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Inhaltsübersicht:

7 Salha Hamdani for example states in her recent (but undated) study which actually focuses on "Female Adolescent Rites and the Reproductive Health of Young Women in Morogoro Tanzania" refering to the Uluguru mountains: *"Residence is to this day matrilocal. In case of divorce, children are automatically retained by their mother in accordance with the traditional customs. In fact in case of divorce, the husband leaves with nothing but his shirts and pants."* (Hamdani n.d.: 3) Vocabulary like "automatically" and "traditional custom" suggests a firm and static tradition which however does not exist in this part of the Uluguru mountains anymore and it is doubtful whether this presented ideal version of a supposedly traditional pattern of land tenure ever existed.

8 Yngstrom also states this explicitely: "Women, it is said, can still inherit lineage lands on the understanding that their brothers have "enough" land." (Yngstrom 2002: 30)

9 figures are estimates by the respective village chairmen

10 Unfortunately I cannot cite from the original as I did not manage to get a copy of the Land Act, which was impossible to come by in Tanzania in summer 2002. Conversation with activists from Hakiardhi, the Dar-es-Salaam based NGO lobbying for land rights suggested that the government does not make any effort to make the laws available to the public, to say the least.

11 2000 Tsh was in the period July-August 2002 worth slightly more than 2 Euro which – although I cannot give any meaningful relation – is not little money for a family in the case study area.

12 Nevertheless would she like to have the shambas registered: "kama ikitokea naweza kufuatilia tu, ningependelea".

13 out of a sample of 135 women

Christian Lund

Conflicts and Contracts in Burkina Faso. Land and Local Law between State and Community

1. Introduction

Land tenure systems are changing throughout the Sahel region at different paces, more or less profoundly and probably not in one single and clearly predictable direction (Benjaminsen and Lund 2002). The transformation of tenure systems is not a smooth process but one of conflict and confrontation as well as creativity and innovation. In this article I first focus on the institutional capacity to manage land disputes inscribed in a structural competition, namely between herders and farmers in the Boulgou region in Burkina Faso. These conflicts have social, political and cultural dimensions as well as the more legal ones. This puts serious demands on the societies' capability to resolve or manage disputes. Secondly, I focus on the popular recording of land transactions in Western Burkina Faso. Various practices of formalisation of land rights are important in people's strategies to legitimate and secure rights – to turn claims into rights, as it were. Both issues demonstrate how the actual legal practices at the local level neither represent the formal legal rules and institutions as prescribed by the legal texts, nor totally disregard state institutions and formal law. Rather, it emerges as a negotiated, creatively crafted amalgam of rules and practices in that very tension mediated through power relations.

Conflicts over land in the Sahel have received increasing political and scholarly attention over the past decades. Conflicts are normal social processes and social order does not depend on the absence of conflicts but on society's capacity to deal with them appropriately (Le Roy 1991:165). Far from all conflicts and disputes have 'happy endings'. Some negotiations break down and are ended by force rather than settled with mutual recognition of the outcome. Others do not really end as such. In persisting relationships there may often be a chronic eruption of conflicts rooted in a structural competition over resources. In Burkina Faso, as in other African societies, the institutions and norms related to land are plural and often quite ambiguous. The colonisation and modernisation processes engendered a split in the legal system between state law and more customary regulation of social life. While the two types of law are not always internally consistent respectively, colonial and independent government administration inculcated a dichotomy in the legal system over time. The dichotomy often develops ambiguity and contradictions in terms of which institution is authorised to intervene in a conflict and which principle should be applied. A central institution respon-

sible for dealing with tenure disputes between herders and farmers in Burkina Faso is the *Tribunal Departemental de Conciliation* (TDC). This tribunal deals with conflicts stemming from structural competition over resources in an ambiguous legal environment.

A newer development of informal formalisation of land rights is becoming increasingly widespread in Western Burkina Faso in connection with monetary land transactions. In the absence of a state managed land register, people have taken to the private issuing of deeds and contracts. On the one hand, this formalisation draws on the signs and symbols of the state as well as the idioms of custom and community. On the other, it is carried out largely outside of the formal law. This informal formalisation (Mathieu, Zongo and Paré 2002) displays a remarkable creativity by ordinary people to bridge the gap between contradictory trends, interests and idioms. While commoditisation and formalisation echoes markets 'requirements', the processes would appear also to be largely embedded in local social relationships that encompass more than market relations.

In the following I sketch out two theoretical principles for how collectively binding decisions are defined and enforced – two principles that the TDC in practice has to reconcile somehow. And I analyse some of the strengths and weaknesses of the TDC in this endeavour. I then describe how written contracts are emerging as legal practice between state and community.

2. State Law and Community Law

Legal philosophy offers two distinct perspectives of how legal settlements come about inscribed in two images of 'law's social environment' (Cotterell 1990: 4; Moore 1978: 244). One is the image of a morally cohesive association of a politically autonomous people; a *community*. The other image is one of individual subjects of a superior political authority, the *state*. While the image of community symbolises a horizontal relation where the bindingness of the norms is assured by the reciprocal interest in bilateral negotiated agreement among free agents, the image of state symbolises a vertical relation where a central authority's imposition and sanction insures the bindingness of the norm.

Community-as-source-of-law is a broad category. It stretches from a participatory and not overly codified mode to a more institutionalised and professional mode. At one extreme there is a rather immediate connection between community norms and law because it is the community that decides what its customs and hence law should be. At the other, the connection between community norms and law is mediated by judges who interpret existing customs and hence express them in terms of law. In circumstances (which are the most common in Africa) where several communities and several competing customs exist the community perspective is not easily compatible with the notion of one unrivalled jurisdiction.

A particular problem concerns the role and legitimacy of the judge or third party. In the community perspective the judge is the primary representative of the community and is therefore allowed some latitude for judicial creativity. In the state law perspective, on the other hand, the judge is the extension of the sovereign and not constrained to interpret and apply community values. In this perspective the judge will apply the law as issued from the government. Any creativity in law making should come from the government as legislators. Obviously, both perspectives are ideal typical, and in concrete contexts they combine as the cases below demonstrate.

3. Burkina Faso – local level judiciary and tenure legislation

3.1 The Judiciary

While the legal system of Burkina Faso, and more precisely the judiciary, has undergone considerable changes during the past decades it has maintained an important element of 'community' since independence in 1960. Before the revolution in 1983 disputes over land, which were not settled at village level were dealt with at the *Tribunal de 1er or 2ème degré de Jurisdiction de Droit Coutumier*. The tribunal was headed by the government representative of the department, the Prefet or Sous-Prefet, who was assisted by lay assessors, namely customary chiefs and notables.

During the revolutionary period (1983-91), the *Tribunaux de Jurisdiction de Droit Coutumière* were replaced by *Tribunaux Populaire de Conciliation*. They dealt with judicial as well as political controversies. The general drive to oust the traditional chiefs excluded them from the judiciary, which instead was presided and controlled by the new political leaders – the *Comités pour la Défense de la Révolution* (CDR) controlling the legislative, the executive as well as the judiciary.

From 1991 with the return to constitutional governance the judiciary re-acquired formal independence from the executive. The new *Tribunaux Departementaux de Conciliation* (TPC), which thenceforth dealt with land disputes were presided by the Prefet and composed by four lay-assessors. The latter are neither chiefs nor political militants but rather 'honourable citizens' from the community; generally, retired school teachers, *anciens combattants*, older members of the civil service and to some extent younger high school graduates who function as secretaries for the TDC.

While political changes during the past decades are reflected in the composition of the tribunals, a number of common features also characterise them. First, none of them were formally empowered to adjudicate. But the presence of a high profiled powerful person as the Prefet or the leading CDR meant in practice that the mandate of the tribunals was ambiguous. The second common feature is the blend of a central government representative and members of the community.

Obviously, the notion of representatives of the 'relevant community' changed over the years from being chiefs, over revolutionary militants to honourable citizens. But the importance of the 'community voice' in tribunal hearings has characterised all periods. And the Prefet or his CDR-equivalent was always 'surrounded by community' in the tribunals.

3.2 Legislation

Although 'community' features in the local judiciary the legislative background for deciding in disputes over land has been changed quite considerably over the past 20 years. Before the revolution there was no clear legislation on rural land ownership and land use. A concept of customary land tenure, covering a wide variety of tenure principles was the basis for dispute settlement. The custodians of custom and tradition – chiefs and notables – therefore had an obviously privileged position to know, adapt and invent customs as disputes were brought before them in the tribunals. Traditional landowners were allegedly favoured by this system. With the revolution came a first general attempt to regulate land tenure by government legislation. The Land Reform Act (*Reorganisation Agraire et Foncière*) from 1984 (RAF-84) thus declared that land was the property of the state. This was an attempted clean break with customary rights. The unintended consequence of this revolutionary declaration was, as described by Faure that the message was,

> 'interpreted as meaning that "free land belongs to those who cultivate it". Everywhere, people extended their farmland and took over new areas by clearing forests and grazing lands. ... Emboldened by revolutionary declarations, the spontaneous settlers were no longer afraid of the customary guardians of these lands' (Faure 1995: 5).

During the revolutionary period the state's control over land was constantly inculcated in propaganda and the tribunals were in a sense political instrument devoted to annihilate the power of the chiefs and their control over land. Consequently, rulings were generally favourable toward those actually exploiting the land and not those non-exploiters who claimed to have an ancestral right to it.

The revised land reform, RAF-91, formally established local village commissions for attribution and retrieval of land. Although the composition and mandate was quite unclear, the coincidence with the post-revolution era made it quite clear that it was no longer the enemies of the landowners – the militant CDR's – who had monopoly on this institution. The majority of the articles in the RAF-91 dealing with how people could acquire rights to land meticulously describe the conditions and procedures.[1] But article 123 makes an important exception, village land used for habitation or cultivation is not attributed through this well described procedure. As a senior civil servant with intimate knowledge of the consecutive tenure reforms stated to me, 'according to the RAFs, the land holding of 98 % of the population is not covered by law'. This effectively leaves it to people to negotiate forms of land holding locally.

More recently, acknowledging how land tenure issues are actually dealt with in the rural areas of the country, revisions of the RAF operate with the notion of local customary rights and land owners. In the most recent revision of the RAF, formulations like '*les membres des commissions villageoises de gestion des terroirs elus et/ou désignés suivant les réalités historiques, sociales et culturelles ...*'[2], reflect a growing recognition of local customs. It might even include customary institutions such as chiefs.

Summing up, the conditions for the local dispute institution of the TDC are both complex and changing. While the TDC or its predecessors headed by a civil servant or another state representative have had a position as the extension of the state, it has equally been organised with some sort of community voice. And while the law since 1984 has been rigorous in form and content, it has been applicable only under special circumstances. This is beginning to be recognised in more recent legislation and propositions, which to some extent refer to community norms as source of law. But this does not necessarily make it easier for the TDC to apply the law as such. The TDC thus have some room for manoeuvre and the challenges in making use of it are numerous. I shall explore this in two cases.

4. Two Cases of Conflict

The two cases were played out in the Boulgou province in Eastern Burkina Faso.[3] Both cases deal with disputes between a group of Fulani pastoral herd owners and a group of Mossi and Bissa farmers. Historically, cohabitation between these ethnic groups have characterised the area. Both groups therefore have, what could be termed, reasonable expectations of continuing to live in the area and exploit the resources. The recognition of the decision by both parties is therefore most likely to be obtained if both parties continue to have access to the resource in the area somehow. Consequently, while compromise is not always the physically possible or socially just outcome of a dispute, in this particular type of conflict it seems a very reasonable option as a solution to a dispute.

4.1 Case 1: Cattle Corridor Annihilated and TDC Appears Powerless

The village of Malanga Nassoré has around 4000 inhabitants and holds 9 *quartiers* of which 8 are the homes of Mossi and Bissa who are predominantly farmers. One quartier is inhabited by Fulanis who predominantly raise cattle. The extension of cultivated fields had recently begun to pose a problem for the mobi-

lity of the herders' cattle. In 1993, the last access corridor from the Fulani *quartier* to a village pasture was being encroached upon and blocked by a neighbouring farmer from the village. The Fulani leader, Diallo, addressed the farmer asking him to postpone the extension until the village chief had assigned another corridor for the herders and their cattle. The Mossi/Bissa farmers held a meeting where the proposition was discussed. The outcome was, however, that they would not postpone extension of the fields. It was argued that the extension of the fields merely constituted a re-integration of the fallowed field into cultivation. And besides, the argument was, 'Fulanis cannot own land'. Diallo went to the *chef-lieu* of the department, Tenkodogo, to gather information with the Prefet. At his return he explained to the village chief and the villagers that the government had a policy of protecting cattle corridors. And, accordingly, the village's cattle corridor should be protected. While the farmers in general refused this the village chief argued for respecting the corridor. The farmers then went to the *Prefecture* in order to complain about the decision. Due to heavy rains the Prefet and the lay-assessors of the TDC were unable to go to Malanga Nassoré for another 10 days, but at their arrival the Prefet repeated his earlier decision and encouraged the villagers to plant trees to mark a 50 m wide corridor which he indicated with the assistance of the agricultural extension agent. Two weeks later all the trees were uprooted, but nobody admitted doing it. The Fulanis, once again, addressed the Prefet, but at his and the agricultural extension agent's arrival the millet crop was already 1 m high in the fields and the contested corridor. After the visit of the Prefet the status of the corridor was formally maintained, but the farmers were allowed to harvest this year because of the advanced state of the crops. The following year, however, the corridor was to be re-established. The Fulanis accepted and transferred their cattle to a pasture some 60 km away.

The following year, in 1994, the pasture to which the corridor led from the village was cultivated. This meant that the corridor was leading 'nowhere'. When the Fulanis brought the case before the Prefet they were dismissed on the grounds that the area in question did not enjoy formal status as pasture and the protection issued the year before was for the corridor only. The final outcome was that the corridor as well as the pasture was cultivated and the Fulanis had to transfer their cattle to another area for good.

This case exhibits a number of weaknesses in the operations of the TDC as a dispute institution. First, while the TDC seemed determined to adjudicate for the protection of the corridor it was not capable of enforcing its interpretation of local custom. The protection of a cattle corridor was, in fact, a mixture of state legislation and community norms. While the mobility of cattle has been a historical fact, most cattle corridors seem not to have enjoyed a particular status beyond pragmatism with local communities. Only with state intervention and government planning did cattle corridors get formal status. Unenforceable, however, this decision gave way, first, for a seemingly pragmatic temporary decision of permitting farmers to harvest, but later for an outcome compatible with the farmers' dictum that Fulanis cannot own land. And this is the second point, leaving the decision to be worked out in the community because of the administration's incapacity meant that the settlement was reflecting the interests of the stronger party. There was apparently no inducement of good will on the part of the farming community to reach compromise. Instead of a compromise, which considered the interests and stakes of both parties, a simple decree was issued favouring one party to the exclusion of the other. It is as if the options for the Prefet and the TDC were either total or no control over the outcome; either rigorous application of state regulation or complete state absence, leaving decisions to be worked out by the parties however they could. The interesting thing about the case is that the authorities had apparently no influence on the outcome – not only did they not manage to impose its first ruling, it did not even effectively influence the ensuing social struggle or negotiation over the land in question. The irony is that the Prefet and TDC's insistence on state control produced the opposite result – untethered community reckoning.

Another case of legal procedure from a neighbouring department brings forth a somewhat less gloomy picture.

4.2 Case 2: Increasing Land Pressure due to Bagré Lake

Around 1985 the Fulani family of Tarko arrived at the Bissa village of Bassindingo in Niaogho department in Boulgou. They had left a neighbouring province because of lack of land. Arriving at Bassindingo they asked for land with the land chief and the CDR-representative, and were assigned some land uphill from where the farmers of the village farmed. With the completion of the neighbouring Bagré dam in the late 1980's, the level of the lake rose and permanently flooded major parts of the farmers' cultivable land as well as an important mango grove. The Bissa farmers, led by the village chief, approached the Fulani herders and asked them to vacate the area allotted to them earlier and move on. The Fulanis refused to leave, however, and referred to the earlier allocation. At first, the farmers let the case lie and cultivated the land, which was not flooded, but in 1993 the dispute was brought before the TDC of Niaogho by the farmers.

The two parties had not been able to work out a solution by themselves. The Prefet and the TDC were caught in a tricky dilemma; the legal texts did not foresee this type of situation where a large group lost their land through force major lost their land, and still the authorities had to find some kind of solution.

On the one hand they could opt for an application of the RAF arguing that the farmers had no right to come back to the land they had once abandoned. A

problem of applying the RAF would, however, be that the agro-pastoralist Fulanis did not use all their land for cultivation and no management plan (*amenagement pastoral*) had been produced. Hence, 'blind' application of the RAF could entitle the farmers to settle on all the un-farmed land of the Fulanis. On the other hand, the Prefet and the TDC could opt for an interpretation more in line with the recent political indications. They could argue that the farmers of Bassindingo had a traditional right to the land of the village. This could be done by letting members of the village commission for land management declare that the transfer to the Fulanis was of a temporary nature since no written agreement had been produced. However, such a commission appointed according to local '*realités historiques, sociales et culturelles*' hardly existed, even on paper, in Bassindingo.

The Prefet chose to do neither. Instead he summoned the parties at the banks of the new lake in order to convey the gravity of the farmers' situation to the Fulanis. Then the litigants were threatened to negotiate a settlement agreeable to both within a week. Otherwise the Prefet would apply the law to the letter, as he said. This was somewhat of a bluff, because while a copy of the law, RAF-91, was always displayed on his desk when the TDC was in session, he had no idea of which paragraph or article to refer to or to apply. Nevertheless, his manoeuvre produced an at least temporary settlement. The Fulanis agreed to surrender some of their land to the farmers while the farmers agreed to relinquish any further claims to the land. The following year, in 1994, the farmers attempted to have the Fulanis evicted with the assistance of the Prefet. They claimed that the 1993 settlement had been a one year grace period for the Fulanis before their eviction. This was refused by the Prefet and since then the decision was not contested.

Now, why was this settlement produced when prior to the intervention of the Prefet and the TDC no agreement seemed possible? It seems that the invocation of the coercive power of the state and the threat of the strict application of the law made both parties prefer to have some influence on the outcome and to show good will. Just like the Prefet, none of the parties actually knew what the application of the law to the letter would have implied.

The confusion of this case is not altogether discouraging. First, had the Prefet and the TDC neglected the dispute and simply left it to the parties to sort out their problems, the dispute may very well have developed seriously – even tragically. On the other hand, had the Prefet and the TDC tried to impose a specific settlement upon the two parties, there would have been the obvious problem of working out the outcome favouring one or the other. The TDC would have had a problem in either case be it based on state laws or community customs since neither the RAF's nor the community customs are unambiguous.

Instead the Prefet and the TDC opted for a pragmatic combination. The TDC accepted the urgency of a decision expressed by the two parties. But instead

of interpreting a specific community norm authoritatively, the TDC and the Prefet left it to the parties most closely involved and most dependant upon the outcome to work out a settlement. It was left to the parties to develop a possibly new but at least adapted community norm.

The procedure can be described as a combination of a somewhat formalist logic of state law (more concerned with the fact of order and authority than with its actual contents) and a substantial logic of community letting the decision be worked out by the relevant community, hence creating new local customs or new local law.

5. Formalising contracts

The cases of conflict settlement described above – whether consensual or not – share one particular feature. The settlements were not recorded. Recording of land transactions – loans, rentals, sales etc. – have recently become more widespread in some rural areas of West Africa and also in Burkina Faso. This practice also straddles the divide between formal law and custom and constitutes an important adaptation and innovation.[4]

A key issue in the debates on land tenure policies in Africa is registration of property and its transactions. According to what Platteau has dubbed (and criticised) the *Evolutionary Theory of Land Rights*, the emergence of a land market creates a dynamic of increasing demand for tenure security and institutional innovation addressed to the state. The latter will be forced to provide and guarantee ownership of title (Platteau, 1996). While pressure on land increases the need for tenure security the theory has weaknesses. As pointed out by Lavigne Delville,

> 'it implicitly assumes that stakeholders are unable to innovate and invent, or to come up with solutions for the problems they face. … Their demand for institutional innovation is addressed to government and relates exclusively to the radical innovation of bringing land title into general use. However, stakeholders are neither passive nor totally powerless' (Lavigne Delville 2002: 90).

In the cotton producing areas of Burkina Faso land transactions are increasingly monetised (Mathieu, Zongo and Paré 2002).[5] Previously local norms concerning land would allow the settlement of strangers (i.e. people from elsewhere in rural areas). It was possible to obtain long lasting and secure access to land on the condition of a good personal relationship with whoever granted the settlement right. Such relations were normally maintained by symbolic payment of a nominal fee or a small portion of the annual harvest. Such relationships between a sponsor and a settler would generally be passed on through generations. Over the past decades, cotton cultivation has been extended strongly encouraged by the

state and external financial support, and the cotton zone has experienced a steady flow of migrants from the central areas of Burkina Faso. Land has increasingly become precarious and valuable. The nebulous character of the Land Reform Act, the RAF, undermining the legal backing of customary land rights added to the uncertainty experienced by autochthonous populations in the cotton areas. As a result, it has become increasingly common for autochthonous farmers to claim back land from settlers and descendants.[6] In response, some 'settlers' pay increasing rental fees or buy the land outright. This is where the new forms of formalisation come in.

Transactions are increasingly accompanied by recording. This ranges from hand written pieces of paper that testify to the agreement between two people, to more sophisticated documents that mimic official letters from the public administration. The language and detail in these documents vary, however, since the Land Tenure Act as well as custom prohibits land sales, the words *purchase* and *sale* are avoided by euphemisms such as *transfer* or *gift* in all types of documents (Lavigne Delville 2002; Mathieu, Zongo and Paré 2002). One particular element of recording land transactions, namely its situation between private and public, and between state and community norms shall briefly be touched upon here.

Local people who fabricate these written documents find themselves in a dilemma. There is a strong need for the production of proof of certain transactions in order to secure certain claims to land. Historical customary procedures no longer adequately provide that. Nor does the state. The formal legal framework essentially reserve land ownership for the state, and does not provide relevant security of rights in these new circumstances. On the other hand, for interests in land to become rights, public recognition is key, and recognition and validation by a public authority is particularly interesting (Lund 2002). People thus attempt to invoke the state to bolster the legitimacy of their transactions and claims either by imitation of style or by indirect recognition by an authority.

Some papers are thus semi-formal, drawn up by a public official outside working hours often titled *certificat de cession* or *certificats de palabre*. They are 'typewritten and framed in an administrative style, with a letterhead imitating administrative documents. Thus, the note of paper mentions of the province, of the department, of the state's official motto (*La Patrie ou la Mort. Nous Vaincrons*) etc., thus pretending to belong to the realm of the administrative papers' (Mathieu, Zongo and Paré, 2002: 119-20). As Mathieu et al. explain, each party will have his its copy of the document, and at some later stage have the local police validate the document. The *certificats de palabre* were instituted by the colonial authorities and do exist as official documents. However, strictly speaking, this validation only goes to the authenticity of the signatures, whereas the nature of the transaction – still technically illegal – does not regard the authorities as such. However, to the two parties concerned, the validation of the document 'legalises' the transaction by inference. Hence in a somewhat convoluted way, the state lends it public authority to a transaction, which is neither legitimate according to older customs nor legal according to the formal law. However, it is accepted as a contemporary practice in rural areas as necessary in order to deal adequately with emerging situations.

6. Discussion – Emerging Local Law

The examples above demonstrate that while state and state legislation matter, they matter in ways that differ from what formal intentions suggest. We must therefore deal with the area in-between state and community. In his analysis of legal reforms in Senegal, Etienne le Roy (1985) identifies this as local law. While local law is an instance of 'non-state law' in the sense that it is not issued in written form from the state, it differs from other non-state laws such as customary law or religious laws in the sense that it is not inscribed in a specific normative structure. It is rather pragmatic adaptation of norms and procedures, often in the wake of administrative or judicial reform. It is, on the other hand, not state law as such, exactly because it exhibits considerable local adaptations of the legal framework. It is law, however, because the authority with which it is exercised and the jurisdiction for which it is valid are sanctioned by the state.

From the recount of the first conflict case it can be argued, I believe, that rigid application of state law is not possible at all times. On the other hand, though, the room for manoeuvre of the TDC and the non-application of state law does not 'by itself' and without the state develop into recognised decisions and procedures which could merit the term law. This, apparently, requires much more conscious and ingenious action from the local authorities. The improvisation demonstrated in the second conflict case seems more promising, but is not without weaknesses either.

The procedure in the second conflict case was an attempt at defining the line between rules and situational adaptation. While the TDC and the Prefet were indifferent regarding the specific outcomes of the negotiation, they were insistent on the politico-legal procedure applied. The norms defined by the TDC were thus few and very general and related more to procedure than substance. Solutions must be negotiated by the parties and hence be mutually acceptable. This choice of degrees of substantive and procedural rules and of rules and situational adaptation also implied that the TDC defined the community as the farmers as well as the herders in spite of the farmers' claim that they had been there long before the herders.

However, while the choice of norms and choice of relevant community seems to have produced a more durable settlement of the dispute, the recognition of the

authority of the TDC to determine this framework was more a result of fear of sanction and ignorance of the law than a belief in the legitimacy of either. Whether the TDC's and the Prefets will develop legitimate authority as umpires monitoring the procedures of dispute settlement without depending on fear and ignorance or whether community based local law develops in the shadow of fear of state sanction is yet an open question.

The fabrication of written proof of property leads us to questions of language and style of the state. The institutionalisation of law and legal discourse, and the materialisation of the state in series of permanent signs and rituals are parts of this language. In a sense, the state is brought about when certain forms of institutionalisation are backed by state law and the bureaucracy, encoded in official language and often exercised with the paraphernalia of modern statehood. However, as evidence shows in Burkina Faso, the language of the state is not its preserve alone and other institutions strut in borrowed plumes. They may use the language of the state as well as its props in terms of contracts, deeds, attestations are used by ordinary people. The irony of such 'unstately stateliness' is that distinctions at one and the same time get increasingly blurred (who is exercising state authority?), and become increasingly important (who can produce rights?). Reality in Burkina Faso does not fall into neat dichotomies but is a blend of coexisting mutually influencing forms of power, discourse and rationality.

Ordinary people recognise the symbolic importance of the state as well as its incapacity to deliver. Hence, creativity is unfolded as institutional innovation is negotiated. Likewise, the public officials recognise that the durability of a decision often depends on its legitimacy among the primary stakeholders, and that the formal legislation's substantive rules are unlikely to provide it. Hence they also adapt their means creatively to circumstance. Negotiability does not work equally well for all concerned, however. Local entrepreneurs may, for instance, be less interested in clear and unequivocal rules than is often supposed. And those less well equipped to negotiate, and in particular to negotiate the very terms of negotiation, often lose out. On the other hand, however, negotiability seems to offset determinism. The constant re-negotiation of rights and property does not imply a situation of social equity and equality, but it provides opportunities to disprove the solidity of inequality.

It seems almost contradictory that the state and its public authority, on the one hand, is sought to validate claims, while it, on the other, demonstrates a striking incapacity to regulate and instil institutional certainty and predictability. Thus, despite weak, ambiguous and, essentially, negotiable legislation and despite inconsequential and challenged institutions, the state has a profound, though oblique, effect on the social management of property. The state – or rather the way the state is imagined –is central to the production of property. The opportu-

nities for rent-seeking provided by control over such institutions are, on the other hand, alluring and will often tend to work towards their proliferation rather than towards the consolidation of predictable rules and institutional paths.

Abstracts

Local level legal practices concerning land in Burkina Faso neither represent the formal legal rules and institutions as prescribed by the law, nor totally disregard state institutions and legislation. Rather, a creatively crafted amalgam of rules and practices emerges as a negotiated result mediated through power relations. It is argued that despite ambiguous and negotiable legislation and despite inconsequential and challenged institutions, the state has a profound, though oblique, effect on the social management of property. The state – or rather the way the state is imagined – is central to the production of property.

In Burkina Faso repräsentieren lokale Rechtspraktiken betreffend Land weder die formalen Regelungen die im Gesetz festgeschrieben sind, noch ignorieren sie staatliche Institutionen und Gesetzgebung völlig. Stattdessen entsteht – als verhandeltes Resultat Ausdruck der bestehenden Machtverhältnisse – ein kreativ zusammengeführtes Amalgam aus Regeln und Praktiken. In diesem Artikel wird argumentiert, dass der Staat, trotz widersprüchlicher und verhandelbarer Gesetzgebung und trotz in Frage gestellter Institutionen, eine starke, wenn auch indirekte Wirkung auf das soziale Management von Besitz hat. Der Staat – oder eher die Art auf die der Staat gedacht wird – ist für die Produktion von Besitz von zentraler Bedeutung.

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1 RAF-91, Livre II, articles 83-208
2 Article 46 in RAF-96
3 Material for these cases was gathered in 1996 and 1997. The research was funded by the Danish reseach Academy under the SEREIN programme.
4 In the following I draw heavily on the writings and continued discussions with Jean-Pierre Chauveau, Philippe Lavigne Delville and Paul Mathieu. For work on this issue, see, Chauveau, 1997, 1998; Edja, 2001; Kone and Chauveau, 1998; Kone, Basserie and Chauveau, 1999; Lavigne Delville, 2002; Lavigne Delville and Mathieu, 1999; Lund, 1999; Mathieu, 1999, 2001; Mathieu, Zongo and Paré, 2002; Paré, 1999, 2001; Zongo, 1999; Zongo and Mathieu, 2001; Zougouri and Mathieu, 2002
5 For a parallel development in Mali see, Benjaminsen and Sjaastad, 2002.
6 Similar waves of withdrawal of land were sparked off in Niger in the wake of the announcement of the land tenure reform, the *Code rural* (Lund, 1998).

Rohn, Walter 2002
Regelung versus Nichtregelung internationaler Kommunikationsbeziehungen.
Das Beispiel der UNESCO-Kommunikationspolitik. ISR-Forschungsbericht 26. Verlag der Österreichischen Akademie der Wissenschaften, Wien, 96 Seiten.

Wer erinnert sich noch an die New World Information and Communication Order (NWICO), mit der die UNESCO in den 70er und frühen 80er Jahren versuchte, der Einseitigkeit des Informationsstroms von Nord nach Süd gegenzusteuern? Dass wir auch heute noch sehr wenig über die Länder Afrikas, Asiens und Lateinamerikas wissen, macht es den Demagogen so leicht, mit Angst vor den und dem Fremden Politik zu machen. Denn unsere Medien transportieren in erster Linie Klischees von Armut und Gewalt aus den Ländern des Südens.

Die Länder der sogenannten Dritten Welt sollten nicht nur Objekt, sondern auch Subjekt von internationalen Nachrichten sein. Das war das Anliegen von Konferenzen und Beschlüssen der UNESCO. Der Prozess der Entkolonialisierung hatte vor allem in Afrika neue selbstbewusste Staaten hervorgebracht, die in der Welt wahrgenommen werden wollten. Ihre zahlenmäßige Mehrheit in den großen UNO-Organisationen ermöglichte es den Entwicklungsländern, große Reformprojekte wie die NWICO oder auch die Neue Weltwirtschaftsordnung zu beschließen. Die sogenannte McBride-Kommission legte 1980 einen Bericht vor, der die zur Verwirklichung der NWICO notwendigen Maßnahmen zusammenfasste. Der Ausbau der Kommunikationsinfrastrukturen im Süden und die Senkung der internationalen Telekommunikationstarife gehörten ebenso dazu wie die Ausbildung von Journalisten beider Welten. Es entstanden staatliche und parastaatliche Presseagenturen in vielen Ländern. Die Gründung der internationalen Agentur Inter Press Service (ips) wurde von großen Erwartungen begleitet. Ips gibt es heute noch, doch sie fristet ein Schattendasein zwischen den Giganten der Nachrichtenfabriken.

Spätestens mit dem Austritt der USA aus der UNESCO im Jahre 1984 ging es bergab mit der NWICO. Es fehlten die Mittel und der globale Keynesianismus, der der Neuen Weltwirtschaftsordnung wie auch der Neuen Informationsordnung zugrunde lag, kam zunehmend aus der Mode. 1989 vollzog die UNESCO den Schwenk zur neoliberalen Globalisierung auch auf dem Gebiet der Kommunikation nach und verschrieb sich in der 25. Generalkonferenz einstimmig dem Free-Flow-Regime. Unter den Schlagworten „freedom of expression“ und „free flow of information“ wurde die Ware „news“ wieder den Regeln des Marktes unterworfen.

Der Politikwissenschafter Walter Rohn zeichnet in seinem Forschungsbericht Geschichte und Scheitern der