argues that private property increases security and investment in two out of three provinces. This is not supported by African evidence, however. Studying several regions in Ghana, Kenya and Rwanda, Migot-Adholla et al. (1993: 269) found that, in general, agricultural productivity did not vary under individual land rights regimes, suggesting that factors other than land tenure are more constraining for agricultural development. The areas researched are relatively densely populated with commercial farming among the areas where Shipton would expect privatisation processes to occur. Most of the fields in the study were 'acquired through non-market channels such as inheritance, gifts, government allocation, and allocation (initial clearing and use of part of the pool of communal land)' (Migot-Adholla et al., 1993: 275). And the land was held under a variety of tenure forms ranging from temporary use-rights, to permanent use-rights, to transfer rights. Their results are quite interesting. People were inclined to make more improvements on their land if their use-rights could be bequeathed or inherited by their children than if the use-rights could not be transferred. However:

‘there is no difference in the incidence of land improvements between “preferential transfer” [i.e. rights to transfer to kin] and “complete transfer” [i.e. the right to sell to whoever they wanted (full alienation)] land, nor does the requirement of prior approval matter’ (Migot-Adholla et al., 1993: 281)

Concerning productivity, the arguments for private property grows even slimmer.

‘We found no relationship between land rights and plot yields in Kenya and Ghana. ... we also found that the mode of acquisition had no effect on plot yields’ (Migot-Adholla et al., 1993: 282).

Recent studies from Burkina Faso generally support these observations. Ouedraogo et al. (1997: 232) argue that differences in land productivity ‘depend on factors other than property rights, mainly the natural fertility and climate conditions.’ In Rwanda, Migot-Adholla et al. even found that:

““short-term use rights” parcels were more productive than parcels in all other land rights categories. ... farmers who rent land may generally be in dire need of land resources and apply greater amounts of labour in order to provide subsistence for their families’ (Migot-Adholla et al., 1993: 281).

Atwood makes a similar argument, referring to Bruce (1986) when contending that:

‘if potential purchasers tend to see land as an investment with a high potential for appreciation or as a hedge against inflation, rather than as a factor of production, reducing their transaction costs and risks may lead to poorer land use and reduced production as land is held idle or used in a non-intensive way after its transfer’ (Atwood, 1990: 663-64).

Sjaastad and Bromley (1997) even suggest that ‘security-leading-to-investment’ can be turned on its head:

‘the common assertion that tenure security is necessary to promote investment may - in many cases - be reversed. That is, investment is necessary to obtain security. Investments in trees, irrigation furrows, buildings or other fixed structures may provide a litigant in a land dispute with an unassailable case. Thus, although insecurity of tenure is a

disincentive to invest, it is - paradoxically - often also an incentive because investment in itself increases security ... If one accepts that certain types of investment in land are a legitimate way of claiming more secure rights to land, and that investments may be recovered even when land is lost, the assertion that insecurity of land rights in indigenous tenure systems is a serious impediment to investment seems less convincing' (Sjaastad and Bromley, 1997: 553).

These few examples suggest that the causal links between increasing privatisation and increasing investment and productivity are not immediate and simple and that we should look into the concept of 'security' which supposedly links them.

WHAT ARE TENURE SECURITY AND TENURE CERTAINTY?

Bruce and Migot-Adholla, who support the idea of tenure security as something which must be understood in terms of degrees, propose the following definition: land tenure security exists when:

'an individual perceives that he or she has the right to a piece of land on a continuous basis, free from imposition or interference from outside sources as well as the ability to reap the benefits of labour and capital invested in that land, either in use or upon transfer to another holder' (Migot-Adholla and Bruce, 1994: 19).

This definition is appealing in its comprehensiveness, since it encompasses extent, duration and certainty, but herein also lie sources of misunderstanding and short-circuiting. Decomposing the concept of tenure security makes some of the weaknesses in standard argumentation more obvious. It is problematic that tenure security is used in several different senses if sufficient attention is not paid to the distinction between them. Security is used as a measure of command over the resource, i.e. to what extent may the right holder use and transfer the resource and for how long are these rights valid. However, tenure security also means the opposite of tenure insecurity, i.e. the degree of certainty of the extent and duration of rights. The meaning is not identical so let me call this kind of tenure security *tenure certainty*, and discuss them both in turn.

The problem with the concept of tenure security (the extent and duration) is that it confuses the concept of 'private property' (implying the right to alienation) with high tenure security (implying 'full command'). This makes it rather futile to correlate the two, since 'private property' is by definition 'high tenure security'.

The high degree of correlation has already been ‘assured’ by the way the concepts are defined. Moreover, most African tenure systems are characterised by the existence of multiple tenures, i.e. several users may have access to different resources on the land, one may farm, another gather fuel wood, a herder may be entitled to dry season grazing, and so on. What is often neglected in this type of argument is that while increasing exclusivity may produce more tenure security for the excluding party, the opposite must be the result for he or she who is being excluded. Thus, when we talk about increasing tenure security, there is most of the time a corresponding aspect of increasing tenure insecurity as well, something which has a much less benign ring to it.

If we then turn to the links between privatisation and tenure certainty, I dealt with one aspect of this above, namely ‘autonomous privatisation’, which is occurring in many places in Africa. As mentioned, this process often seems to be accompanied by land litigation and to evolve at the margins of the law as well as of customs. One could argue that not only is uncertainty an integral element of the privatisation process, but ‘autonomous privatisation’ actually depends upon it evolving. Only a certain measure of ambiguity in rules and norms allows people to manoeuvre at the margins and take advantage of ‘open moments’ and appropriate land under more private forms. The causal link between ‘autonomous’ privatisation and increased tenure certainty thus seems dubious.

If we then look at the efforts of ‘directed privatisation processes’, tenure uncertainty seems even less likely to diminish. On the contrary, it seems that uncertainty is significantly amplified. ‘Directed privatisation’, including land titling, is ideally a way of clarifying the tenure situation. However, most titling programmes aim to issue exclusive rights to the primary right holder, while secondary right holders’ rights are formally extinguished (see Atwood, 1990: 661 and 663). Whether their use-rights (rights to dry season pasture, wood collection, access to water points, etc.) may still be enjoyed under a tenure regime sanctioning the primary right holders’ rights as private and exclusive is most uncertain. Furthermore, as Platteau argues,

‘in a social context dominated by huge differences in educational levels and by differential access to the state administration, there is a great risk that the adjudication/registration process will be manipulated by the elite to its advantage ... The fact of the matter is that, insofar as it encourages the assertion of greedy interests with powerful backing and is likely, wittingly or not, to reward cunning, titling opens *new* possibilities of conflict and insecurity that can have disastrous consequences for vulnerable sections of the population *at a time when their livelihood crucially depends on their access to land* (Platteau, 1996: 43-5).

My research on the Rural Code in Niger fully supports Platteau's observations. The mere announcement of a titling programme not only unleashed potential and old disputes but also generated new disputes and transformed the ways they were dealt with, in particular since the reform was introduced in conjunction with the advent of multi-party democracy (Lund, 1998).

An aspect which might seem quite banal is the management and maintenance of a land register. The most 'advanced' titling programme in Sub-Saharan Africa is the Kenyan reform. However, its maintenance is very poor and subdivisions, sales and other transfers are not recorded and the land register not kept up to date. As a consequence, proof of private ownership and its enforcement is often unlikely to gain support from the land register, and uncertainty may increase with the result that tenure security is hollowed out. This evidence gives us cause to re-examine the assumption that private ownership provides more certain use-rights than other tenure forms.

The idea that property is a 'thing' seems often to prevail; either you have it alone as exclusive private property, or it is shared in some obscure way, or it is not yours at all. Consequently, common sense would dictate that one is more sure to reap benefits from privately-held property than from resources held otherwise. It would be more secure. Such reasoning contains at least three erroneous assumptions. First, property is not a thing but a social relation or contract determining how rights to use and duties not to use a specific resource are distributed among people (Hohfeld, 1913; Goody, 1962; MacPherson, 1978; Moore, 1998; Lund, 1999b). Property can be seen as a social convention that defines the relationship between people *vis-à-vis* things backed up by the sanctions and administrative structures of society. Thus, property is not merely a question of either having it or not. It is more useful to talk in terms of extent of rights ranging from no rights to (the theoretical) all rights. Consequently, several social actors may hold (different) rights to the same resource simultaneously. Considering that property and property relations are aspects of social relations and thus are defined as society's (i.e. other people's) approval of certain rights, it seems paradoxical that tenure security or property should be measured in terms of the absence of social relations (or 'interference from outside sources' as argued by Migot-Adholla and Bruce (1994: 19)) which can secure or challenge such a right. This leads to the second problem.

People often measure African tenure forms by their 'distance' from complete private property, implying that this is the characteristic property form in the developed world. They often neglect what they know very well, i.e. that what is termed private land in Europe is more often than not subject to a whole range of

restrictions (concerning the land's development, its use, its division, zoning, construction on it, etc.). It is often forgotten that productivity and investment may actually be quite high under other tenure forms if other factors (such as market access, credit access, etc.) allow it. Conversely, as Ribot (1998: 336) argues, control over the resource without benefits because of insufficient market control will neither lead to maintenance of the resource nor productivity increases.

Third, while the wide variety of African tenure forms may seem obscure and irrational observed from a distance, these forms of tenure generally make sense to those for whom they really matter: namely, the immediate stake holders. To paraphrase Sjaastad and Bromley (1997: 551): 'the appropriation of a good, and the subsequent assignment of a right, does not materialise in an institutional vacuum; a "social contract" - an agreement, tacit or explicit, on the legitimacy of the specific form of land holding - must precede individual appropriation of resources.' Platteau argues, in the same vein:

'The point is that, if property has no social legitimacy, it is no property because it lacks the basic ingredient of property, recognition by others' (Platteau, 1995a: 46).

In other words, it is not being 'private' which makes a land holding certain. Private holding may be more or less certain depending on the prevailing social contract. In the 'developed world' the social, institutional and legal consensus in favour of specific private forms of ownership is so strong that we often do not perceive the distinction between them and they become one; private equals certain. However, this is not generally the case in most African societies, and it may explain why in Kenya it has often happened that buyers of land are not able to take possession of it. The local community simply does not accept that land is sold to a 'stranger'. In such cases, 'private' is not very certain, and in many places in Africa other types of tenure than 'private' are more certain for the right-holders. Of course, social contracts may evolve and change, and private forms of land holding may become more generally legitimate and hence certain, but evidence does not support a thesis that rights will become fully exclusive.

CONCLUSION: LAND TENURE AS AN EMPIRICAL QUESTION

In questioning the two lines of reasoning concerning land tenure I am not suggesting simply reversing them. I am not arguing that land is becoming private on a general scale in the Sahel or in Africa for that matter, or that land tenure

insecurity is a general result of privatisation and individualisation or titling as such. Nor am I arguing that titling cannot under certain circumstances be a reasonable measure helping to pre-empt and scale down conflicts. What I am suggesting is, however, that processes of privatisation occur and have a long history in many places without government initiative. In a significant number of situations this causes increased tenure insecurity, uncertainty and conflict. Any effort to influence rural development should take account of these eventualities. This constitutes a challenge considering policy authors' partiality for general and sweeping statements. There is little doubt, I believe, that property matters. The amount of time, energy, social, political and economic resources people employ in order to secure, entrench and extend land rights indicates that property is a significant preoccupation amongst ordinary people in the Sahel and Sub-Saharan Africa. It is much more difficult to predict systematic causal relationships between various forms of property and land tenure and economic, social and political behaviour. While theories may direct our attention to interesting hypotheses, this still remains a largely empirical challenge.

Moreover, since rights seem intrinsically negotiable and conflicts integral parts of the transformation of land tenure systems, maybe more attention should be paid to ways of institutionalising negotiations and managing disputes than to illusory solutions of clear-cut reforms which put an end to social conflict and transformation.

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