

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure and Development” Technical Committee

Examples of the diversity of rights holders and rights to land and natural resources in West Africa

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‘Modern’ legal categories rarely take full account of the complexities of reality on the ground. Worse still, they sometimes lead to profound changes in social and economic relations, since providing security for one type of rights holder or issuing a particular land title (full or absolute) may negate the rights of other types of rights holders.

The three examples outlined below suggest that we should always think of land as both a private and communal resource, consider the nature of the different individual and collective actors concerned, and see them as possible rights holders who may be recognised or ignored.

This paper provides a brief and highly incomplete glimpse of the immense diversity of land rights. It describes three very different situations in West Africa: communities of nomadic pastoralists in Niger, farmers in Burkina Faso, and planters in Ivory Coast. It does not describe all the different rights that exist in each context, but gives several examples of how collective and individual rights holders co-exist, and shows how land and natural resources always have the characteristics of both common and private goods.

Nomadic pastoralists’ rights to resources

Producers in the Sahel have to contend with the huge constraints presented by the climate (poor and highly variable rainfall) and natural resources (which are scattered, heterogeneous and extremely unpredictable). Livestock rearing is the only viable productive use that can be made of semi-desert lands in these areas, and mobility is the key factor in enabling herders to optimise resource use. In these conditions, the complete or permanent private appropriation of land and resources by one community to the detriment of others

would be dangerous and counter-productive for all concerned.

The different resources and territories, rainy season areas, dry season pastures, permanent or temporary pools, saline lands, cultivated fields, fallback areas and transhumance corridors give rise to complex and diverse rights whose characteristics are linked to the various systems of production.

Certain resources—such as **home grazing territories** with their network of deep wells or permanent pools and surrounding pastures—are covered by more significant rights. Known as *ngenndi* by the Wodaabe Fulani of eastern Niger, and *akal* or *amadal* by the Tuareg, this is where these communities spend most of the year. Pastoralists may have to leave these areas from time to time, but always return with their herds for the dry season. The boundaries of home grazing territories are determined by the area used by the part of the herd that returns to the encampment in the evening (the milk producers). Resources in this area

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are appropriated, but not in a private or individual way.

Although certain wells may be covered by increasingly individualised rights, this does not mean that the holder of these rights can sell them or prevent others from accessing the well. Whether it is individual or collective, appropriation does not entail exclusive use. Access to water and pastures cannot be refused to those who need them. The community linked to the *home grazing territory* only has priority rights of access to the resources within its boundaries, and management rights authorising them to decide how and for how long its members and outsiders can access them, depending on the resources available.

This limited appropriation is accompanied by reciprocity. Thus, when members of the community go on transhumance or have to leave the home grazing territory due to exceptional conditions, they benefit from rights to access water and fodder resources on the home grazing territories of other communities.

Saline lands, where herds regularly go for salt cures and the minerals essential for their survival, are accessible to everyone and are not appropriated. After they have been cultivated, fields are left open for grazing in the dry season and various arrangements (such as manure contracts) are put in place so that several types of user can benefit from these areas.

Thus, rights are defined within the framework of an **economy of sharing**, with multiple rights holders and access negotiated flexibly according to the circumstances—not only in the pastoralists' domains, but also in spaces that they share with sedentary farming communities.

Rights to land and resources in Winye country in Burkina Faso

We will now look at an example of an agricultural society, the Winye in central western Burkina Faso, through the work done by anthropologist Jean-Pierre Jacob.

Winye society is organised at different levels in accordance with its local institutions, vision of the world and religious practices. For the Winye, appropriating land is not simply a material affair, but also involves establishing *earth shrines* and *bush shrines*.

The first level that needs to be taken into account in the analysis of land rights in this context is the **village**. In an 'indigenous' village, the possession of backwaters is evidence that its founders managed a specific territory. There is always a mechanism for managing water, and a **land chief** who has administrative rights that can be used to enforce a project that serves the general interest by limiting private rights.

The second level is the **lineage group**, which is composed of the dependents of a shared male ancestor. A shared lineage group landholding, known as a *forba*, is built up from successive land clearances undertaken by this ancestor's descendants. It includes cultivated and fallow lands, and land that is infertile or has never been put to productive use.

The third level is the **descent group**, whose members share the same mother. The chief of this group manages an individualised family landholding with plots in the village [*kātogo*] and the bush [*yoru*] (fallow), fishing enclosures, etc.

Certain fields are cultivated collectively (**grands champs**), while others are tended by individuals. Inter-generational transfers and marriage strategies may vary between villages and often bear little relation to legal arrangements.

Permanent village fields and temporary bush fields have different uses and prohibitions, with different modes of



conflict resolution and opportunities to assign temporary use rights. Their various characteristics naturally evolve over time, hence the increasing importance of bush fields as land saturation and demographic growth have taken hold.

Parcels remain part of the collective landholding, although there has been some privatisation of the means of production. Individual rights are exchanged in return for responsibilities, and users are expected to respond to requests for assistance or redistribution from the family, lineage group or village. Therefore, the systems that are in place are for **lending land**. There is still no sale-purchase market for bush lands, and very few 'modern' rental, sharecropping or security contracts, despite the development of cash crops such as cotton, and the urbanisation of certain areas.

The range of rights to access and use resources on the territory varies between communities. Certain resources can be freely accessed, such as baobab leaves during the hungry season; others, such as fish in sacred backwaters or game from collective drives are regarded as common goods; and some are accessible to holdings and individuals on a private basis. Fish in sacred backwaters are managed by collective resource management bodies. Access to resources by neighbouring communities may be authorised, and fishing by individuals is permitted, but the sale of such fish is forbidden in order to prevent this resource being over-exploited.

As in many other parts of rural Africa, it is not easy to distinguish between private and common lands and natural resources in Winye country. Collective institutions evolve, and customary rights systems are not rigid. If other

changes need to be made, it is essential to understand how rights are divided between customary institutions in order to determine how rights can be distributed in new ways that facilitate governance compatible with sustainable development.

Land rights in forested areas and plantation economies

Villagers in Affalikro (Abengourou, south eastern Ivory Coast) have established plantations with perennial crops of cocoa, coffee, oil palm and rubber; food and annual crops such as yam, rice, maize, groundnut, okra and plantain; and also rear small livestock. The indigenous *Agni* live alongside the *Baoulé* and migrants originating from Burkina Faso and Mali.

The customary rights held by indigenous villagers are passed down from one generation to the next. According to customary rules, rights to communal land are not transferred to children, but to another member of the community; while family lands are passed on to offspring (male or female, married or unmarried), but are not distributed individually among them. However, a family member can ask for land to establish a personal plantation, in which case, rights to this land will be transferred when the previous rights holder dies.

Because investments in a plantation economy have a long life cycle, it can be difficult for planters who want to extend their plantations to find parcels on village territory.

There has been a recent upsurge in one form of access to land, with individual rights holders (indigenous or incomers) selling old plantations or fallow land to those with sufficient



Ghana, Agriculture in forested areas © Michel Merlet

means to establish a plantation. The nature of this type of contract is determined by both parties concerned.

Other modes of temporary assignment of use rights include short-term rental for food production in return for rent paid in cash or kind. Long-term rental is rare, as sales are considered preferable.

Analysis of the sale of rights in Affalikro shows that it is unusual for all rights to be sold, even when the transaction leads to a plantation being established. Transfers are not usually permanent, and the rights purchased are in some way guaranteed by productive use of the land. In these situations, if the plantation ceases to exist, the vendor can recover the land to which he has sold the rights. People say that the transaction relates to the unit of production rather than the land itself.

There are some contradictions between the ancestral customary rights holders' desire to retain their management rights and the planters'

need to see their investments secured, and their interest in being able to transfer these rights freely.

The law of December 1998 allows customary rights to be transformed into absolute ownership rights. This can be done in two stages, by issuing villagers (male or female, indigenous or incomer) with land certificates that can then, under certain conditions, be transformed into land titles. Detailed analysis of the nature of the pre-existing rights is required in order to understand the extent to which the new legal arrangements take them into account, how they change them, and whether these changes are superficial or radical.

In conclusion

The systems of rights currently in force vary greatly from region to region, and can also differ significantly within the same area or even the same population, depending on the village and the history of access to land, population density and factors specific to the locality.

This leads to very diverse combinations of rights and modes of land and natural resource governance.

FOR FURTHER INFORMATION

- >> CHAUCHEAU Jean-Pierre, *La réforme foncière de 1998 en Côte d'Ivoire à la lumière de l'histoire des dispositifs de sécurisation des droits coutumiers, Proceedings of the symposium held in Montpellier, 2006.*
- >> HABOU Akilou, MARTY André, ANY Issoufou, YOUSSEF Ibrahim ag., *Les régimes fonciers pastoraux. Etudes et propositions*, FIDA, Permanent Secretariat for the Rural Code of Niger, IRAM, 1990.
- >> JACOB Jean-Pierre, *Terres privées, terres communes. Gouvernement de la nature et des hommes en pays winye*, Burkina Faso, IRD Paris, 2007.
- >> LE ROY Etienne, KARSENTY Alain, BERTRAND Alain, *La sécurisation foncière en Afrique. Pour une gestion viable des ressources renouvelables*, Karthala, Paris, 1996.
- >> THEBAUD Brigitte, "Droit de Communage et Pastoralisme au Sahel", In *Politics, Property and Production in the West African Sahel*, Eds Benjaminsen and Lund, Nordiska Afrikainstitutet, Sweden, 2001.
- >> THEBAUD Brigitte, *Foncier pastoral et gestion de l'espace au Sahel*, Karthala, Paris, 2002.

Other teaching notes directly related to this topic

- >> COMBY Joseph, *Overlapping land rights in Europe.*
- >> MERLET Michel, *Rights to land and natural resources.*

Applying standard legal norms based on simplistic criteria will have very different effects on these diverse rights holders, and will often result in resources being redistributed, in ways that are far from transparent for all the actors concerned.

In-depth analysis of the components of rights, as described in the paper, *Rights to land and natural resources*, can be helpful in identifying and evaluating these effects, and could certainly contribute to the formulation and implementation of more fitting legal reforms. ●

ORIGINAL VERSION IN FRENCH "Diversité des ayants droit et des droits sur la terre et sur les ressources naturelles en Afrique de l'Ouest : quelques exemples, translated by Lou Leask.

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