



Governing livelihood and land use transitions: The role of customary tenure in southeastern Morocco

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ABSTRACT

This article documents how customary land tenure systems mediate transformations of land use and livelihoods in the arid pre-Saharan region of southeast Morocco. Although dominant development paradigms for land governance have begun to recognize customary regimes, development orthodoxy still holds that formalizing rules as part of national property law is essential to ensuring economic growth or effectively governing land use and livelihood transformations. Our research in southeastern Morocco indicates that customary tenure regimes play a central role in managing such transformations in the absence of effective formal property frameworks. Extended ethnographic fieldwork in the Mgoun Valley of Tinghir province established the trajectory of rural livelihoods, migration, and land use in the latter half of the 20th Century. Additionally, the authors conducted a survey with 306 households in the Mgoun Valley, documenting income, asset, and livelihood profiles of households today; the survey produced demographic, livelihood, and asset profiles of these same households in the early 1960s. The results confirm a marked shift from pastoralism to other land uses and livelihoods at the household level in the last half-century. The household-level data also show how the “invisible rules” embedded in customary tenure regimes shape livelihood and land use options available to different households. Unformalized tenure rights in collectively-owned land and breakdowns in customary resource management regimes under global economic pressures are often seen—in Morocco and other parts of the world—as producing chaotic or unsustainable land use change. However, this research shows that customary land tenure may, in fact, actively manage such change using rules that may be invisible to formal data collection and policy-making institutions, but are not invisible to the people negotiating these dynamic rule systems.

1. Introduction

This article documents how customary land tenure systems mediate transformations of land use and livelihoods in the arid pre-Saharan region of southeast Morocco. The management of arid and semi-arid lands is currently one of the most pressing development questions throughout North and dryland Sub-Saharan Africa, as climate change, political instability, market integration, and economic marginalization transform pastoralist livelihood systems and the environments on which they depend (Turner, 2011). Many groups have diversified into cultivation and other livelihoods, raising contentious questions about appropriate land uses, conservation goals, and the ability of land tenure

systems to manage livelihood and land use transitions (McCabe et al., 2010). While formal tenure regimes and government policies are central to these dynamics, customary tenure regimes also mediate socio-ecological processes, sometimes exacerbating pressures but often managing land use transitions in the absence of effective formal tenure governance.¹ Dominant development paradigms for land governance have begun to recognize these customary regimes. However, development orthodoxy still holds that formalizing rules as part of national property law is essential to ensuring economic growth or effectively governing land use and livelihood transformations. Our research in southeastern Morocco indicates that customary tenure regimes have played a central role in managing such transformations over the past

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¹ This paper uses the definition of customary tenure cited by the FAO: “the tenure usually associated with indigenous communities and administered in accordance with their customs as opposed to statutory tenure usually introduced during the colonial periods. However, some countries in Africa are giving legal status to customary tenure. It often includes communal rights to pastures and exclusive private rights to agricultural and residential parcels” (Food and Agriculture Organization, 2002: 48). It is beyond the scope of this paper to explore the various ways in which formal and customary tenure systems interact in the Moroccan context; we focus particularly on tenure practices that are not formalized in national property law. There is also a substantial literature on the problematic nature of the category of “customary tenure,” given the role of colonialism in reifying, remaking, and often inventing tenure regimes then glossed over as “customary.” See, for example, Mamdani (1996) and Peters (2013).

half-century.

Since the early 1960s, the pre-Saharan region of Morocco has experienced a marked movement out of extensive pastoralism as a result of outmigration to Europe and urban centers, environmental change, market integration, and other social and economic pressures. Many former pastoralists have moved into cultivation, wage labor, and other diversified livelihoods (Rignall, 2015; Gertel and Breuer, 2007). These forces have also precipitated intraregional population movements, as households move from the drought-affected highlands and into the lower-lying steppe. Such marked livelihood transformations—whether sudden or over longer periods, as in this case—are invariably accompanied by land use transitions in a mutually constitutive relationship: new economic and social realities place new demands on land while new land uses present changing opportunities and constraints for households forging new livelihoods. This paper examines the shift from pastoralism to other land uses and livelihoods to ask broader questions about how customary land tenure systems mediate land use transitions. Extended ethnographic fieldwork in the Mgoun Valley of Tinghir province established the trajectory of rural livelihoods, migration and land use in the latter half of the 20th Century.² Additionally, the authors conducted a survey with 306 households in the Mgoun Valley, documenting income, asset, and livelihood profiles of households today; the survey produced demographic, livelihood, and asset profiles of these same households in the early 1960s.³

The results confirm a marked shift from pastoralism to other land uses and livelihoods at the household level in the last half-century. The household-level data also show how the “invisible rules” embedded in customary tenure regimes shape livelihood and land use options available to different households. Unformalized tenure rights in collectively-owned land and breakdowns in customary resource management regimes under global economic pressures are often seen—in Morocco and other parts of the world—as producing chaotic or unsustainable land use change. A countervailing finding in land tenure scholarship has shown that conflict over land and resource allocation generally has elevated the importance of customary land tenure as a means of controlling who benefits from access to land and how (Geschiere, 2009; Mamdani, 2012; Peters, 2009). In this formulation, customary land tenure is not a static set of inherited rules, but instead, a shifting form of governance in tension with juridical frameworks but often with substantial authority to govern access, ownership, and use of land. This research builds on the finding that customary tenure can have increasing relevance in contemporary struggles over land (Rignall, 2015); this relevance hinges on customary land tenure’s flexibility and evolution over time, rather than an assertion of continuity or stability. We show that customary land tenure may, in fact, actively manage livelihood and land use change using rules that may be invisible to formal data collection and policy-making institutions, but are not invisible to the people negotiating these dynamic rule systems.

There are no established tools for tracking how customary tenure operates to govern land transfers and use in Morocco. Official data on agricultural land use and production focus on formal land owners and production statistics without addressing how informal tenure governance might shape land transfers, use, and production decisions at the household and regional levels. Our results demonstrate how customary tenure rules can nonetheless be tracked in household-level data by documenting the opportunities available to two major categories of

“rights-holders” in the pre-Saharan steppe and oasis systems: those with “native” land rights and those without. Though these categories are complex and historically variable, they nonetheless indicate two major categories of rights that can be captured in a binary variable and maintain their relevance as land becomes more valuable and in demand for a variety of uses. This variable is not intended to describe all the sociological dimensions of what it means to have native land rights—access to communal land, governance responsibilities at the local or regional level, access to systems of social reciprocity, and others—but is a proxy for the privileged access that we conclude has a material impact on the livelihood prospects of households. This proxy in turn allows for quantitative analysis of largely invisible to formal data collection systems on land. Such quantitative analysis also requires qualitative assessment of how and why these rules maintain their authority over land access. We combine both approaches to find that customary tenure managed the direction of intraregional population movements and at the same time regulated who accedes to native land rights, thereby limiting access to agricultural land. In effect, customary tenure regimes dictate land use patterns and who can practice what kind of livelihood activity by limiting non-native households’ access to agricultural land, especially agricultural land that is collectively owned.

2. Conceptual framework

2.1. Approaches to customary land tenure

In the past two decades, global development thinking on land tenure has shifted from a long-standing emphasis on private titling and individual tenure to a recognition that many rights are held collectively and subject to customary regimes not enumerated in formal tenure law.⁴ In the post-World War II development consensus, these customary systems were seen as an obstacle to growth and investment (Platteau, 1996). The dominant paradigm now holds that securing rights in land whatever the prevailing legal regime is more important for maximizing the productive potential of land and other natural resources, though there remain strong voices in support of private tenure (Borras and Franco, 2010; de Soto, 2003). The goal of recognizing plural tenure regimes usually entails policy or legal approaches to giving land users stable and secure rights in land. This can mean formal titling but now involves a more diverse suite of certification schemes, such as issuing collective land registration or otherwise recognizing communal jurisdiction over territory (Deininger et al., 2012). The emphasis on transparency, rule of law, and accountability are intended to give marginalized groups a stronger basis on which to defend their ownership or use rights, though many are asking critical questions about whether land governance has substantively changed in pro-poor directions (See, for example, Li, 2014; Silva-Castañeda, 2016). For one thing, more inclusive policy pronouncements are a long way from translating into defensible rights on the ground, and in some cases, may be facilitating increasing land concentration or land grabbing (Peters, 2013; Wolford et al., 2013).

In accepting a plurality of land governance regimes, these evolving approaches to customary land tenure arguably offer more legal and policy options to groups and individuals attempting to secure their rights in land. However, official emphases on the need to codify rights or formalize these informal regimes may not acknowledge the extent to which plural legal regimes are themselves actually evolving, adapting to manage new social and economic landscapes (Chimhowu and Woodhouse, 2006). The *practice* of land tenure usually involves a combination of customary and formal legal strategies for adjudicating land to the point that the lines between formal and customary tenure regimes can be blurred (Amanor, 2010). The newly dominant land

² Fieldwork constituted 12 continuous months of participant observation, structured and semi-structured interviews, and extended case studies of households in three rural communities in the Mgoun Valley. Karen Rignall has subsequently returned each year for follow-up research, on average a month each year, and to conduct a household survey to test the qualitative findings.

³ The baseline date of 1960 was chosen because the shift in livelihoods documented in this article was to a large extent precipitated by out-migration; this migration was facilitated by a French labor recruiter who enlisted male migrants during visits to southern Morocco that began in 1963 and ended in 1965, though other opportunities for migration emerged after this time (Atouf, 2011).

⁴ The World Bank has articulated this shift in a series of reports and in the thematic emphases of its annual Land and Poverty Conference. See, for example, Deininger (2003).

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