

Tenure individuelle et collective en Afrique

Si l'on examine le territoire d'une communauté, un système de tenure africain typique, on constate que le paysage est divisé en zones dont l'utilisation varie et auxquelles s'appliquent des règles de tenure variables. Chaque zone constitue donc une niche de tenure, soit un espace dans lequel l'accès aux ressources et leur utilisation sont régis par un ensemble de règles communes. Ces niches foncières définissent dans l'espace les zones auxquelles on peut appliquer les théories dont l'on se sert pour analyser les modes de faire-valoir. Toute analyse de l'utilisation des ressources à l'échelon communautaire devrait recenser non seulement les différentes zones d'utilisation des terres, mais également ces niches de tenure qui définissent qui utilise la ressource et dans quelles conditions. Un paysage foncier varié fait donc son apparition, comportant plusieurs niches de tenure selon qu'il s'agit de ressources d'accès libre, de propriété collective ou de propriété individuelle. Ces niches peuvent se superposer, comme c'est le cas lorsque des droits d'exploitation exclusifs cèdent le pas, après la moisson, à l'utilisation de la terre comme pâturage commun.

L'auteur estime que l'on aborde ce nouveau siècle dans de meilleures conditions, les responsables du développement rural étant moins catégoriques quant aux solutions finales, plus conscients des limites du droit et de l'intervention de l'État, plus respectueux des systèmes indigènes, plus participatifs dans leurs méthodes et plus enclins à accepter la diversité. Tout cela est de bon augure pour les études et le travail d'élaboration des politiques foncières au XXI^e siècle.

La tenencia individual y colectiva en África

Cuando se examina el territorio de una comunidad, que es el sistema típico de tenencia en África, se observa un paisaje dividido en extensiones de tierras destinadas a distintos fines, a las que se aplican diferentes sistemas de tenencia. Cada una de ellas representa una categoría de tenencia, es decir un espacio en el que el acceso a los recursos y su utilización se rigen por un conjunto común de normas. Las categorías de tenencia definen espacialmente las zonas a las que se pueden aplicar las diversas teorías que se emplean para analizar los diferentes tipos de tenencia. Todo análisis de la utilización de los recursos a nivel comunitario debe incluir una indicación no sólo de los tipos de uso, sino también de las categorías de tenencia: quién utiliza los recursos y en qué condiciones. Se observan diferentes categorías de tenencia que corresponden al acceso libre, la propiedad común y la propiedad individual. Estas categorías pueden solaparse, como por ejemplo cuando los derechos exclusivos de cultivo ceden el paso después de la cosecha al aprovechamiento de las tierras como pastizales colectivos.

El autor considera que se entra en el nuevo siglo en condiciones mucho mejores que las que existían anteriormente, con menos seguridad de las soluciones finales, más conciencia de los límites de la ley y la acción estatal, más respeto hacia los sistemas indígenas, más inclinación a aplicar métodos participativos y más disposición a aceptar la diversidad. Esto es un buen presagio para los estudios y las políticas sobre tenencia en este nuevo siglo.

African tenure models at the turn of the century: individual property models and common property models¹

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The territory of a community operating a typical African tenure system has a landscape that is clearly divided into areas of land under different uses, with different tenures applying to different areas. Each area constitutes a tenure niche, that is, a space in which access to and use of resources are governed by a common set of rules – a particular tenure. Tenure niches define spatially the areas to which the various bodies of theory can be applied in analyses of the different types of tenure. Any analysis of resource use at the community level should include the identification, not only of areas of use, but also of tenure niches: who uses the resource and on what terms. As a result of these processes of tenure development, a varied tenure landscape emerges, with different tenure niches involving open access, common property and individual property. These niches may overlap with one another, as for instance when exclusive cultivation rights give way after harvest to use of the land as a grazing common.

The author of this article anticipates that the process of adaptation will lead to formalization of the tenure regimes in these niches, and probably to their simplification over time. If this is to happen, a supportive legal and policy environment will be needed; one that recognizes indigenous tenure systems and allows their rules to evolve in a common law mode, largely through the settlement of disputes. For the most part, individuals operating within these systems should choose how they evolve, by making claims and allowing the community to mediate as a social consensus is reached about the changes to be made to the system. The author is optimistic about the climate at the beginning of this new century, in which those involved in rural development seem to be less sure of final solutions, more aware of the limits of law and State action, more respectful of indigenous systems, more participatory in their methods and more ready to accept diversity. This bodes well for the next century of tenure studies and policy.

THE NEO-LIBERAL DISPENSATION: PRIVATE INDIVIDUAL PROPERTY IN AFRICA

Private individual property in its Western form was introduced into sub-Saharan Africa during the colonial period. Both the United Kingdom and France created enclaves of individual ownership for the colonies' urban areas and white settler farms and experimented, usually very cautiously, in expanding this tenure form to selected Africans. The call for private individual

ownership of land for Africans was not often heard as long as the colonial powers continued to rely on indirect rule. The

¹ This paper was prepared for a Conference on Land Tenure Models for Twenty-first-Century Africa, held from 8 to 10 September 1999 in the Hague, the Netherlands. The discussion of common property that it contains draws substantially on work done for FAO as preparation for a community forestry note on the legal bases for common property in community forestry, to be published later in 2000. The author gratefully acknowledges the assistance of many colleagues at FAO in his consideration of these issues.

colonial governments were, for the most part, quite content to exploit indigenous tenure arrangements as a means of controlling the populace through its own traditional authorities. Demands for the individualization of communal tenure systems increased during the years leading up to independence. A classic statement of these is the Swynerton report from Kenya, which postulated that the future prosperity and political stability of Kenya depended on the creation of a class of African yeoman farmers with land in private ownership.

In both France and the United Kingdom, the nineteenth and early twentieth centuries saw the triumph of private individual property and the elimination of remaining feudal encumbrances, dramatically in French law and more gradually in United Kingdom law. This radical simplification of tenure was an intrinsic part of the development of strong market economies and, in some views, was important to the growth of political democracy. There was a broadly shared belief that private individual ownership alone delivered security of tenure, brought land into the market and facilitated land development. Western development planners of the neo-classical economic persuasion working on African development strategies in the early post-independence period were anxious to extend the benefits of individual ownership to the African farmer.

There were, of course, important dissenters from this line of thought – Marxists and African socialists – but their tenure models incorporated serious errors about economies of scale and incentives and their failures have largely left the field open to market economy models of tenure reform. Neo-liberal development prescriptions still assume, for the most part, that property individualization is an important element in the development process. It might have been expected that the last years of the twentieth century would have seen a new push for individualization programmes, and indeed major tenure reform programmes are being implemented in the countries of Eastern Europe and the former Soviet Union. However, in Africa major new initiatives in individualization have been

forestalled by the belated recognition that, in the words of Parker Shipton, there have been serious “misunderstandings in the public creation of private property” (Shipton, 1988) within the African individualization programmes so far carried out.

Kenya, where the post-independence government somewhat unexpectedly embraced the colonial government’s Mau-Mau-era individualization programme, has been the major test case for the individualization of indigenous tenure. The programme was carefully studied and generated an extensive critical literature in the 1960s and 1970s. More recently, other important studies have been carried out of both the development of indigenous tenure systems where there are no major interventions, and the economic impacts of tenure individualization in several smaller pilot tenure reform exercises (Bruce and Migot-Adholla, 1994).

Two conclusions have emerged. First, indigenous tenure systems tend to evolve under the influence of such factors as new market forces and population growth. They are not static and can often be reformed without the need of state interventions. Second, where individualization was forced by State-sponsored reforms, it usually did not have the desired impacts on small farmers’ behaviour. New investment did not materialize, and land was not used as collateral to secure credit. Other important economic or technological preconditions for the anticipated behaviour apparently did not exist, and farmers’ behaviour with regard to land still reflected their adherence to the values of family and lineage. These findings have weakened the case for forcing individualization. Existing tenure systems are less often described as “bottlenecks” and discussion concentrates more on strategies for adapting such systems, rather than replacing them.

Two recent national reviews of land policy from southern Africa, the Shivji Report in the United Republic of Tanzania (Shivji, 1998) and the Rukuni Report in Zimbabwe (Government of Zimbabwe, 1994), are thoughtful and innovative attempts at

adaptation strategies. State land administration bureaucracies have been vigorous in their opposition to key points in these reports, especially in the United Republic of Tanzania, and it is clear that it will not be easy politically to vest power over the development of tenure in local communities. The donor community has so far been unenthusiastic about this approach, and it seems that individualization initiatives in the future will be far more limited and selective.

THE REVIVAL OF COMMON PROPERTY

In the 1970s, the “tragedy of the commons” was almost conventional wisdom in discourses about natural resource management. The tragedy asserted was that, as population and pressure on resources grew, the users of resources that were held in common would eventually, and inevitably, overexploit and degrade those resources, because they had no individual incentive to use them carefully (Hardin, 1968). Today there is renewed optimism about the prospects for effective community management of natural resources, based to a significant extent on the growing perception that communities with the opportunity to manage resources as common property have a reasonable chance of doing so sustainably.

The most simple definition of common property is “corporate group property” (Bromley, 1992). It can be held in full ownership or under a right that is less than ownership. For example, a long-term lease can also be common property, so long as the right is held by a group. There must be a group, sometimes referred to vaguely as “the community”, and the group must be organized and legally recognized (“corporate” in Bromley’s terminology). The term “community” is often used as if its meaning were obvious, but in fact it can refer to many different types of groups other than the simple residential community. A community may be a lineage or a clan, with units defined by descent from common ancestors, or it may be a community of interest – a group that has formed voluntarily to achieve a common purpose or represent a common interest.

Common property is one important way of ensuring that communities have the confident expectation of long-term use of the land. Common property is a strategy for increasing incentives for sustainable use by giving resource management a longer planning horizon. Communities can respond positively to the incentives for investment created by expectations that are as secure as those of individuals towards their own holdings.

Realization of the potential of common property in supporting sustainable community resource management has, in part, evolved from the observations of development practitioners that local communities sometimes manage their resources effectively, even under substantial pressure. It is also a result of the work of institutional economists who have reflected to good advantage on the precise meaning of common property, on why sustainable common property management is theoretically workable, and on what might be the necessary conditions for effective common property management (Bromley, 1992; Ostrom, Gardner and Walker, 1994).

The literature that has developed over the past decade distinguishes open-access situations, in which there is no social control over use of the resource and where a “tragedy” of overuse may indeed be likely, from common property, where the conditions for such control exist; i.e. a group with a limited membership, the right to exclusive use of the resource, the opportunity to regulate resource use by the group’s members and the incentive to do so, because the cost and benefits of disciplined, sustainable use are internalized to the group (Ostrom, 1986; Bruce and Fortmann, 1992). Those who predicted the inevitable demise of the commons have modified their predictions (Hardin, 1994).

Community resource management and, by extension, common property are important because there are certain resources that by their nature are less conveniently partitioned for management by households than others. Resources in movement, such as rivers and fish and wildlife, are particularly difficult to

individualize. With other resources, such as pastures and forests, the costs of individualizing are high and it may be impractical. In the case of pastures, for example, herders who can no longer move to accommodate highly variable rainfall patterns need to establish a source of water for each discrete grazing unit. The costs of establishment are too high for small stockowners, so the options become either individualization that denies access to many small stockholders, or the maintenance and further formalization of common property through legal mechanisms such as Kenya's group ranches. In forestry, there are protection, management and opportunity costs associated with long-term investment in trees, and these can more easily be borne by a community or other group than by a household.

The special physical properties of these resources have important management implications which have led to their being characterized as "common pool resources". This appears to be the best way of referring to the resource itself, as opposed to the term "common property resource" which seems to suggest that there is some necessary connection between common property as a legal regime and the nature of the resource, when in fact many resources can be managed either as individual or as common property. The term "common property regime" (CPR) is used to refer to the legal regime in which a resource is utilized as common property, while the term "common pool resource" is used to describe a resource's exploitation as a commons (McKean and Ostrom, 1995).

Many designers and managers of development and conservation projects seek to incorporate the establishment or support of CPRs within their projects. Designers of natural resource management (NRM) projects, disillusioned with the performance of the State as a resource manager, now almost always encourage greater control of resource use by local communities. Common property is regarded as an efficient solution in forestry, but there are other important values reflected in the literature on common property. One is the need to maintain access

to critical resources for the many rather than the few, and especially to preserve the access of the rural poor. In some cases, the survival of minority peoples depends on the safeguarding of those communities' rights over their lands and forests (Plant, 1994; *Cultural Survival Quarterly*, 1995).

Donors and governments are opting increasingly for smaller, more participatory projects. There is evidence that CPR works better when the resources to which it is applied are not too extensive (see Box 1). Non-governmental organizations (NGOs) commonly operate at this smaller scale and are generally more open towards local participation in project design and management. NGOs often work with communities that use land as commons, and frequently find common property arrangements governing the use of pasture, woodland and fishing grounds under community-based tenure systems. At present there is a particular interest in exploring more thoroughly the role that common property can play in community forestry (McKean and Ostrom, 1995).

The adoption of a clear notion of common property on the part of tenure policy-makers and analysts has considerably strengthened the field and made it easier to take account of the complex realities of African land tenure. However, discussion of the application of these insights has often been clouded by the idea that indigenous African land tenure systems are communal, in the sense that all the community's land is seen as being common property. A close examination of this proposition would be worthwhile, because it may well be seriously misleading.

INDIVIDUAL AND COMMON PROPERTY IN INDIGENOUS SYSTEMS

The term "communal" has been used in the land tenure literature in a variety of situations: where a resource is used by virtually anyone, a situation that would better be characterized as open access; where land is utilized coextensively and simultaneously or serially by a number of users – the classic and widespread grazing commons situation; in the unusual situation in which land is

Box 1

Small-scale CPR works better

Case study materials were used to test hypotheses in several studies that examine the effects of group size on the performance of institutions managing common property resources. The analytical literature on collective action and the case study materials highlight group size as a factor that affects the ability of a group to manage a common property resource. The intuition is obvious. All other things being equal, the smaller the group, the easier and less costly it is for its members to recognize each other, and so the easier it is for the group to detect rule infractions by members and entry into the commons by non-members. The costs of decision-making and the coordination of activities should similarly be related to group size. Thus, costs of the following four factors are affected by group size: intragroup enforcement, extragroup exclusion, decision-making and coordination. (The per caput benefits of cooperation are assumed to be held constant as the group size varies.) The cost involved for each of these activities is affected by more than group size and, in particular, responds to the costs of transportation and communication, which in turn depend in part on the available technology. It is not surprising, therefore, that unequivocal generalizations do

not emerge from a quick review of the case studies.

Yet the case studies do include information that corroborates intuition. The three successful cases discussed by Berkes¹ were located in bays exploited by between 100 and 140 registered fishing units; while the bays in which failures occurred were exploited by twice to ten times as many units. All four factors appear to be relevant in the cases discussed by Berkes.

Similar results are reported by Kari Bullock and John Baden in their discussion (in 1977) of the operation of Hutterite communes. Group sizes of 60 to 150 were found to promote successful communal operations in such settings. Victor S. Doherty and N.S. Jodha (in 1979), and Doherty, Senen M. Miranda and Jacob Kampen (in 1982) also highlight the importance of group size in the successful operation of tank irrigation schemes in semi-arid areas in South Asia. (Similar evidence for aquaculture in Panama is found in 1985 in a case study by Molnar, Schwartz and Lovshin.)

¹ Full details of the works mentioned are cited in Feeney, 1992. Source: adapted from Feeney, 1992.

utilized collectively and production is organized and carried out by a community or descent group; and where there are social institutions that allocate and reallocate land among households on a temporary basis.

Systems that have some or all of these elements are often described as communal, although they may in fact include within them land that is perpetually individual and family property. In this article, the term “community-based” is used instead of “communal” for such complex and internally diverse systems that are based on local usage, in order to emphasize their source of legal legitimacy without attempting to give a broad characterization of their tenurial substance.

How does common property figure in community-based systems? Some authors suggest that a CPR may be conceived as encompassing an entire village territory, including individually held land. Here the

term “common property” becomes almost synonymous with “community-based tenure system” or the older “communal land tenure”. This tends to overlook the strong household and individual property rights within those territories, which may amount to private ownership. The same reasoning has been used on an even broader scale to characterize as common property an elaborate regional resource management institution, such as the *dina* in the inland Niger delta, that involves the negotiated sharing of a wide variety of natural resources among several ethnic groups (Moorehead, 1989).

Such a characterization is potentially misleading. In order to benefit from the lessons of institutional economists as to what makes common property work, it is best to keep to a narrower definition of common property within which those lessons apply: property of a group held as a common pool resource that group members

Box 2

How communal is communal tenure?

Writing in 1953, White observed that it is unfortunate that the misleading expression “communal tenure” continues to be used so often as a blanket definition of African land tenure, implying that every individual has equal rights in every piece of a tribe’s land. In discussions about grazing areas in certain provinces of northern Zimbabwe, to speak of communal rights in grazing is, to some extent, justified since anyone may graze cattle on any land not claimed for individual use; but it must be qualified by the observation that these communal grazing rights are not vested in a whole group collectively because, where land is short, as among the Tonga or the Mambwe, individuals can bring pieces of communal grazing land under their personal control for arable purposes through the usual process of starting to cultivate it. Communal grazing areas are not vested in any authority that preserves them from encroachment in this way.

Rights over arable land are essentially individual – acquired by, enjoyed by and disposed of by the individual. Rights of individuals over arable land cannot possibly be described as communal tenure without a complete distortion of the facts. Much of the confusion here no doubt springs from contrasts between United Kingdom ideas of landownership and the conditions found in the most undeveloped systems of shifting cultivation, where an individual exercised rights over a piece of land for only a brief period and, when it was exhausted, passed on to open up another piece of

vacant land. Under such conditions, land was presumably hardly ever inherited and only rarely transferred. An individual enjoyed rights in respect of a piece of land, but only of an ephemeral nature so far as those rights were soon transferred to another piece of land. However, with the stabilization of agriculture, the scarcity of land in a given area, the emergence of cash cropping putting an economic value on land, or some combination of all three, the permanence of an individual’s land rights developed quickly. In areas where land is valuable for these reasons, it is regularly transferred or inherited and rarely abandoned. Hence, in some places land once acquired does not revert to the common pool to be taken up by someone else, but passes directly from one individual to another without any intervening authority. At this stage, individual rights of a continuing permanent nature are strongly developed; while it may be inappropriate to refer to such tenure by any English term that is liable to contain unsuitable implications, it is certainly necessary to avoid the use of the expression communal tenure. It would seem preferable to call such cases individual tenure, accompanying the expression with such definition as may be necessary of the existing rights. Individual tenure of this type occurs in all the provinces of northern Zimbabwe so far studied.

Source: adapted from White, 1953.

use simultaneously or sequentially.

However, there are also well-developed individual, family and lineage rights in land that are quite different from a common property concept. Africans under indigenous tenure systems have both private and individual rights. For residential land and farmland, these function under the governance of the village but are not in any sense derived from some large-scale village ownership of land. It is increasingly understood that individual appropriation of resources – as opposed to land allocation by the community – plays a significant role in these communal tenure systems. Cheater (1990) discusses this with regard to Zimbabwe and, in Zambia, White noted this

as early as the 1950s (see Box 2). Chanock (1991), basing his work on contemporary studies in Central Africa, discerned a colonial strategy of undermining indigenous land rights in the emphasis on the communal elements of these systems (see Box 3).

There are subtle gradations of property rights within such systems, as in the bush-fallow systems in southeastern Nigeria: two communities each designate areas of their distant fields for cultivation by their members in given years to maintain a community rotation system, but in one the fields farmed by community members are allocated to them by the community on an annual basis, while in the other they are owned by lineages and individuals, and

farmers who do not have land in an area designated for cultivation that year must lease land from those who do. The first case is an example of common property, while in the second individual private property is emerging, subtracted from the common property.

At the same time, multiple CPRs applying to other resources are usually readily discernible in the community landscape, as in the case of the diverse traditional forest reserves that exist in some areas (see Box 4).

Dealing adequately with the diversity of tenure regimes within a community requires distinguishing the several component tenure niches in the community landscape. A tenure niche can be thought of as a discrete area of land within a landscape defined by the specialized set of tenure rules that are applied to it (Bruce, Fortmann and Nhira, 1993). Indigenous tenure systems have customized their tenure arrangements for land under different uses. Each tenure has

been evolved to meet the needs of community members as they use a resource, allocating rights and responsibilities to it and its products. A community's tenure system is composed of several tenures, each of which defines different rights and responsibilities for resource use.

Examination of a community's territory shows how the landscape is divided into areas of land under different uses, with different tenures applying to those areas. Each area constitutes a tenure niche, that is a space in which access to and use of resources is governed by a common set of rules, a particular tenure. Distinctive patterns of resource use in different areas, as determined both by the physical features of the resource and by cultural factors, spatially define many tenure niches. The boundaries of one pattern of resource use (and of a corresponding tenure niche) may be visible. Where swidden-fallow systems are no longer practised and cultivation has been stabilized,

Box 3

The colonial construction of communal tenure

Early administrators approached Africa with certain basic ideas in mind. These were the broad evolution of human societies from status to contract; the contrast between individualism and communalism; and, even among the anthropologically minded, a contrast between rational and irrational economic behaviour. An essential part of the picture was the model of land tenure, the basic features of which were that land was held in some form of communal tenure and could not be sold by individuals, and that all had a more or less equal right to land. In 1983, Iliffe¹ remarked that "rural capitalism was seen not only as socially and politically dangerous, but somehow improper for Africans, like guitars or three-piece suits". The framework of suspicion and of tight control over rural entrepreneurs meant condemning their desire to increase their landholdings as unnatural and greedy, in a sense economically right, but not customary and therefore not legitimate. Gradually, a picture of a customary economic world was built up, according to which institutions in the realm of custom, such as landholding, were judged. Even customary institutions that did not fit this picture were judged illegitimate.

Against this background of notions of African economic behaviour and the powers of chiefs, the colonial legal system etched its version of customary land law, a version essentially necessitated by the need to validate early land alienations. The summoning into existence of the customary regime was hugely convenient, for to treat indigenous rights as if they were the equivalent of rights recognized in United Kingdom law would have created a plethora of embarrassing problems. At the same time, to treat Africans as people who had not "evolved" the institution of private property in land not only gave vastly greater scope to the State, but also functioned as a powerful ideological criticism of African societies. Individual title could be thought of as a distant goal of policy, while in the meantime the colonial regimes would handle land in the best interests of the population. Attempts to assert individual rights could gain no recognition because they were by definition not legal.

¹ Full details cited in Chanock, 1991.
Source: adapted from Chanock, 1991.

Box 4

Traditional forest reserves in the Babati district of the United Republic of Tanzania

In a study carried out by the Swedish University of Agricultural Sciences, Uppsala, a traditional forest reserve (TFR) was defined as being a forested area of not less than about 0.04 ha that is protected by the residents of the adjacent area in accordance with their customary laws. Thus, the creation of a TFR has its roots in the local community and is by no means based on government laws.

Using this definition, it was possible to define a number of different types of TFRs in the United Republic of Tanzania. These can be classified as:

- haymanda, used by men for circumcision and dances;
- meeting places for male elders;
- cemetery grounds (for the Barabaig tribe);
- places of natural springs;
- TFRs controlled by private individuals (e.g. traditional medicine-men);
- TFRs believed to make rain;
- TFRs for the traditional teaching of young women.

As the list indicates, many TFRs are used by (sometimes secret) groups for traditional ceremonies. If a member or non-member cuts a tree in the TFR without permission (which is rarely granted), that individual is nearly always required to pay a fine of a bull to the group. If the breaker of this traditional law refuses to pay, the group will pray for bad luck for the family of the offender who will be ostracized from the village. The prayers are directed to Loa, the traditional god of rainmaking.

The effectiveness of these sanctions is shown by the fact that TFRs have been virtually untouched for generations. In some areas, the TFRs stand out as environmental museums of vegetation that formerly covered the surrounding agricultural fields. Socially, as in the case of natural springs, the TFRs serve as a clear demonstration of the wise ecological beliefs and behaviour of the elders who teach the younger generation to respect the TFR. Without the ecological tradition of the elders, the natural springs in the TFRs would probably have dried up, as have many other natural springs on cultivated public land. Other social roles of the TFR are to serve as a traditional place of worship or a classroom and to help in integration and understanding between members of the different tribes who belong to the TFR groups.

The study located 46 TFRs covering an area of roughly 288 ha. Most of them (33) were haymanda and were situated on hills or slopes, covering a total area of 245 ha.

The fact that many of the TFRs are on slopes and hills and surround natural springs is an indication of their ecological importance. They conserve water sources and protect against soil erosion. They are also surviving natural habitats for animals and birds and provide a reminder of the natural forest environment of the past.

Source: adapted from Gerden and Mtallo, 1990.

the boundary between cultivated land (belonging to households) and grazing land (commons) can easily be seen.

The concept of tenure niche makes it possible to respond analytically to local specificity and complexity. Tenure niches define spatially the areas to which can be applied the various bodies of theory that analyse different types of tenure (e.g. common property theory, community pastures). Any analysis of resource use at the community level should involve the identification, not just of areas of use, but of tenure niches: who uses the resource and on what terms?

Tenure niches are by no means simple or static. The space they cover may vary

seasonally, as when household fields after harvest become a commons where all community livestock can graze crop residues. In swidden systems, tenure niches move and rights in resources change as cultivation is undertaken at one location then moves on to other areas. Tenure niches may overlap when there are distinct tenure regimes for two resources that physically overlap, as when tenure in trees is defined independently from that in land. When two communities with different tenure systems share (or compete for) a resource, each community may project tenure over the resource, and the overlapping niches may have very different rules. Where niches overlap, conflict and competition

sometimes break out as use intensifies (Bruce, Fortmann and Nhira, 1993).

As a result of these processes of tenure development, a varied tenure landscape has evolved, with different tenure niches involving open access, common property and individual property. Land shifts among these different tenure categories over time. Population pressure and market forces may increase and decrease, and as they decrease individual property rights may give way to common property, as happened in parts of the Tigray highlands early in the twentieth century (Bruce, 1976). In other cases, farmland may be overused and degraded, and relegated to de facto open access, even where older rights are remembered and conserved for the future, as with certain hilltop lands in Guinea's Fouta Jallon (Fischer, 1995).

It is likely that the process of adaptation will mean the formalization of tenure regimes in these niches, and probably their simplification over time. What will be needed to allow this to transpire is a supportive legal and policy environment that recognizes indigenous tenure systems and allows their rules to evolve in a common law mode, largely through the settlement of disputes. Where there are glaring inadequacies (gender discrimination seems the most acute of these), carefully targeted legislation may be considered to prompt the required adjustments to national values. For the most part, however, the individuals who operate them should choose how these systems evolve, by making claims and allowing the community to mediate, working through to a social consensus on changes to the systems.

AN AGENDA FOR THE NEXT CENTURY

In recent decades there has been concern with prescribing tenures. For the early years of the twenty-first century, the focus needs to shift to the following areas.

Processes

The processes of tenure change in indigenous societies in changing environments needs to be understood better, and ways of facilitating community-initiated change, rather than change dictated from above, need to be

found. In this context, studies of indigenous dispute resolution and careful consideration of its relationship to the larger justice system are critical tasks. Similarly, a deeper understanding is needed of the ongoing development of land markets, often without legal sanction, over large areas of rural Africa and how this is affecting tenure and distribution of land. In addition, ways of working with local women must be evolved in order to help them put forward their claims for new tenure rights effectively and begin a fundamental process of social reorientation in this regard.

Tenure interfaces

It is now clear that most countries in Africa will move into the twenty-first century with some sectors under individual ownership in the Western mode and other sectors where indigenous tenure systems prevail. Recent decades have seen dramatic attempts at land-grabbing by the urban-based government and commercial élite through the process of shifting land out of the indigenous tenure category into statutory tenure systems, whether by government-granted concessions of indigenously held land over which a State title is asserted, or through registration of land purchased by the élite from those who held it under indigenous tenure systems. Adaptation will be of little significance if such processes cannot be controlled, and this implies broad political mobilization of rural people to put an end to land-grabbing. On the other hand, care is needed in selecting solutions, so that they do not themselves undermine the dynamics of tenure evolution. For example, some proposals for defensive registration of title to the community itself run the risk of converting individuals and families from alloidal right-holders to little more than tenants of the community.

Local institutions

More rigorous thinking is needed about public and private local institutions and the needs they must meet in rural society. Today, discussions of decentralization and local governance, land administration and land

tenure often become profoundly confused. These issues are not all the same and clearer definitions are required about who makes decisions in each of these arenas and how they relate to one another. If they are lumped together, the checks and balances that have existed in indigenous societies may be undermined.

These points notwithstanding, the overall climate at the beginning of the new century is positive: current thinking is less sure of final solutions, more aware of the limits of law and state action, more respectful of indigenous systems, more participatory in its methods, and more ready to accept diversity. This bodes well for the next century of tenure studies and policy.

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