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Reforming Land Rights in Sub-Saharan Africa: An Issue of Efficiency and Equity

1. Introduction

The basic idea underlying Structural Adjustment Programmes is that adjustment should involve not only the introduction of better macroeconomic management policies (implying a more effective regulation of aggregate demand) but also the carrying out of structural reforms aimed at creating more incentives for economic growth. What these structural reforms precisely amount to is not always clear, yet there is no doubt that privatisation of public assets is the outstanding component of the structural reform package. For the agricultural sector, emphasis is generally put on privatisation of marketing boards and other distribution parastatal agencies on the ground that they are inefficiently run and impose unfavourable terms of trade on the peasantry. What the ownership status of rural land assets ought to be is a complex question that is less decisively answered, even though the dominant view untiredly lays stress on the efficiency advantages of duly formalised private property in land. In this paper, we would like to reflect upon this issue in the specific context of Sub-Saharan Africa (SSA), a continent characterised by major macroeconomic problems, low overall economic growth and poor agricultural performances.

Till the beginning of the seventies, the attention of land reformers was almost exclusively focused on Latin America and Asia while Africa was commonly considered as a "special case" that did not need to cause worries owing to her abundant land endowments. It is true that SSA did not know of private property rights in land, yet this did not really matter since, as long as communally-owned resources are abundant, the absence of such rights cannot have serious consequences. Indeed, the main argument put forward by upholders of the so-called Property Rights School is that "a primary function of property rights is that of guiding incentives to achieve a greater internalisation of externalities" (Demsetz 1967: p. 348). Richard Posner expressed the advantage of private property rights in a less abstract way: "The proper incentives (for economic efficiency) are created by the parceling out among the members of society of mutually exclusive rights to the exclusive use of particular resources. If every piece of land is owned by someone, in the sense that there is always an individual who can exclude all others from access to any given area, then individuals will endeavor by cultivation or other improvements to maximize the value of land ..." (Posner 1977: p. 10)

What needs to be emphasised is that, when land is plentiful, to maintain communal rights (in the sense of general rights to use a resource that fail to include the right to exclude others from using it except by prior and continuing use) makes good economic sense since the gains of internalisation remain necessarily small compared to the costs: externalities are of such small significance that it does not pay anyone to take them into account. In other words, "there is no positive value to society of creating clearly defined property rights in land" (Johnson 1972: p. 271), especially because the costs involved by the enforcement of these rights are high when rural dwellers are highly scattered due to low population density (a description which perfectly fits the case of SSA).

However, so the argument continues, when there is growing competition for the use of land as a result of population growth and/or increased commercialisation of agriculture in the wake of market integration, communal ownership becomes unstable and produces harmful effects in the form of mismanagement and/or overexploitation of the now valuable resource. Efforts at husbanding and conserving it are discouraged and potential social benefits are lost. To remedy this situation, property-rights theorists argue, one needs to create freely tradeable private property rights in land since the gains of internalisation have become greater than the cost. During the eighties, some authors have applied that line of argument to SSA and expressed the view that there is a fundamental discrepancy between existing land tenure arrangements that reflect a long tradition of extensive usage of land and the requirements of output growth in the context of an emerging intensive agriculture. Thus, we would hear that SSA is in need of "a genuine land reform" (Giri 1983: p. 271) and that many African countries require "a total redrafting" of their land laws which have become "inconsistent and ill-adapted to the actual situation in the field", as well as a whole machinery of a formalised land legal framework to establish private rights in land and facilitate their exchange (Falloux 1987: p. 199). In short, nothing short of a drastic alteration of customary land rights under the aegis of determined public authorities is likely to offer a viable solution to output losses resulting from the above-described misfit (see also Lewis 1955: p. 121; Ault/Rutman 1979; Gourou 1991: p. 156).

At this preliminary stage, the concept of communal or corporate ownership which is often used to characterise land tenure arrangements in SSA needs to be precised. Essentially, communal ownership or tenure means that there exists a corporate entity (the tribe, the village, the lineage, the extended family) acting as a joint ownership unit. This implies that the collective territory of a rural community is actually regulated by an authority which decides the allocation of the available lands, distributes land use rights to the member families, determines the uses to which the land is put, supervises land exchanges (by the way of explicit approvals), litigates land-related problems, etc. In most of the cases, the territory is divided into several portions according to the nature of the land rights defined over them. At one extreme, we find the village commons which are open to all members of the community and, at the other extreme, there are the lands which are privately held by individual rightsholders.

There are thus two central questions that need to be raised in the light of the aforementioned doctrine about the need for a radical privatisation of land rights in Africa. The first question relates to the former category of lands and asks whether village-level common property resources (CPRs) ought to be privatised. It is addressed in section 2 of this paper. As for the second question, it refers to the latter category of lands and asks whether the increasingly individualised rights which farmers hold on their agricultural lands need to be formalised by a state authority and whether their free tradeability should be actively encouraged. In other words, should these rights be made the object of a full-fledged privatisation programme? This question is tackled in section 3. Section 4 is a conclusion that draws the main policy implications of the analysis proposed in the previous two sections.

2. Common property arrangements: an institution of the past?

2.1 Some theoretical considerations

What needs to be stressed with respect to the two aforementioned land categories (and all the intermediate categories which are ignored for the sake of simplicity) is that, in SSA as in other tribal or lineage-based societies, possession of land is personal and statutory in the sense that access to a portion of the communal resources is mediated through membership in a social group. In fact, the relation is reciprocal: on the one hand, group membership is the basis of social rights which include access to land as a means of ensuring one's subsistence (such guaranteed access is therefore an insurance mechanism) but, on the other hand, maintaining access to a share of the corporate productive assets serves to validate membership in the group (see, for example, Berry 1984: p. 91).

Regarding the commons, the above feature is obviously important since it helps distinguish between situations of open access (*res nullius*) in which a right of *inclusion* is granted to anyone who wants to use the resource on the one hand, and situations of common property (*res communis*) in which the right of *exclusion* is assigned to a well-defined group. Conceptually, this makes a significant difference (see Baland/Platteau 1995, chapter 2 for a recent, more elaborated presentation). Under an open access regime, the users of a resource do not take into account the fall in others' incomes which is caused by their entry when they privately evaluate their net expected profits: as a result, they impose an externality upon the other users and an economically inefficient situation ensues. Moreover, the dynamic consequences of present decisions are completely disregarded because each user follows a myopic rule which simply consists of comparing the average instantaneous subtractable flow he can draw from the resource with the cost he has to incur to effect that subtraction (which can be thought as the only price of entry under open access conditions). Under common property, by contrast, the users do not any more think that the final outcome is independent of their own individual decisions. They instead expect that their action will induce a particular reaction from the other users and, thereby, affect the collective result. Economists characterise such a situation by saying that the agents interact *strategically* with each other. The decision rule followed is no more the above myopic rule but a more sophisticated mechanism such as that described by the Nash equilibrium concept.

Does this mean that, because there is a well-defined social unit that owns the common property resource, its use can be as efficient as under private property, as is sometimes believed? Not necessarily. In fact, if the group of the CPR users is well-defined but all of them are free to behave as they wish with regard to the resource (a regime that Baland and myself have chosen to call 'unregulated common property'), the answer is negative. In these conditions, the following two propositions hold true. First, the use of the CPR is more efficient under unregulated common property than under open access, yet it is also less efficient than under a single (private) owner regime. Second, if the size of the rightsholding group is large, the degree of relative inefficiency of common ownership compared to private property is also large because the users are less able to take into account the negative consequences of their actions on the overall productivity of the common property. At the limit, if the number of CPR users in the group tends to infinity, the inefficient outcome obtained under common ownership is the same as under open access.

In other words, there is a noticeable difference between a situation characterised by a single private owner and a situation of collective ownership *as long as owners under the latter system make their resource use decisions in a completely decentralised way.* This last qualification is obviously essential since, if the CPR co-owners are able to concert among themselves and to act in a corporate fashion to regulate the use of the resource, the conceptual difference between a single private ownership situation and a (regulated) common ownership situation vanishes: the externalities are completely internalised and the efficient outcome is achieved both statically and dynamically. All the above theoretical results are intuitively plausible: when a set of individuals behave as though they were a single decision-maker, the decision which they reach together cannot differ from the one made by a unique private owner while, at the other extreme, if their number is fixed but very large and if they act in an uncoordinated fashion, their situation resembles the open access predicament. In between these two polar cases, we find situations in which resource users, by acting strategically, succeed in reducing yet not eliminating the efficiencies inherent in the open access regime.

2.2 Failure of state ownership of local-level CPRs

State property is, of course, another possibility. Conceptually, it belongs to the aforementioned regulated common property regime, even if the regulating agency is much larger and of another kind than the village community. All throughout SSA, this solution has been widely resorted to. This is worth illustrating with the help of a few examples. To begin with, the state of Mali took over

control of all resources at independence in 1960 and "in the process supplanted the authority of local groups to regulate access to and use of local resources" (Lawry 1989a: p. 4). In the Niger River Delta, this has actually meant that the traditional grazing – control system known as the *dina* – whose political basis had already been eroded under French colonial rule – came to an end and, together with it, Fulani hegemony in the area on which it was based (ibidem). A similar shift in the locus of resource control took place in the fishing sector since fishing groups were divested of their traditional rights over local fisheries. All waters entered the national domain of state property and customary dues received by local water masters were replaced by state taxes imposed on all operating fishermen irrespective of their ethnic origin and place of residence. Outsiders thus obtained legal free access to the waters of the Niger River Delta provided that they meet their fiscal duties vis-a-vis the new independent state (Jeay 1984; Kone 1985). It may be noted that, in this case, the Malian state has gone farther in the way towards centralisation than French colonial rulers since the latter recognised customary rights of local communities and tribes over well-delimited, small water bodies. What they ignored, and sometimes actively opposed, by contrast, were rights over large and more or less open water spaces. They indeed adhered to the so-called Grotius doctrine according to which the sea may not be the object of any appropriation because it is inalienable by nature and because the abundance of fish resources actually deprives exclusive access rights of any positive value (see, e.g., Christy 1983).

In the Sahelian countries, in general, forestry management under independent governments has been more in the line of colonial policy than inland water management. The French West Africa forest service was established in 1935 and charged with overall responsibility for managing the woodstock. Following metropolitan French forestry tradition, the forestry department in West Africa was granted relatively extensive controls over the exploitation of the woodstock not only inside but also outside national domain lands. Accordingly, "small forestry agencies were set up by French administrators in each colony to implement central policies elaborated through a bureaucratic process and imposed through the colonial administrative hierarchy" (Thomson/Feeny/Oakerson 1986: p. 399). The new legislation introduced far-reaching changes in the regulation of woodstock use. First, state forests were created which were subject to exclusive forest service control concerning woodstock and land use. Second, and much more importantly, "this legislation centralised the forestry service's authority to regulate the exploitation of the 15 most valuable species of trees outside, as well as inside, the state forests". For example, cutting live specimens, or lopping branches above the height of 10 feet were prohibited without prior authorisation (which could however be obtained free from the forestry service if trees were destined for personal use) or without a cutting permit (which was sold to holders if the wood was to be harvested for sale).

Essentially, independent governments of West Africa inherited the centralised approach of their colonial predecessor by maintaining the institutional framework contained in the French forestry code (ibidem: pp. 399–400). As pointed out by Toulmin, current forestry legislation in the Sahel relies heavily on direct state regulation of how trees and their products can be used by local people and forest codes "consist largely of lists of restrictions or prohibitions on forest use, with permits issued by the forest service for certain allowable activities" (Toulmin 1991: p. 27). Moreover, "Even trees on farms are subject to such restrictions and farmers must pay for a permit before cutting or using a tree that they themselves have planted. Community-based management of forest resources is also not allowed for within these codes, or is permitted only in terms of increased restrictions on use." (ibidem)

Just consider the case of Mali whose Forest Code is typical of forestry legislation in the Sahel and is not markedly different from the first code promulgated by the French in 1935. The area of general jurisdiction of the Forest Code is the 'forest domain' which actually comprises as much as 90 percent of the total land area of Mali. (Cultivated land which has been left fallow for more than five years is considered part of the forest domain). Moreover, all protected species listed in the code (including *Acacia albida*, nere, and karite, three of the most common and economically important tree species in Mali) are protected wherever they occur in the country, even within cultivated fields (Lawry 1989a: pp. 13–4). In the Sahelian zone, uprooting or cutting of trees or bushes in order to provide animal feed is forbidden while cutting of branches less than 1.5 m from the ground is prohibited. "These restrictions apply to all species of tree, native and exotic, and all trees occurring on individual holdings." (ibidem: p. 13)

Subsistence cultivation and grazing are permitted within the so-called 'protected forests' (a territorial unit defined within the forest domain) while they are strictly forbidden in the 'périmètres de restauration' (another territorial unit corresponding to areas undergoing planned reforestation or considered in need of special protection) and forbidden except in special circumstances and under controlled conditions in 'forest reserves' (a third territorial unit in the forest domain classification). Individuals collecting wood, including fuel wood, from the forest domain for commercial purposes must secure a permit from the forest service. On individual holdings, listed species may not be harvested unless the farmer has obtained a permit which is however free. By contrast, collecting deadwood in 'protected forests' for domestic use does not require any permit (ibidem: p. 14). "Those who violate rules, including those who fail to secure a free permit, are subject to citation by forest agents and payment of fines". Permit fees and fines are important sources of forest service revenue, part of which is distributed as commissions to Forest Service personnel.

In SSA like in Asia and Latin America, state ownership and centralised management of village-level natural resources have produced disappointing results. One of the most intractable problems with this form of ownership is an information problem. As a matter of fact, given the great diversity of resource types, it is difficult to establish straightforward management prescriptions that can be widely followed. Also, no government agency can know local realities in

sufficient detail to conceive of valid solutions to the highly differentiated ecological problems that arise at village level (Arnold/Campbell 1986: p. 442; Dasgupta/Mäler 1993: p. 24). This actually applies with special force to tropical areas where the number of species available (in the forests, in the ocean, etc) is considerably larger than in temperate climatic zones. Here, it seems, the government is at a clear disadvantage compared to the historic users who can be expected to possess extensive knowledge of local resources and constraints.

It must be added that monitoring and enforcement of government rules are made particularly difficult by the combination of the above-noted diversity of ecological conditions and the wide dispersion of African rural populations. For example, effective government supervision of innumerable patches of forest scattered through remote villages, often not easily accessible, is almost an impossible task. An important consequence of such a situation is that state property is likely to degenerate into a *de facto* system of open access. Thus, one Malian official from Mopti characterised the situation in the Niger River Delta "as empty of any institutional or tenurial basis for resource management and control" (Lawry 1989a: p. 5). From this perspective, the 'emasculation' of local organisations, wherever they existed, appears to be a tragic outcome. Thus, with reference to woodstock management in the Sahel, the following has been observed: "As it happened, most villages had lost their power of independent activity as the result of efforts of both the colonial and independent regimes to establish controls over major forms of organisation in rural areas. Villages (or quarters within them) had no authority to enforce sanctions against violators of locally devised use rules. In practice, few such rules appear to have been made." (Thomson/Feeny/Oakerson 1986: p. 399) A similar phenomenon has been noted with respect to fishing in the Niger River Delta: "Because of the limited extent of traditional village lands, the fisherman passed from a minuscule jurisdiction to a larger jurisdiction, with the resulting weakening of traditional control structures without the practical operation of a substitute control system." (Kone 1985: p. 100)

2.3 Privatisation of local CPRs: the limits of the case

The lesson from the foregoing account is clear: nationalisation of local natural resources is not advisable and, where this regime has been established, there is good ground for calling it into question. In other words, de-nationalisation of village CPRs seems to be unavoidable. Yet, before such a step is taken, the question has to be raised whether there is an ownership regime that may prove more efficient than state property and management and, in particular, whether de-nationalisation should be made in favour of privatisation in the sense of entrusting private ownership rights to individuals.

This question is complex and cannot be addressed in detail in this paper. Since I, together with Baland, have probed into it in a forthcoming book (Baland/Platteau 1995: chap. 3 and 8), I will be content in the following with mentioning some of the main points that must be kept in mind while discussing the privatisation issue. The first point is evident: private property rights may be very costly to establish and to enforce. This may be due to two reasons. For one thing, the characteristics of the resource may make it difficult or even impossible to privatise, as illustrated by maritime open-sea fisheries (especially if there are migratory species of fish). All resources are obviously not as difficult to privatise from a technical standpoint as maritime fisheries: this is attested by the case of village pastures which have been largely privatised under the pressure of land scarcity (due to high population growth) in a country like Rwanda. For another thing, the resistance of villagers against the (sudden) privatisation of local commons that have been in the collective patrimony from times immemorial is liable to cause high enforcement costs, particularly so if the distribution of local wealth is affected or if a high symbolic value is attached to the CPR concerned (say, because the territory is thought to be the abode of ancestors).

A second thing to note is that privatisation may create new externalities: this happens, for example, when the privatisation of an irrigation system through the development of private tubewells leads to an overexploitation of underground water, admittedly because private property rights in this resource are too costly to define. The third point draws attention to the fact that the case for privatisation is often made as though all markets (including forward markets) were not only existing but also perfect and competitive. That absent markets tend to make the problem of privatisation appear under a less favourable light has been recently emphasised by Seabright (1993). This becomes evident when the implicit contracting aspects of traditional CPRs are brought to light: the users' entitlements and obligations are too complex and interlinked to be written in a formal contract and, moreover, they require reasonably long time horizons to work effectively. And yet, implicit aspects are important because they induce informal cooperation among the users. According to Seabright, therefore, privatisation with tradeability of private property rights may undermine the reliability of those cooperation arrangements. This is not only because "it is difficult to frame formal contractual rights so as to safeguard traditional entitlements", but also because privatisation weakens the credibility of long-term contracts and suppresses the kind of interdependence and reputation effects that are conducive to informal cooperation practices. In particular, if sale of assets is possible, the incentive of customary users to invest in a personal relationship and to cooperate with the new private owner is dampened since there is no way the latter can credibly commit himself to sustain these 'relationship-specific' arrangements (Seabright 1993: pp. 124–9).

The absence of insurance markets creates a need for substitute non-market arrangements. Village CPRs can precisely serve the function of a risk-pooling device and this role may well turn out to be crucial under certain circumstances, like when the resource itself is subject to wide spatial variations in yields, such as grazelands. "For example, in the tropical and subtropical rangelands of the Sahel and East Africa rainfall varies considerably from year to year. But, more importantly, rainfall is unevenly distributed over an area in any given year. Rain is usually produced in this region by individual storms creating narrow rainfall paths with inter-storm areas remaining quite dry. In parts of Kenya, these storms rarely exceed five kilometers in width and are normally less than one kilometer wide. As a result of this pattern of rainfall, a traveller on horseback during a single day in the rainy season can easily pass trough several spots that are saturated with water and full of grass and others that have not received any rainfall. The proper utilisation of such pastures requires that livestock producers have the freedom to move animals over a large area in order to efficiently use available forage resources. Masai herders in East Africa must have access to between 120,000 and 200,000 hectares of rangeland to be able to cope with this situation." (Gilles/Jamtgaard 1981: pp. 132–3; see also Wiessner 1982; Cashdan 1985; Wilson/Thompson 1993: pp. 305–6)

It is easy to show formally that, when a CPR is divided into a number of portions (say, grazing areas) within which a given risk (e.g. the risk of rainfall fluctuations) is evenly distributed while this risk varies significantly across these different portions, the individual risk borne by anyone who has access to the whole CPR territory falls as the number of portions increases and as the correlation of risk across the portions decreases. However, contrary to a view commonly held, risk considerations alone are not sufficient to explain why private property should be inferior to common ownership. For instance, one could think of parcelling out the entire grazeland into small, appropriately scattered pastures so that, by possessing a large enough portfolio of them, each herdsman can be effectively protected against the risk of income shortfalls. If such an alternative is not feasible, it must necessarily be because costs of enforcing private property rights are too high relative to the land yields. In other words, it is only insofar as they are combined with high enforcement costs and low resource productivity that insurance motives can make common ownership more desirable than private property. Alternatively, one could think of bringing the entire grazeland under the private ownership of a single owner who would then lease out grazing rights to the herdsmen. In this case, the comparative inefficiency of private property is to be explained by the combination of the monopoly argument and risk-pooling considerations (risk minimisation implies the creation of a monopoly).

My last point is to do with equity considerations but is somewhat directly related to the problem of absent or imperfect markets. Thus, because credit markets are imperfect, if local-level resources are sold by the state, those having a privileged access to credit (or to any form of capital) are more likely to become private owners. This outcome may be all the more serious for the village poor as access to local CPRs is often an informal security mechanism whereby they can survive in times of stress. In the words of Dasgupta/Mäler, local CPRs "provide the rural poor with partial protection in times of unusual economic stress. For landless people, they may be the only non-human asset at their disposal" (Dasgupta/Mäler 1993: p. 19). The importance of this consideration in the context of SSA ought not to be underestimated: some authors actually think that access of community members to local CPRs as a mechanism of last resort's employment is perhaps more dominant than anywhere else (Freudenberger/Mathieu 1993: p. 12).

An interesting question to ask is then the following: assuming that enforcement of private property rights in village CPRs is costless and that all markets are perfect and competitive so that the competitive private property equilibrium Pareto-dominates unregulated common property, will the dispossessed traditional rightsholders lose from the private appropriation of the CPR if no reliable system of transfers is available to compensate them for the loss of their customary access rights? On the surface of it, the answer to that question is unmistakably positive. This needs not be so, however. As a matter of fact, since the resource is now efficiently managed, is it a priori possible that the marginal productivity of labour increases in such proportions that the former users, now working as wage earners for the new CPR private owner, actually gain from privatisation. The question is also valid in the case where the property rights in the CPR would be sold competitively by the state and the former users would become the private owners of the resource, it being understood that the proceeds of the sale (which represent the discounted sum of the rents which an efficient use of the resource will yield over time) are siphoned off by the state.

The above question has been actually raised by Weitzman (1974) in a celebrated article (see also Cohen/Weitzman 1975: pp. 311–3), and the answer is that the former CPR users will unambiguously lose from this shift in property rights. Even though the proof provided by Weitzman is (unnecessarily) complicated, the underlying argument is rather simple and can be easily described with the help of a standard diagram, as is shown below. Assume that the average product, AP, is decreasing in the variable factor, L (this is indeed the classical situation where the tragedy of the commons arises). Thus the marginal product of the variable factor, MP, is also decreasing and, for each level of L, $MP(L) < AP(L)$. Let us draw the supply curve of the variable factor, S(w), where w stands for its market price, and assume that $S'(w) > 0$. Then we can draw the following diagram:

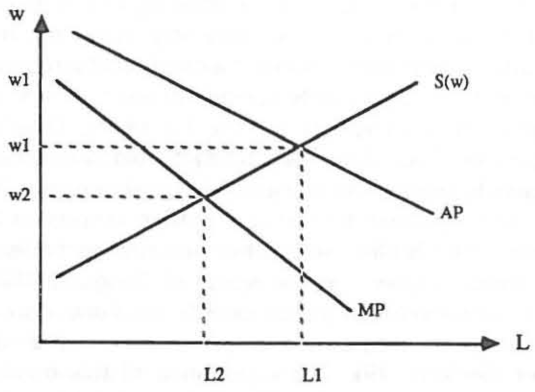

Figure 1: The welfare impact of privatisation of a village CPR

In an open access situation, we know that the variable factor is remunerated at its average product, w_1, while, in the competitive situation, it is remunerated at its marginal product, w_2. It is evident from the graphical analysis above that $w_2 < w_1$, $L_2 < L_1$, and $w_2L_2 < w_1L_1$. This is precisely the conclusion reached by Weitzman: the remuneration of the variable factor falls. It must nevertheless be noted that Weitzman actually compares open access (OA) to private property (PP), i.e., the no-rent to the maximum-rent situation. Using the same diagram, it is simple matter to extend the argument to unregulated common property (CP). Indeed, we already know that $w(CP) \geq w(OA)$. From the above, we also know that $w(OA) > w(PP)$. Therefore, $w(CP) > w(PP)$.

The practical implication of the foregoing analysis is, in the words of Weitzman, that "there may be a good reason for propertyless variable factor units to be against efficiency improving moves (...) like the introduction of property rights (...) unless they get a specific kickback in one form or another" (Weitzman 1974: p. 234). It is indeed striking from Weitzman's proof that former resource users lose not only in terms of employment but also on account of reduced individual labour earnings. This lesson is to be taken all the more seriously as, in many circumstances, customary CPR users do not get their traditional access rights properly recognised and are excluded from the CPR with no compensation. Such is not always the case, however, as attested by the experience of Rwanda where the village common pastures have been gradually individualised (there are no formal private property rights) in a relatively egalitarian manner (see supra).

2.4 The essential role of village communities and user groups

It is now the time to attempt to draw policy conclusions from the above inquiry. Under certain conditions, privatisation of local-level resources is feasible at relatively low enforcement costs and, when population pressure and/or increased commercialisation of natural products have led to rapid degradation of the CPRs, there may be a good case for privatisation, especially if the shift to this new property regime does not alter too much the distribution of wealth (so that no resistance can be expected from the actors concerned). Yet, it bears strong emphasis that privatisation of local CPRs offers no guarantee that degradation will stop (assuming that the process is reversible), as is too often automatically assumed. Indeed, private users may be led to overexploit their private share of the former CPRs for a variety of significant reasons. They may heavily discount their future incomes, especially if they are hard-pressed by subsistence constraints. They may (rationally) wish to deplete the resource because they have available to them other, more lucrative, investment avenues in which they would like to plough back the incomes earned from the CPR exploitation. They may feel uncertain about the future price that the produce from the resource will fetch on the market or even about the impact of their use behaviour on the stock of this resource (Pagiola 1993; Baland/Platteau 1995: chap. 1, p. 12). There is actually much evidence from Asia and Latin America that the aforementioned possibilities are real enough to deserve serious consideration.

A clear illustration is provided in Jodha's study of India's dry regions. As a matter of fact, the critical importance of CPR resources for the poor is reflected in the fact that, when these resources were privatised, they have been exploited with increased intensity compared to the pre-privatisation period. More specifically, CPRs in these areas typically consist of submarginal lands that can be sustained only under low intensity uses (e.g. natural vegetation as against annual cropping). However, in most cases, these submarginal/fragile lands have been shifted to crops following privatisation with the result that not only their sustainability is jeopardised but also their ecological function in the total dryland system is undermined (Jodha 1992: pp. 62–3).

There are clearly circumstances in which, contrary to what has just been assumed, the enforcement costs of privatisation are so high that it is simply not feasible. Since state ownership and management of village-level natural resources have such a poor record of success in the many instances where they have been tried, they do not represent a viable alternative to private property rights. We are thus left with the solution of community property. Here, we have drawn attention to the fact that a decentralised functioning of a well-defined social group tends to produce a sub-optimal outcome and that the inefficiency in the use of local CPRs will be great if the number of rightsholders is high. At least, this is so if we assume that villagers behave in a completely independent manner in a context of anonymous relations. Such an assumption is obviously too restrictive, especially with respect to small communities whose members have frequent and highly personalised relationships which guarantee that they are well informed about each other's actions and preferences and that they will have a strong incentive to consider the indirect and long-term consequences of their choices. In the context of such small groups, reputation effects can thus ensure a decentralised discipline that drives the members to take into account the negative impact of their actions for the others. This is all the more so as people can easily communicate with one another and therefore signal to the other resource users their willingness to cooperate with a view to achieving an efficient use of the CPRs (Baland/Platteau 1995: chap. 4, 5, 7, 12).

This being said, allowance ought to be made for the possibility that resource users accidentally deviate from their collectively rational behaviour, or that they subvert decentralised monitoring and punishment mechanisms through manipulation and deceit. The latter outcome may be a direct consequence of a well-known disadvantage of small groups, namely that highly personalised relationships create a fertile ground for strong negative feelings such as envy and rivalry that can easily lead to group implosion. To counter these threats, a group needs to organise itself, which implies that it lays down explicit rules of use and establishes monitoring and punishment mechanisms to ensure their

proper enforcement. Empirical evidence actually confirms that village-level management of local CPRs is frequently grounded in monitoring and punishment mechanisms that are not self-enforcing (Baland/Platteau 1995: chap. 12). As a matter of fact, one often finds in African villages that authority structures exist that serve the function of ensuring that rules of access to, and rules regulating the use of, CPRs are not violated by potential users. They resort to a variety of monitoring devices and punishment mechanisms going from the issuing of warnings to the imposition of fines and more or less severe forms of ostracisation. In other words, in many instances, user groups do not (entirely) rely on purely decentralised mechanisms of monitoring and sanctioning: voluntary compliance and spontaneous initiatives for the detection and punishment of rule violators are not deemed sufficient and this is why there is a recourse to a central enforcing agency (be it a village chief, a council of elders, or any other kind of authority recognised by the CPR users).

Of course, community schemes for CPR management are not a panacea that can solve all the problems. That they may fail is evident from a number of historical experiences, such as the disappearance of communal pastures in a country like Rwanda or the large-scale deforestation of some Sahelian areas. Failure tends to occur when communities with the required internal cohesion and authority or leadership patterns do not exist, either because they have never been there or because they have gradually dissolve under the impact of rapid population growth and increased market integration. Market integration, in particular, can prove a destructive force owing to the individualising propensities which it tends to foster through its various side-effects, such as increased geographical, social and economic mobility, diffusion of materialistic values, etc (for more details, see Baland/Platteau 1995: chap. 11). Adopting a pragmatic attitude that avoids any kind of romanticism does not, however, imply that the right attitude about the community approach to CPR management is one of scepticism. There is indeed a sufficient number of experiences that converge to show that, even though the ideal conditions are not fulfilled for effective collective action at user group level, outside assistance can possibly redress the situation by fostering small user groups (nested, if needed, into larger, more formal structures), building the necessary trust through a gradual, problem-solving approach, creating more awareness about ecological issues, promoting local leadership, and so on (see, for example, Bromley/Cernea 1989; Ostrom 1990).

Finally, to argue for a user group-centered approach is not tantamount to asking for a drastic retrenchment of state responsibilities in resource management. In many important cases, the issues involved are too complex and the limitations of the user groups too serious for considering a solution in which these groups would be the only actors. What is actually needed is a reshaping of state interventions so as to institutionalise collaboration between the administration and the direct resource users and to end those unproductive situations where they are pitted against one another as antagonistic actors in the process of resource regulation. Nowadays, there seems to be a clear trend towards what is sometimes called a co-management approach where the state and the resource users are called to work together in a complementary way that makes maximum use of their respective strengths (see, for example, Lawry 1989b; Baland/Platteau 1995, chap. 13).

3. Should individualised land rights be formalised?

3.1 The statement of the problem

The view according to which SSA suffers from a serious discrepancy between existing land arrangements and the institutional requirement of intensive agricultural growth is misleading in so far as it may convey the idea that land tenure arrangements in SSA are essentially static. Quite the opposite appears to be true. Indigenous land practices evince considerable flexibility. In effect, growing population pressure and increasing commercialisation of agriculture, particularly since colonial times (when commercial crops such as oil palm, cocoa, coffee, cotton, groundnuts, etc. have been introduced), have given rise to gradual but meaningful changes in land tenure practices in the direction of enhanced individualisation of tenure[1], larger incidence of land sale transactions (first disguised, then increasingly in the open), increased use of money in connection with land loans, and a shift from matrilineal to patrilineal inheritance patterns (Meek 1949; Hill 1963; Boutillier 1963; Raynaut 1976; Cohen 1980; Berry 1984; Noronha 1985; Coquery-Vidrovitch 1985; Bruce 1986; Pingali/Binswanger 1986; Feder/Noronha 1987; Robertson 1987; Downs/Reyna 1988; Bates 1989; Atwood 1990; LTC 1990; Migot-Adholla et al. 1991; Platteau 1992; Mackenzie 1993; Roth 1993; Lawry 1993; Saul 1993; Bassett 1993a, 1993b).

During colonial times (and even before their advent in a few localised areas of high population density), increasing emphasis has been put on individual (or family) appropriation of land for exclusive use; rules of inheritance have evolved towards a more and more direct transmission of land between father and sons and, as a result of the increasing individualisation of land tenure, the younger members of the village groups or communities have started to emancipate themselves (albeit rather slowly) from the elders' authority. Moreover, customary modes of land transfers through gifts, exchanges, loans, renting, pledges or possessory mortgages have intensified whereas sales of land, though often redeemable to the seller, have begun to take place running counter to one of the most deep-rooted customary limitations on land use. At first, sales were sanctioned only among members of the group (of common descent or residence), later to outsiders with approval of the group or its head, still later without such consent (Bruce 1986: pp. 38, 40). In addition, sales may be initially subject to a right of preemption by family members or to a right of repurchase

1 By individualisation is meant "a reduction of community controls over land use and distribution, enhancing the rights of the individual landholder/farmer" (Bruce 1986: p. 52).

by the seller (Bruce 1993: p. 42). Note that, with greater integration of rural areas into the market economy and accentuating population pressure, the above modifications in African customary land tenure arrangements have tended to accelerate during the postindependence period, often in spite of the formal land laws enacted by the state (particularly so with respect to land transfers)[2].

Upholders of the 'static' view have ignored or downplayed the dynamic potential of indigenous African land systems partly because they have failed to see that individual tenures can exist under a general system of corporate ownership; that communal arrangements are genuine multitenure systems with different land uses calling for different tenures; and that land-use rights, most often to a specific plot of land, are held by individuals or households (Boserup 1965: p. 85; Cohen 1980: p. 360; Bates 1984; Noronha 1985: pp. 181–95; FAO 1986: Main Report, chap. 4, para. 4.87; Bruce 1986: pp. 4, 28–9; 1993: pp. 35–9; Feder/Noronha 1987: pp. 158–9; LTC 1990; Atwood 1990: p. 661; Bruce 1993: pp. 35–9; Bassett/Crummey 1993). Such systems are flexible enough to allow the proportion of lands held under relatively well-secured rights of individual possession to increase as the need arises for agricultural intensification and the accompanying long-term investments[3].

In brief, African tenure systems appear as dynamic arrangements which have come to recognise increasingly individualised rights for individuals and households under the pressure of rising land values. Therefore, "they can best be thought of as systems in which individual rights are maturing" (LTC 1990: p. 1). In the words of Bruce, the changes that have taken place have often not required radical revision of older tenure arrangements nor have they often involved a

2 Thus, in a country like Kenya where land hunger was pronounced due to white settlement, land markets had existed in many areas as early as the 1930s, although sales were redeemable to the seller (head or representative of descent group) upon repayment of the original price. Yet, by the end of the colonial period irredeemable land purchases began to emerge entailing a shift from clan rights to individual rights over land (Barrows/Roth 1989: p. 5). A recent study conducted by the World Bank shows that in a sample of ten regions in Ghana, Kenya, and Rwanda, the proportion of operated parcels acquired through purchase varies from less than one percent to nearly 30 percent while that which holders think to be freely saleable without requiring any sort of external approval varies from a low 6 percent to more than 50 percent. Moreover, these proportions appear to be higher when population pressure is stronger and/or commercialization is more advanced, at least in the case of Ghana and Rwanda (Migot-Adholla et al. 1991: pp. 160–4). In the highly populated prefecture of Gisenyi in Rwanda, Kanama commune (566 inhabitants per square kilometer and a rate of population growth of 4 percent p.a.), André (1989) estimated that 23 percent of the operated parcels have been acquired through purchase, a still higher proportion than that found in the above study for the neighbouring prefecture of Ruhengeri (17 percent).

3 The so-called garden lands offer a striking illustration of the high security land tenure can sometimes afford under communal arrangements. Garden lands "were always deemed to belong to the family that cultivated them" and did not fall under the scope of the general rules of land allotment and control (Noronha 1985: pp. 186–7, 193). It is interesting to note that, especially in areas of high population densities, they were usually well-settled (possibly terraced or even irrigated) and subject to continuous cultivation thanks to regular application of vegetal manure and careful soil husbandry practices (Raynaut 1976: pp. 287–8; Dupriez 1980: chap. 9).

conscious decision by the community: instead, change has come in an unfolding of the internal logic of indigenous tenure systems in response to new circumstances (Bruce 1988: p. 33).

If things work themselves out so effectively, the question may be asked as to whether there is any room left for policy-making. In other words, does the evolutionary mechanism that is obviously at work in the African countryside allow SSA to just do without any state intervention? It seems that, for many scholars, the answer to that question is negative. One influential school of thought which is deeply influenced by the Property Rights View insists that land rights ought to benefit from maximum security and this implies that formal private property rights must be established and duly recorded by using titles based on precise cadastral surveys. Of course, the state is expected to supply this institutional innovation since it is clearly a public good that will not be forthcoming otherwise. Lobbying the state to get the job done is the expected response of land claimants confronted with increasing litigation and other transaction costs (Thomson et al. 1986: pp. 415–6; Feeny 1988: pp. 283–7). Note that, in this perspective, the task of the government is rather easy (which does not mean that it is not costly) as it only consists of supporting a change that is well under way, that is, of facilitating or hastening "a transition caused by fundamental economic forces" (Bruce 1986: p. 51). In the words of Barrows/Roth, "registration is best viewed as a policy to assist in the evolution of land tenure institutions under way ..." (Barrows/Roth 1989: p. 24).

There are several reasons why the formalisation of land rights is considered as an important step towards promoting intensive agricultural practices. Schematically, one can say that such a step engenders both a demand and a supply effect (see Johnson 1972; Ault/Rutman 1979). On the demand side, it provides incentives for investing in soil conservation measures, land improvements and other productivity-enhancing operations since farmers are assured of reaping the future benefits of their present efforts. Also, it leads to efficient cropping choices and, in particular, it removes decision biases in favour of short-cycle crops that arise from tenure insecurity.

On the supply side, land titling affords farmers access to the finance required for undertaking their investment projects. Indeed, by laying down legally protected property rights and by releasing land from group or secondary claims, titling or registration allows land to become freely transferable. A well-known effect of the development of a land market is efficiency enhancement: land tends to be transferred from less to more dynamic farmers and to be consolidated in larger holdings, thereby eliminating the excessive fragmentation and subdivision encouraged by traditional land allocation and inheritance patterns. Also, insofar as land can be easily converted to liquid assets through sale, investment in land by potential entrepreneurs is encouraged. Another equally important effect stressed is that a thriving land market promotes agricultural investment by causing the emergence of a rural credit market. When private land rights are well-established and legally protected and when they can be freely exchanged, land acquires collateral value and the supply of credit tends to increase dramatically (for a first formulation, see Hicks 1969: p. 107). In effect, the emergence of a class of (professional or non professional) moneylenders and a class of nonowners of land is the natural consequence of both the reduction in the lender's risk due to increased collateral options and the possibility of foreclosure in case of default. Of course, banks and other institutional lenders will also be incited to extend more credit to agriculture. If we except gifts (including inheritance), land may thus change hands in two main ways: through foreclosure or through voluntary market transactions. In the latter case, it must be noted that "increased opportunities for specialization will lead some households to withdraw from cultivation" and "nonowners of land have a choice between renting land and working entirely as landless laborers" (Binswanger/McIntire 1987: p. 89). Finally, since land titling has the effect of eliminating all causes of land disputes, the government will save on public expenditures entailed by court litigation. In addition, it will have at its disposal a precious tool for assessing property taxes and thereby increase its revenue.

In the following subsection, I offer a survey of the recent literature available on this issue with a view to assessing the validity of the aforementioned claims. Before embarking upon this attempt, the difficulty it presents in the present state of our knowledge must be underlined. As a matter of fact, most postcolonial governments in SSA have purposefully avoided the 'capitalist route' leading to full private property rights, choosing instead to vest landowning rights in the state while granting long-term, usually non-transferable landleases to individuals (or, possibly, to village communities and social groupings) on the condition that land is brought under cultivation. An obvious consequence of the above situation is that there is only a very narrow basis from which to assess empirically the relevance of the above-stated propositions. Indeed, only a few African countries (Uganda, Zimbabwe, and Kenya) have a history of land registration and individualised titling programs which allow for such empirical testing. Still, however limited the evidence, it is worthwhile reviewing it, bearing in mind that lessons can also be learned from the experience of countries or regions where (informal) individualisation of land rights is well advanced.

3.2 The questionable impact of land titling: efficiency and equity considerations

To assess the impact of comprehensive formalisation of individualised land rights in SSA, a distinction is made below between three broad categories of effects: the effects on land tenure security, on the operation of land markets, and, finally, on credit, investment and agricultural yields.

Effects on security of tenure

Empirical evidence from several African case studies actually shows that "registration can create rather than reduce uncertainty and conflict over land rights" (Atwood 1990: p. 663). There are three broad lines of considerations that help explain why this may be so.

1°) First, the idea that land registration is grounded in an adjudication procedure that does nothing else than recognise and record accurately existing land rights is unacceptable. In effect, if titling may reduce risk and transaction costs for some categories of people, it may simultaneously create new uncertainties for other categories which rely on customary or informal practices and rules to establish and safeguard their land claims (Atwood 1990: pp. 663–4). In other words, as the experience of Kenya reveals, sections of local populations face a serious risk of being denied legal recognition of their customary rights to land during the registration process (Green 1987: pp. 6, 22–3). This is especially true of women, pastoralists, hunter-gatherers, casted people, former slaves and serfs, etc., who have traditionally enjoyed subsidiary or derived (usufruct) rights to land. As noted by Green, increased security for the registered owner – usually the male head of household – "may mean greater insecurity for other users, who may after the reform use the land only at the sufferance of the owner" (ibidem: p. 26; see also Coldham 1978; Bruce 1986: p. 54; Bruce/Fortmann 1989: p. 7; Mackenzie 1993: pp. 208–13).

In as much as these other users are critical producers (as is obviously the case with farmers' wives throughout most SSA), the issue is not only one of equity but also one of efficiency: output losses might result from land titling. The equity problem is nevertheless hard to overestimate. There is obviously an important tradeoff between security understood as security of tenure in given pieces of land on the one hand, and economic security understood as security of access to an income opportunity on the other hand. The tradeoff exists because traditional tenure rules and rights which determine access to land (and water points) in such a way as to assure employment for the able and social security for the poor, the old and the disabled defy recording and classification[4]. Put in another way, it is impossible to bring to the adjudication register all the multiple rights claimable under customary law (Barrows/Roth 1989: p. 8). Given that the complex bundles of rights associated with given parcels are extremely hard to sort out (where one person's bundle of tenurial rights stops and where another's begins is often very difficult to determine) and that a landholding unit (such as the 'compound' in West African societies) is rarely under a single management rule (if only because women manage 'their' fields fairly independently), the cost entailed by a comprehensive registration would be prohibitively high, all the higher as the bureaucratic machinery is confronted by a

4 In Senegal and in Gambia, for example, women, older relatives, poor relations, and other 'marginal' compound members all have rights to compound land under the stewardship of the head of the 'compound' (Von Braun/Webb 1989; Golan 1990: pp. 53–4).

considerable information gap. Such a machinery has indeed much less information and knowledge of land tenure history of rural communities than these communities themselves (Riddell et al. 1987: pp. 30–1). In fact, when customary group rights and community control are extinguished by a procedure of registration/titling, there is a transfer of transaction costs from local land authorities to the state and it is the inability of the state to bear them that accounts, as evidenced by the experience of Kenya, for the failure to adjudicate and register all rights existing under the customary system (Barrows/Roth 1989: p. 21). It must also be added that traditional systems of land tenure involve a great deal of flexibility and recording all the corresponding rights is likely to ossify these systems.

To sum up, due to high information and other transaction costs, governments in poor countries are typically unable to record accurately all existing land rights. Such a failure is likely (1) to create new uncertainties for vulnerable sections of local populations and (2) to reduce the efficacy of traditional institutions or mitigatory factors that used to provide economic security to all members of village communities and to help hold economic differentiation in check. The latter effect is particularly worth pondering over when economic opportunities in the outside economy are few and no alternative insurance systems exist.

2°) Second, in a social context dominated by huge differences in education levels and by differential access to the state administration, there is much to be feared that the adjudication/registration process will be manipulated by the elite in its favour. During the colonial period already, in countries where lands could be immatriculated (such as those under French colonial rule), numerous malpractices have been observed which allowed powerful people (including bureaucrats, particularly land surveyors who are "prominent experts in land grabbing") to dominate land allocation procedures, especially inside or near urban areas. As for rural lands, the few people who took advantage of the registration system had often manipulated the law to expropriate collective rights for themselves (Doornbos 1975; Bayart 1989: p. 113; Golan 1990: p. 19; Haugerud 1983: p. 78; Mackenzie 1993: p. 212). Contemporary evidence is disquieting too, as can be judged from the experience of countries (such as Kenya) which have adopted a land titling reform as well as from that of the more numerous countries where registration of even rural lands has been allowed during a transitory period accompanying a reform vesting bare ownership of all non-immatriculated lands in the state (such as in Senegal and the Ivory Coast), or where public lands form an important category in national land laws.

In the case of countries of the first two types, the experience is similar: clever, well-informed or powerful (and usually educated) individuals often successfully jockey to have parcels not previously theirs registered in their own name while the mass of rural people are generally unaware of the new land provisions or do not grasp the implications of registration (Coldham 1978: p. 99; Le Roy 1979: pp. 72–3; Gastellu 1982: p. 275; Wolf 1982: pp. 247–9; Koehn 1983, 1984; Noronha 1985: p. 145; Engelhard/Ben Abdallah 1986: p. 61; Feder/Noronha

1987: pp. 156–7; Green 1987: p. 7; Hoben 1988: p. 216; Berry 1988: p. 68; Goheen 1988: pp. 301–5; Shipton 1988: pp. 106–7; Kerner 1988: p. 179; Bruce 1988: p. 44; Atwood 1990: pp. 662–3; Roth 1993: p. 317). That allocation of public lands is often politically manipulated is evident from many stories reporting, like in the case of Nigeria, that under the cover of national development projects extensive land tracts "running to hundreds of hectares" have been granted (on a long-term basis) to 'political friends' even though this led to the dispossession of many villagers of their customary lands (Zubair 1987: p. 133).

Note also that it is often the ability to use both the statutory and the customary law – to the extent that, as the experience of Kenya reveals, customary rights are not extinguished with the introduction of freehold tenure and the registration of individual title – that enables powerful individuals or groups to enhance their interests. Customary law is then manipulated, appearing as a "continuously evolving code" to which those individuals or groups refer in order to claim large tracts of land to be registered under the freehold system of tenure (Glazier 1985: p. 231). Thus, for example, Coutts, then district commissioner in Fort Hill district, pointed out in 1948 that certain unscrupulous persons are using the custom of redeemable sale of land "to take back land which has been made fertile by a younger more progressive person" (Mackenzie 1993: p. 207). In such circumstances, subscription to custom or tradition, while appearing to maintain the status quo, in fact represents the strategy adopted by clever actors to effect the kind of social transformation favourable to their particular interests (ibidem: p. 203).

It is clear from the above that registration supplies a mechanism for transfer of wealth for the educational, economic and political elite (Barrows/Roth 1989: p. 8). As a result, it creates new sources of tenure insecurity for less influential rights-holders. Given the high level of politicisation of wealth allocation in SSA and the highly unequal chances of getting access to strategic information or influencing bureaucratic and judiciary decision-making (see, for example, Sklar 1979; Hyden 1983; Berry 1984; Young 1986; Bayart 1989), it is therefore not satisfactory to vindicate registration/titling on the grounds that, if adjudication dredges up old disputes or involves hard choices[5], it has at least the decisive advantage of settling unavoidable problems and conflicts in a definitive, 'unimpeachable' manner. 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 up *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*. This is a cause for serious concern insofar as people who are most eager or better positioned to get titles are often (but not always) motivated by speculative purposes so that their lands go largely uncultivated (Green 1987: p. 9; Golan 1990: pp. 15–6): for original occupants, loss of land may thus be accompanied by outright eviction, such has sometimes happened in Uganda (Doornbos 1975: pp. 60, 66, 73). Referring to the case of the Lower Shebelle in Somalia (where irrigation development has proceeded rapidly during the last decades), Roth writes that "price seems to provide the main rationing mechanism, and high costs appear to determine the low volume of registration activity among smallholders. High costs, in turn, have biased the acquisition of title toward larger farmers, the wealthy, or well-connected individuals who possess superior knowledge of government bureaucracy and procedures. And until costs of registration are made more affordable, nonconcession holders will continue to face risks of land grabbing and weakened security of tenure" (Roth 1993: pp. 318–9). The problem is all the more intractable as "registry operations are hampered by tight budget constraints and lack of facilities", while the low government pay scales create "an incentive for civil servants to extract a portion of the high economic rent associated with leasehold title" (ibidem).

5 Thus, for example, how is the honest judge to decide to whom to allocate a piece of land when it has been lent, mortgaged or pledged during such long periods of time that it has become very difficult to determine who is the actual possessor (especially when the original transactors or eye-witnesses are dead); or when it is uncultivated but bear trees that belong to another person than the possessor; or, again, when it has been traditionally opened to herders for grazing their animals on the crop residues after the agricultural season?

Even assuming away this awkward situation, there exists the possibility that costly conflicts arise from the adjudication process and even title-holders do not enjoy the benefits of tenure security. This is especially likely to happen when the latter are outsiders because, throughout most of SSA, people continue to strongly adhere to the traditional ethical principle that land ought to belong to the "sons of the village", to the members of the local community (most commonly defined by descent or adoption) whose families have been living on the land for several generations and have therefore developed ritualistic and strongly emotional identity links with it. This is all the more so as the ancestors' cult is still very much alive (ancestors are actually believed to continuously intervene in present-day human affairs) and is deeply rooted in the (corporate) land of the lineage (Caldwell/Caldwell 1987: pp. 415–7; Richards, forthcoming: p. 150). What Zufferey has noted with reference to Botswana (Eastern Central District) still applies to many countries in SSA: "Owning land thus appears to confer to the local residents a sense of identity and membership in a specific social group in comparison with the *bahaladi* (foreigners) who are, in contrast, expected to apply for land" (Zufferey 1986: p. 79). Under such circumstances, the separation of land ownership from land use and the assignment or transfer of land to strangers are bound to arouse deep-seated feelings of injustice and alienation among the people deprived of their customary rights of access.

3°) Third, a major difficulty with titling is that cadastral surveys are incomplete and there is a lack of diligent record keeping of all intervening changes in land ownership. The difficulties are obviously compounded when landholdings comprise numerous parcels which are often minuscule.

Even in a country like Senegal where land registration has been allowed, on a voluntary basis, only during a limited period of time and demanded by relatively few people, we are told that "the Senegalese bureaucracy is still processing registration claims that were filed in the two-year grace period granted by the 1964 National Domain Law" (Golan 1990: p. 51). In Kenya and Uganda, successions and other transfers of title have gone largely unregistered, as a result of which land records hardly reflect the present day reality, thus destroying the utility of the record and possibly engendering new uncertainties (Doornbos 1975: p. 68; Bruce 1986: p. 58; Saul 1988: p. 273; LTC 1990: p. 4). In the case of Kenya, Green does not hesitate to say that failure to maintain a valid record of successions and absence of updated records constitute one of the major disappointments of the land titling program (Green 1987: p. 11). As for Shipton, he writes: "So the emergent land market is largely unregistered. It is likely to remain so. The government does not have the resources to monitor, let alone control, the many kinds of land exchanges that happen every season in the farm neighborhoods. By their very nature, these defy recording and classification: for the most part they are ad hoc, unnamed, individually tailored agreements in which land is only one of many mutually interchangeable goods; ... the lines blur between loans, rentals, barter, swaps, and sales" (Shipton 1988: p. 123). There is an obvious parallel between Shipton's point and the first consideration made above. Because titling is such a cumbersome task weighing on the administration of poor countries, it is certainly unrealistic to expect them to be able to register not only the immensely complicated rights ruling in village communities but also the frequent and equally complex transactions that take place in the same.

It would however be wrong to conclude that discrepancies between records and reality arise only from administrative deficiencies and implementation problems. Not only supply but also demand factors contribute to create such discrepancies. Thus, in Kenya again, the government's attempt to limit the subdivise impact of indigenous inheritance systems led to an enormous amount of evasions which undermined the registration system as a whole (Bruce 1986: p. 68). More generally, people's failure to register transactions is often to be ascribed to adherence to customary tenure rules in registered areas. Customary law (such as subdivision of land among all the sons) "in fact continues to govern the way in which most people deal with their land, making tenure rights ambiguous. The land law failed to gain popular understanding or acceptance, individuals continued to convey rights to land according to customary law, and a gap developed between the control of rights as reflected in the land register and control of land rights as recognized by most local communities" (Barrows/Roth 1989: p. 7).

To sum up, as a result of glaring failure to build up and update reliable land records, titles shown on the register are increasingly at variance with the facts of possession and use and considerable confusion is created over legal property rights. The impact of land registration is therefore undermined and, worse, a breeding ground might thereby be prepared for (future) land disputes with people not in possession of titles being under threat of eviction by registered proprietors (Bruce 1986: p. 58; Green 1987: p. 11; Barrows/Roth 1989: p. 19)[6]. Moreover, administrative errors tend to cause conflicts even in the short run.

In the light of the above considerations, it is not surprising that the incidence of land disputes has apparently not diminished and, according to some, has perhaps even increased in a country like Kenya where a program of systematic, compulsory individualized titling of all farmlands has been sustained since the 1950s (Coldham 1978; Green 1987: pp. 19–20). This has resulted not only in increased litigation costs but also in new inequalities. Indeed, as aptly noted by Njeru: "Whereas earlier, disputes could be resolved by tribal authorities, after the reform they required official litigation proceedings. Only those people with money could afford to bring their claims to court, and the least wealthy people were often forced to sell some or all of their land to pay their litigation fees. Still others were forced to concede part of their land to avoid adjudication and the chance of losing their entire holdings." (Njeru 1978: p. 19; see also André 1989)

Effects on land market transactions

It has been mentioned earlier that as pressure on land rises there tends to be a spontaneous move towards increasing land sale transactions in rural societies. There are two main questions to be asked now. First, has registration/titling succeeded in activating the land market and, second, to the extent that land sales take place, do they promote economic efficiency by transferring land into the hands of dynamic cultivators or by stopping fragmentation? The problem of the implications of titling for equity may be raised when attempting to answer the latter question.

Regarding the first question, the evidence from Kenya is that land sale transactions have *not* increased following land reform except during the earliest stages, that is, before registration had been completed (indeed, in the knowledge of pending registration, the educated elite took advantage of the situation to acquire additional lands). When they are transferred, the majority of parcels continue to follow the path of customary channels (lending, gifts, inheritance or *non* registered sales) among which inheritance stands foremost. Moreover, there is often an apparent persistence of indigenous control over land transfers even when they are duly registered: thus, many owners of titled lands do not consider that they can transfer their lands outside the lineage or that they can make permanent transfers without approval by the community. This situation of a constrained land market is actually reinforced by the fact that District Land Control Boards in charge of approving land sales are frequently reluctant to permit transactions which would leave families (and their descendants) landless and destitute. That is why they insist that all adult members of the household

6 At present, Green notes with respect to Kenya, traditional cultivators working on lands registered in some other's name believe that the registered owners have a moral obligation not to exclude them from the land even if they are inefficient (Green 1987: p. 15). It remains to be seen, however, whether such a belief is well-grounded in the long run. In addition, it does not hold when registered owners are outsiders who have no historical ties with local people.

(including women) of the person selling the land are to be present at the hearing to indicate their agreement with the sale, a directive that (male) household heads try their best to circumvent. Finally, markets for leaseholds appear to be relatively rare in almost all regions of the country (Haugerud 1983: p. 80; Collier 1983: pp. 156–8; Bruce 1986: p. 56; Green 1987: pp. 13–8; Barrows/Roth 1989: pp. 10–1; Migot-Adholla et al. 1991: pp. 160–4; Mackenzie 1993: p. 200)[7].

If land sales tend to increase with land scarcity, it therefore appears that (1) frequency of land sale transactions is not affected by titling as such, and (2) incidence of such transactions remains relatively limited whether they are officially allowed or not. The question as to why land markets are thin in SSA as well as the second above-mentioned question as to whether land sales tend to promote efficiency can be addressed together by probing into the mode of operation of these markets.

In a celebrated book, Lewis has aptly observed that "there is probably no country in the world where land is bought and sold solely for its value as a factor of production, and no country where non-economic factors do not frustrate schemes which would otherwise increase output" (Lewis 1955: p. 91). This certainly applies *a fortiori* to SSA insofar as kinship ties remain strong and ethnic, local or regional feelings remain central considerations in social and political life. Land is thereby prevented from becoming commoditised within a context characterized by impersonal interindividual relations and a code of abstract morality ensuring honest deals among unrelated transactors. It has been already emphasized that African people are emotionally attached to 'their' land which represents an important source of their identity and is typically seen in a holistic perspective. Its 'value' is embedded in the social structure and history of a particular community (Riddell et al. 1987: pp. 82–3) and has a significant symbolic component. Land thus represents far more than a mere input into an agricultural enterprise and it is impossible to abstract it from all the social, ritual, affective and political meanings associated with it.

An immediate consequence of the central role of land as a source of identity and self-esteem is that original occupants are extremely keen to retain their land – even when they reside in town –, all the more so as loss of land implies discontinuance of rituals to ancestors. The reluctance to part with ancestral land is especially strong when it threatens to go to outsiders. Already during the colonial period, indigenous people felt it a sacred duty to protect family or clan property and to prevent ancestral land from passing into European hands[8].

7 Land rental is relatively rare not only in Kenya but also in most regions of Ghana and Rwanda where no registration system has been introduced (Migot-Adholla et al. 1991: p. 161). Yet it appears to be far more pervasive in irrigation schemes of West African countries (such as Mali, Niger, and Senegal) which have a long tradition of land rental contracts – such as the *coggu* system in the Senegal river basin (Minvielle 1977: p. 23) – through which slaves used to get access to lands of the local feudal aristocracy.

8 Thus in Nigeria 1922–23, the Egba asked through their chief that they be allowed by the British to mortgage their *urban* lands to foreign companies so as to be able to raise money from local European banks. Yet they were keen that such principle is not extended to *rural* lands because they felt it a sacred duty not to take any risk that their ancestral property will be lost to foreigners (Meek 1949: pp. 266–7).

Nowadays, the same attitude can still be largely observed and, as expected, the land market is more severely restricted where kinship ties are strongest, for example, more restricted in Kenya's former African reserve (where it operates mainly among members of the same ethnic group) than in the former white settled areas and in urban peripheries (Migot-Adholla et al. 1991: p. 169). Add to this the well-known fact that land remains a crucial source of livelihood all over SSA, *even when it is underutilised by customary landholders who work outside the agricultural sector* (such as Lesotho's people working in the South African mines). For the latter, indeed, land serves as both an insurance against uncertain employment and as a pension fund for their old days (Lawry 1993: p. 58)[9].

Consistent with the above account is the well-established fact that, inasmuch as they happen, land sales tend to be caused by distress conditions (see, for example, Collier 1983: p. 157; Bruce 1986: p. 36; Green 1987: pp. 7, 17; André 1989), a phenomenon which must be understood against the background of absent insurance markets, imperfect credit markets, and declining self-insurance capacities on the part of rural dwellers. Supply of land by smallholders is then clearly involuntary since it is distress conditions in the sense of repeated short-term contingencies (which, ironically enough, include the payment of litigation expenses – fees, bribes, and so on – to defend customary rights against powerful and wealthy people) or unexpected negative shocks that force them to part with parcels of land through desperation sale or foreclosure.

Let us now turn our attention to the demand side of the land market. The existing literature stresses that, to a significant extent, demand for land arises from non-economic motives such as social prestige and political power. Thus, in some parts of Uganda, land purchases suggest "a shift from investment in cattle as the traditional embodiment of wealth to one in land" (Doornbos 1975: p. 58). On the other hand, it is common practice that not only traditional elite penetrate the modern network of administrative-political power but also, in the other way around, the new urban elite try their best to get elected, co-opted or appointed to traditional chieftaincies after having acquired a significant acreage of local land (Doornbos 1975: pp. 58, 67; Berry 1988: pp. 59–60, 67; Bruce 1988: pp. 42–3; Bayart 1989: pp. 215–9). For example, in Uganda where the land market is rather active, the majority buy for social and political advantages, since "owners of land have the right to sit on local councils, the first step on the political ladder, and owners are eligible for appointments as chiefs". In short, ownership is the *sine qua non* of a political career (Barrows/Roth 1989: p. 14 – quoting Mukwaya 1953). Here is a well-established method – which has antecedents in Europe[10] – that enables a modern elite to root their newly achieved status in a

9 In this respect, an interesting informal contract is that whereby a widow who is without family and lacks the minimal resources for farming leases out her land and designates the lessor as heir to it provided that the latter provides her with all basic subsistence requirements, including food and clothing (Lawry 1993: p. 70).

10 Thus, land also served as a privileged avenue to political power (and social prestige) in

lasting base little vulnerable to the fluctuations and turmoils occurring at the national or regional levels. This role of land as a privileged means through which political hierarchy is established actually reflects the traditional conception of the relation between land control and political power (Coquery-Vidrovitch 1985; Gruenais 1986). Note that, in the case of SSA, the strategies pursued by the elites to strengthen their organic links with rural areas have often been based on processes of retribalization and neopatrimonialism (Werbner 1993).

Another well-documented motive for land purchases arises from underdevelopment of capital markets combined with a lack of sufficiently safe investment opportunities. Investment in land is all the more attractive for people with significant savings – usually people with regular incomes from non-agricultural sources – as land represents a secure form of holding wealth and a good hedge against inflation (since it is an appreciating asset given land hunger) (Haugerud 1983: pp. 80–3; Bruce 1986: p. 56; 1993: p. 42; Green 1987: p. 27; André 1989; Mackenzie 1993: pp. 209–10). Moreover, many buyers seem to be motivated by a desire to ensure against landlessness in the next generation of the family (Bruce 1986: p. 56; Green 1987: p. 27). As a result of the above motives, and despite some evidence that land is sometimes purchased for productive reasons (Doornbos 1975: p. 68; Barrows/Roth 1989: pp. 14–5), it is not surprising that absentee ownership is increasingly widespread in those parts of SSA where land market is most active, or that holdings acquired by the educated urban elite "tend to be poorly managed and less productive than smaller farms around them" (Bruce 1993: p. 42; see also Collier 1983: pp. 152–3, 159). In Machakos (Kenya), for example, absentee ownership was found to be as high as 81 percent of the total holding sampled (most farmers own a single parcel) while in Kericho, around one-third of the holdings fell into this category (Green 1987: p. 22; for other estimates of the same order of magnitude, see Collier 1983: pp. 151–2). In addition, insofar as (distress) sellers frequently sell only a portion of their holdings[11], while most purchasers are not agricultural entrepreneurs seeking to enlarge their farm, holdings which grow by purchase are typically formed in a fragmented state and consolidation does not result from the operation of the land market, quite the contrary (Bruce 1986: p. 56; Green 1987: p. 27). Finally, as pointed out by Bruce, liquidity of land assets is likely to remain a matter of limited interest to most African farmers, who lack opportunities to invest outside the agricultural sector. This is, of course, not true of private outside investors who may however be often driven by speculative motives (Bruce 1993: p. 42).

eighteenth-century England. According to Ashton, indeed: "Throughout the eighteenth century the number of estates owned by men who had recently come to fortune by way of some trade or profession increased. City men and manufacturers moved to the country, sometimes for the amenities it offered, sometimes as a step to Parliament, but often because they cherished the ambition of ending their days on at least level terms with the squires" (Ashton 1955: p. 34).

11 Bear in mind that in Kenya land control boards do not allow the free play of market forces to the extent that they "prevent individuals from selling land that would leave their families either landless or with a holding below the minimum subsistence acreage officially defined for each ecozone" (Haugerud 1983: p. 84).

To summarise at this juncture, titling does not seem to activate the land market and, to the extent that market transfers occur, they do not often result in reallocation of land from less to more dynamic agents nor in consolidation of holdings. Since there are numerous pervasive rural factor market failures in SSA (not only on the land markets but also on the labour, credit, and insurance markets), increased land concentration tends to actually worsen the imbalance in factor proportions between larger and smaller holdings, which obviously results in increased allocative inefficiency (Collier 1983: p. 159, with respect to Kenya). Furthermore, even though transactions in land are not the main factor of skewed land distribution in SSA – historically, major land concentrations have originated in state action aimed at direct allocation of land to individuals or organizations (Bruce 1993: p. 43) –, there is strong evidence that most land sales are distress acts that cause landlessness to increase (ibidem). This is a serious issue inasmuch as loss of land is very likely to be irreversible for smallholders.

It would be wrong to believe that, even when there is potential demand from dynamic agricultural entrepreneurs with skills and capital, economic efficiency is automatically promoted by the creation of a legal land market. As a matter of fact, the latter measure may give rise to new and multiple market imperfections. To see why it is so, a broad concept of transaction costs must be used. Transaction costs can consist of the purely cognitive costs of organising and monitoring land market transfers: due to ambiguity in property rights, willing buyers must incur significant search, enforcement and litigation costs as a result of which a wedge is driven between the land's value of marginal product in the owner's use and the value of marginal product if used by the most productive alternative user (see Johnson 1972 for a standard statement). Yet, there is another important category of transaction costs which arise from man's opportunistic proclivities whenever information is imperfect, asymmetrically distributed and costly to acquire[12].

It must however be added that, contrary to what transaction-cost economics typically assumes, such proclivities are *not* independent of prevailing institutional arrangements but actually depend on their legitimacy. This is why ideological factors must be taken into account explicitly in any sensible analysis of institutional change. Man's behaviour is indeed structured by a set of habits, norms and values which reflect the perceptions or rationalizations of the surrounding world in the particular society or social group to which he belongs. If this is true, transaction costs do not only depend on *objective* conditions (such as growing land scarcity giving rise to increasing ambiguity in land rights) but can also be influenced by *subjective* factors, namely people's feelings or preferences about alternative arrangements which are in turn shaped by prevailing standards of

12 For a good statement of the main concepts and ideas involved, see Matthews 1986; Nabli and Nugent 1989; Eggertsson 1990.

justice or notions of fairness. As a consequence, when a new system of rights is regarded as profoundly unfair, implying that it lacks the basic attribute of a rights system – that is, social recognition by others or mutual agreement in the sense of "equal and reciprocal respect" for these rights (Buchanan 1975: p. 12) –, people tend to adopt strategic behaviours that may have the effect of modifying significantly the relative benefit-cost configurations of alternative arrangements otherwise than through aggregate supply-demand mechanisms.

Let us consider again the problem of land sales. To the extent that alienation of land to outsiders violates deep-rooted social norms, bitter resentments and acute tensions are aroused which may lead to opportunistic acts and, in the worst cases, even erupt into open violence. Such is the case when, as observed in many African countries, original occupants oppose the transfer of traditional family or communal lands to strangers by committing acts of sabotage, looting, burning and theft on the property and crops of the new landholders. A striking example is provided by the so-called "Manifesto of the Oppressed Negro-Mauritanian" in which an extremist group belonging to the black community of Mauritania expresses its aggressive reaction to the post-1983 introduction of private land rights conferred (by adjudication) upon stranger investors in the fertile area of the Senegal river basin[13]. In this manifesto, the Negro-Mauritanians are invited to use any conceivable means to prevent their customary lands from passing into the hands of the *Beydane* elite (of Moorish origin), that is, "to boycott, ban, kill if needed, all those who encourage the sale of land; destroy, burn the possessions of these strangers who come to develop your lands while the land should belong to our villages" (quoted from Bayart 1989: p. 82). On the other bank of the Senegal river, we also find hostile reactions against outside intrusion. Thus, around Matam local *Toucouleur* residents increasingly resent and oppose the appropriation of their customary lands by rich capitalists or civil servants from Dakar and by the well-to-do *Moor* elite which acceded to economic prosperity through its leadership role in the export oilseeds boom in the Sine-Saloum. Other examples are easy to come by[14]. They converge to show that informal arrangements whereby strangers can settle in an area only after having got accepted by local elders acting as intermediaries for the village or the lineage are likely to remain an enduring feature of many African regions for some time to come. Resistance to substantial encroachments upon ancestral lands will be strong if

13 For a short description of this reform, see Crousse 1986 and Grayzel 1988.

14 In Ghana, as the frontier land became gradually exhausted, indigenous (*Akan*) ideology began to reassert with vigour "the inalienable rights of the native custodians of the land, and the inalienable rights of individual usufruct" (Robertson 1987: p. 77). In Senegal (Peanut Basin) where freehold titling and land market do not exist, we learn that every year villagers "meet to trace the borders of the land and set the rules so that everyone bands together to keep the land in the village" (Golan 1990: p. 15; see also Riddell et al. 1987: p. 31 for Zaïre). In Western Burkina Faso (a country where indigenous land tenure systems are still very much alive), local residents fear a flood of migrant settlers (mainly Mosi) into their ancestral lands, but, so far, thanks to the strength of their traditional social structure (based on agnatic lineages), they have succeeded in effectively blocking further settlement on their territory (Saul 1993: pp. 81–2).

intrusion or, worse, displacement processes occur through state mandatory allocations or through land sale transactions[15].

Efficiency costs obviously result from determined resistance of local people against drastic reshuffling of land rights. These costs take three main forms. First, opportunism creates new uncertainties that tend to multiply transaction costs such as search, enforcement and litigation costs. Second, insofar as private property rights are continuously threatened, there are all the costs which the owners of disputed land must bear to protect their property. These costs are of both a fixed and recurrent nature: thus, land and related property need to be not only enclosed and fenced but also constantly guarded against malignant interference[16]. Third, social turmoil in the countryside can give rise to serious labour market imperfections that may entail considerable efficiency costs at the level of the whole economy. Indeed, it may be presumed that landless agriculturalists will be prompted by a desire to take revenge for the loss of their customary rights of access and will therefore miss no opportunity of harming the interests of the new private owners, at least when these owners are strangers. As wage labourers, they will be incited to indulge in labour-shirking and mismanagement of assets while, as sharecroppers, they will pilfer inputs, underreport output and overreport non-labour factor costs.

Clearly, the conventional assumption that the creation of formal private land rights has the unambiguous effect of reducing and even eliminating transaction costs so as to encourage efficiency-promoting transfers of land (and investment) must be called into question and duly assessed against the background of specific social contexts. When allowance is made for subjectively induced transaction costs, it can no more be taken for granted that individualized freehold tenure minimizes total transaction costs. Due to the continued presence of transaction costs, *a link thus persists between efficiency and distribution issues* which cannot be ignored in the analysis. Moreover, since these costs tend to vary with the social and ideological matrix in which the new system of rights is going to be embedded, even policy-makers for whom efficiency considerations take precedence over equity ones ought to pay considerable attention to non-economic factors before deciding to adopt land market activation policies.

15 As far as administrative interference is concerned, its limits have been demonstrated in numerous cases where strong community oppositions succeeded in forcing the state to make a retreat from attempts at altering the distribution of village lands without the consent of local landowning descent groups and their elders. See, for example, Saul (1993: pp. 87–8), documenting cases in Western Burkina Faso. Other interesting observations can be found in Bassett (1993b: pp. 143–4).

16 In Lesotho, for example, commercial farmers seem to be reluctant to farm land outside of their village area "for fear of increased supervisory costs and losses due to crop damage and theft" (Lawry 1993: p. 70).

Effect on credit, investment, and agricultural yields

Let us first consider the impact of land tiltling on credit. Available evidence seems to suggest that the impact of individualised titling on smallholders' access to credit is nil or negligible (LTC 1990: pp. 3, 6, 8, 15). Thus, in the case of Kenya, a recent empirical study by the World Bank did not find any significant relationship between the possession of title and the use of formal credit; moreover, the former does not appear to imply an increase in loan maturity or loan size (Migot-Adholla et al. 1991: p. 165). In South Nyanza District, another study reports that over a decade after registration of the most fertile parts of the district, the number of loans extended by the Agricultural Finance Corporation (the statutory body in charge of nearly all the government's land-secured lending) represented less than one percent of the households in the district's total population (Shipton 1988: p. 120; see also Okoth-Ogendo 1976: p. 175). Furthermore, in the aforementioned World Bank study, no significant correlation was observed in Rwanda and Ghana between the extent of (informal) individualization of land tenure and recourse to credit. More precisely, no significant relationship could be found between the percentage of households receiving formal credit or any credit and the proportion of land held with 'complete transfer' rights (Migot-Adholla et al. 1991: pp. 164–6; see also Place/Hazell 1992).

What are the possible reasons for such a state of affairs. They relate to both supply and demand factors. On the supply side, a first point to note is that registration is obviously ineffective if titled land is not considered a reliable collateral by credit-givers because it is difficult to foreclose or because, the market being thin, it is not easy to dispose of in case of default (Okoth-Ogendo 1976: p. 175; Collier 1983: pp. 163–4; Noronha 1985: pp. 197–8; Bruce 1986: p. 40; Barrows/Roth 1989: p. 9). Difficulties in foreclosing land (or other immovables) may originate in either the official or the civilian sphere, or in both. The first possibility arises when the judicial system is ineffective or partial with the result that foreclosure on property belonging to rich and powerful borrowers cannot be legally enforced. In Senegal, pressures from borrowers who are tightly linked up with the political establishment (of the Socialist Party) are considered such a commonality that, in everyday parlance, they are actually referred to as *agir à la sénégalaise*. In Kenya where influential people in government and politics bought larger plots (so-called Z-plots) under the land settlement schemes, we learn that "By mid–1969 no cases of chronic loan defaulters from Z-plot holders had yet been referred to the Attorney General, although by the end of 1969, 158 recommendations for eviction of other settlers had gone to the Sifting Committee in Parliament with 84 evictions resulting" (Wasserman 1976: pp. 155–6 – quoted from Van de Laar 1980: p. 173). Clearly, perverse equity effects result from the operation of a land market (with free mortgage) when it is combined with a biased judicial system.

Popular expression of anger and active opposition can also "break the transmission" between registration and credit supply. This happens because, when people do not consider the new system of (land) rights as legitimate and refuse the reshuffling which it implies, they may succeed – especially in young nations with 'soft' states as we find them in SSA – in blocking the normal functioning of the legal system. This is another vivid illustration of the way ideology can impinge on transaction costs. Thus, in Kenya again, we are told that lending authorities have had great difficulty foreclosing on land mortgages chiefly because "the presence of many kin around mortgaged land makes it politically unfeasible to auction the holdings of defaulters" (Shipton 1988: p. 120). In urban peripheries, notes another study, "although some banks have accepted titled land as collateral and auctioned it off in cases of default, in some cases purchasers were not able to take occupation of the land for fear of reprisals" (Migot-Adholla et al. 1991: p. 170). Governments may not want to run counter to such kind of demonstrations lest this should threaten their political basis or the fragile consensus on which their national policies rest. In the case of Kenya's White Highlands repeopled with native farmers after the departure and compensation of European colonists (the land settlement schemes referred to above), the government was eventually compelled to restrain the use of land as collateral. The fact of the matter is that: "The cry of land hunger had fed the nationalist rebellion that had brought the government to power. To turn people off the lands that they had fought to capture would be to risk the wrath of the true believers in the nationalist revolution." (Bates 1989: p. 74) The pressure on the government was all the stronger as the official opposition represented by a radical party (the KADU or Kenya African Democratic Union) lobbied intensively on the land issue (ibidem: pp. 67–8).

On the demand side, what bears emphasis is the following: to the extent that they perceive a high risk of losing their land through foreclosure, smallholders are reluctant to incur land-secured debts as the experience of Kenya testifies (Green 1987: p. 8; Shipton 1988: pp. 106, 120; Barrows/Roth 1989: p. 9). This may be especially true of subsistence-constrained farmers who fear their ability to repay loans taken for investment purposes is very low (unless payoffs are short-term). Perception of risk of default and aversion for land mortgage may actually vary depending not only on economic position but also on other characteristics such as age of the landholder. In Kenya, for example, it is mainly elders who reject the idea of land mortgage while younger men may be more attracted by the prospect of ready cash and, as a result, they are more liable to have their lands foreclosed (Shipton 1988: pp. 106, 120). Unfortunately, the latter do not necessarily use credit for productive or investment purposes. 'Urgent' consumption needs which elders may well regard as luxury can easily drive young people straight into landlessness, whether inadvertently or not.

This being said, the fact is to be borne in mind that use of credit for agricultural purposes may not increase following land titling simply because there are no attractive investment opportunities or because some enabling conditions are missing. This typically occurs when no technological package suitable for intensive agriculture is on offer, such as is certainly the case under rainfed farming conditions throughout most SSA today (Platteau 1990: pp. 324–35). Or, when the required infrastructure, input-delivery, output-marketing or extension services are not available (Roth 1993: p. 316); or else, when visible wealth is being arbitrarily taxed (a risk to which agricultural investments are particularly vulnerable); or when, as pointed out by Bruce, people are discouraged from improving their lands because of jealousies of the chief and other villagers (Bruce 1986: pp. 29, 31; 1993: pp. 39–40). The critical importance of other-than-tenurial constraints thus makes it difficult to empirically assess the relationship between freehold titling and use of mortgage credit. On the one hand, there is the risk of denying positive effects which land titling can have only under certain conditions. But, on the other hand, as witnessed by some rapid judgments about Kenya's experience with land titling, there is the converse temptation to confuse the impact of registration with the effects of other factors that accompany it (Barrows/Roth 1989: pp. 22–24)[17].

Clearly, the existence of legal registered titles, even in conditions where land is easily appropriable, is not *a sufficient* condition for increased use of credit for agricultural investment. It may not be a *necessary* condition either to the extent that, suitable collateral substitutes may exist, including pledging of standing crops, third party or group guarantees, factor market interlinkages, the threat of loss of future borrowing opportunities or even of loss of face (see Binswanger/Rosenzweig 1986: p. 512). When lenders accepting such guarantees are informal agents relying on limited own or borrowed funds, the constraint of restricted credit supply can be released by using them as conduits of formal-sector funds.

In the light of the above facts and considerations, it is not surprising that empirical evidence on the relationship between land rights and land improvements or agricultural yields in SSA is generally inconclusive. Thus, the aforementioned World Bank study found that in Ghana and Rwanda more individualised land rights do not appear to have any effect on agricultural investment and yields while in Kenya the possession of land titles is not significantly related to these two variables either (Migot-Adholla et al. 1991: pp. 166–9; Place/Hazell 1992: pp. 12–6, 22–7; see also Green 1987: pp. 20–2; Barrows/Roth 1989: p. 13; Haugerud 1989: pp. 62–90; LTC 1990; Bassett 1993a: p. 17; Bruce 1993: p. 51). In Zimbabwe, we are told that smallholders – *without having private title to their land* – have achieved rapidly increasing maize yields, and that their productive performance is not inferior to that of the biggest commercial farmers (Harrison 1987: p. 131). There is even some striking evidence that highly intensive farming (such as vegetable gardening on destumped, heavily manured, and irrigated fields) and use of modern inputs sometimes take place on fields borrowed on a seasonal basis by 'strangers' from local lineages (Saul 1988: p. 265; 1993: pp. 85, 89–95). Yet it would seem that, in such instances, indigenous arrangements provide good security to these 'stranger' farmers insofar as they do not compete with traditional owners for using the land *during the same season*, and as they come from neighbouring villages or other social groups with whom the resident lineages "recognize cultural affinities" (Saul 1993: p. 86)[18]. On the other hand, in a country like Rwanda, where land is unambiguously scarce, the ability to bequeath land – rather than the more complete set of freehold rights involving the right to sell – appears as the most important factor affecting long-term investment (Migot-Adholla et al. 1991: p. 166; World Bank 1991: p. 66; Place/Hazell 1992: p. 13)[19].

17 Assuming the existence of reliable infrastructure and auxiliary services, an independent test of the potential role of land market imperfections in preventing the expansion of credit can be conducted by assessing the impact of individualisation on credit in areas of irrigated agriculture (where technical change has obviously taken place). To my knowledge, however, no such study is presently available.

Finally, the fact that (in Kenya or Uganda) titles are sometimes used to obtain credit allocated to non-agricultural investment or other purposes (Green 1987: pp. 8–9; Bruce 1993: pp. 44–5) seems to suggest that, in these instances, titling has increased the ability but not the willingness to invest in land improvements. The reason why it is so is nevertheless not evident *a priori*. Thus, lack of willingness to improve one's land may be due to the absence of one or several above-mentioned permissive conditions (ready technology, suitable infrastructure, adequate output prices, etc.), but it may as well be associated with the fact that land has been acquired for speculative purposes or for reasons of social prestige and political power, or it may result from persisting tenure insecurity despite registration (see supra).

4. Conclusion

There are three main conclusions which can be derived from the above analysis. First, privatisation of CPRs may be too costly to achieve and, since state ownership and centralised management of these CPRs has proved largely ineffective, a critical role must necessarily be vested in user groups at village level. Second, privatisation of CPRs may be possible, yet there is no guarantee that it will stop their degradation. Third, a clear trend towards individualisation of agricultural lands which lend themselves to intensive agricultural practices is noticeable all throughout SSA, thus testifying to the flexibility and resilience of indigenous land tenure arrangements in this continent. Under many circumstances, however, it is not cost-effective nor justifiable on equity grounds to formalise these emerging rights further by imposing comprehensive land titling.

18 In Western Burkina, agnatic segments unrelated to each other can thus create larger associations which provide "a frame for exchanging group loyalty for privileged access to land" (Saul 1993: pp. 91–2).

19 A serious defect of the Law of National Domain in Senegal is precisely that it does not include the right of bequeathing land to children in the use rights conceded to farmers. Bequeath has to be approved by local rural councils. In practice, however, heirs are still determined by compounds in accordance with customary rules without interference by rural councils (Golan 1990: p. 30).

Regarding this last point, it is worth noting that there is actually a growing consensus that titling operations are a luxury which many African countries cannot afford. (Bear in mind the high degree of fragmentation of landholdings which often makes good sense in the absence of insurance markets). Of late, Bruce has thus pointed out that recent research at the Land Tenure Center (University of Wisconsin) – probably the world's most active centre in the area of land tenure problems – tends to call into question the viability and cost-effectiveness of comprehensive tenure reform, such as systematic individualisation of tenure in full private ownership, and also to point toward the need to explore "community-based solutions to tenure insecurity and a 'state-facilitated' evolution of indigenous land tenure systems" (Bruce 1993: pp. 50–1).

In other words, since reality shows that in SSA direct state intervention in land matters is better minimised – state intervention is indeed a major source of farmers' insecurity –, and that village systems are frequently able to evolve to meet new needs, one may conclude that indigenous land tenure arrangements still have a dominant role to play. What the region requires is a pragmatic and gradualist approach that reinstitutionalises indigenous land tenure, promotes the adaptability of its existing arrangements, avoids a regimented tenure model, and relies as much as possible on informal procedures at local level (Bruce 1986: pp. 64–8; Atwood 1990: p. 667; Migot-Adholla et al. 1991: pp. 170–3)[20]. Reliance on local communities offers important advantages that can only be briefly mentioned here. First, contrary to formal procedures such as land titling which are costly and impose definitive land rights, informal practices at village level are cheap (they economize on information costs) and flexible. Second, even though social differentiation is not to be underestimated, African village communities tend to provide social security to all their members and to ensure that everybody can participate in new opportunities. Such considerations of social security and equity usually dominate considerations of pure efficiency, which should be regarded as a positive contribution in a generally insecure economic environment (Lawry 1993: p. 73). Third, still today, enduring customary systems tend to receive remarkable consensus, in particular consensus on the normative order justifying land claims (Saul 1993).

Emphasising a crucial role for village communities is not falling into the snare of romanticism, but is rather a pragmatic attitude grounded in a realistic assessment of SSA's present predicament. The top-down approach has miserably failed all over SSA[21], and these communities form living systems which have at their disposal many effective means to preempt or subvert any change ushered in from without which they do not like. Turning them around or opposing them in land matters is all the more difficult as tenure rights are embedded in

20 Interestingly, the same conclusion was reached in a careful survey of the land situation in Latin America and the Caribbean (Stanfield 1990).

21 For a useful survey documenting many failures in state attempts at agrarian reform, see Okoth-Ogendo 1993. For a more general critique of the top-down approach in SSA, see Hyden 1983; 1990; Rondinelli 1993.

socio-cultural systems that are not easily bypassed (they embody rules about virtually all aspects of social life, such as marriage, inheritance, homage and power, etc.). What is therefore needed is an approach based on cooperation rather than confrontation[22]. This implies, whenever feasible, a strengthening of local capacities for management, information, and dispute settlement rather than imposing from above the mechanisms of a formal state legal system (Atwood 1990: p. 667).

In fact, it is only when informal institutions and practices are no more reliable methods of adjudicating land rights and ensuring land tenure security that African governments should consider undertaking a formal registration procedure. There are indeed special circumstances where titling may be worthwhile, such as when indigenous tenure systems are absent or very weak (e.g. in new settlement areas); or when traditional lines of authority have been severed and loyalties to lineage and communal groups eroded (Migot-Adholla et al. 1991: p. 170)[23]. On the other hand, when uncertainties and tensions prevail that cannot be adequately reduced by local communities, particularly with respect to inter-community relations, or when local practices involve efficiency or equity costs deemed excessive, the government could lay down a number of basic, well-publicized principles aimed at validating certain kinds of land claims or transactions (ibidem)[24]. Through appropriate institutions where government representatives sit side by side with customary authorities, the former could negotiate with the latter the best ways of implementing these principles (given local conditions) and verify that they are duly abided by. Interestingly, some African countries have already made significant progress in that direction, as witnessed by the experience of Senegal where the Law on the National Domain dispossessed traditional landowning nobilities of any claims such as tithes and rents which they had on farmers in return for access to "their" land, and where authorities succeeded in ensuring access of former slaves to land parcels in the irrigation perimeters developed along the Senegal river[25].

22 See the fascinating study by Bassett on Northern Ivory Coast where examples of the two attitudes can actually be found in the explosive context of Fulani sedentarization (Bassett 1993: pp. 143–9).

23 Note that this does not necessarily imply that titles should be made freely transferable nor, in fact, that they ought to be granted on an individual basis only (Platteau 1992: pp. 216–30, 244–90).

24 That, in those cases, the government can avoid the high costs of land registration is illustrated by the experience of Lesotho where a comparatively cheap system of occupation permits, possibly convertible into formal lease-rights, has been instituted. According to one study, all commercial farmers felt that this system "provided them with sufficient security to farm commercially" and "none of them perceived a customary allocation as inadequate or a disincentive to investment". At the same time, they could easily recognize "the social security role of the customary tenure system" (Lawry 1993: p. 71).

25 See, for example, Diemer/Van der Laan 1987; Bloch 1993.

Abstracts

Die Frage der Privatisierung von Landbesitz hat im Hinblick auf die Länder südlich der Sahara zwei Hauptaspekte. Erstens: Sollen Grund und Boden sowie natürliche Ressourcen, die traditionell der gemeinsame Besitz von Dorfgemeinschaften waren, privatisiert werden? Und zweitens: Ist es notwendig, die verstärkt personalisierten Rechte der Bauern auf ihren Landbesitz durch den Staat zu formalisieren und soll ihre freie Veräußerbarkeit aktiv unterstützt werden? In anderen Worten: Sollen diese Rechte zum Objekt eines umfassenden Privatisierungsprogamms werden? Dies sind die zwei Fragen, die in dem gegenwärtigen Artikel behandelt werden, auch mit der Absicht wichtige politische Verflechtungen darzustellen.

The issue of privatisation of land assets has two main aspects in the specific context of SubSaharan Africa. First, should land and natural resources that have traditionally been the common property of village communities be privatised? And, second, do the increasingly individualised rights which farmers hold on their agricultural lands need to be formalised by a state authority and should their free tradeability be actively encouraged? In other words, should these rights be made the object of a full-fledged privatisation programme? These are the two questions addressed in the present essay with a view to drawing relevant policy implications.

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Entwicklungs- und Umstrukturierungsprozesse im Tourismussektor Namibias

Einleitung

Mit der Unabhängigkeit Namibias 1990 wurde der Tourismus zu einem wirtschaftlichen Hoffnungsträger. Fremdenverkehr und Fischereiindustrie sollen in Zukunft den Bergbau entlasten, die verarbeitende Industrie stärken und wichtige Devisen erwirtschaften. Seit fünf Jahren bemühen sich Regierung und private Wirtschaft um eine eigenstaatliche Entwicklung im Tourismus. Bis 1990 war Namibia der Hinterhof und der Geheimtip südafrikanischer Urlauber. Die Infrastruktur, Straßen, Versorgung und Verwaltung, war gänzlich auf den südlichen Nachbarn ausgerichtet. Noch heute sind über 50 Prozent der Besucher Südafrikaner, doch dieser Wert lag vor 1990 deutlich höher. Verstärktes Marketing in Europa, der Ausbau des Straßennetzes in Richtung der anderen Nachbarländer und die Entwicklung eines eigenständigen Tourismuskonzeptes sollen die Abhängigkeit zur RSA mildern und höhere Deviseneinnahmen bringen.

Der Tourismus soll Impulse für Namibias Wirtschaft setzen und soll die regionalen Einkommensdisparitäten ausgleichen.

Probleme ergeben sich dabei in der Beteilung der ländlichen Bevölkerung, insbesondere der ethnischen Minderheiten, an Gewinnen, Arbeitsplätzen und infrastrukturellen Einrichtungen. Ein weiteres Konfliktfeld kann, bei einer nicht verantwortungsvollen Tourismussteigerung, im Bereich Natur- und Umweltschutz entstehen (vgl. UNIN [Hrsg.]: Namibia. Perspectives for National Reconstruction and Development. Lusaka 1986. Darin wurden Empfehlungen für die Entwicklung von Tourismus und Umweltschutz abgegeben).

1. Der Tourismus als Wirtschaftsfaktor in Namibia

Die Deviseneinnahmen Namibias aus dem Tourismus zeigen eine positive Entwicklung.

1990:	167 Mio. Rand
1991:	231 Mio. Rand
1992:	297 Mio. Rand
1993:	371 Mio. N$
1994:	445 Mio. N$ (1 Namibischer Dollar = 1 Rand = ca. 0,5 DM)

Quellen: Allgemeine Zeitung-Tourismus, April 1994; Fischer Weltalmanach 1995, S. 447.