SOCIALIST AND NON-SOCIALIST APPROACHES TO LAND LAW: CONTINUITY AND CHANGE IN SOMALIA AND OTHER AFRICAN STATES

UGO MATTEI
University of Trento

1. Introduction

This paper is an essay about how in modern Africa the structure of property rights is indifferent to ideological options.

Both in those countries which have followed a socialist way and in those which are trying to work out their development within a non-socialist framework, the structure of property rights seems to remain the same. This article, mainly focused on land law, suggests that three land-use models are at play all around Africa. The socialist option has therefore not been able until now to offer any original solution comparable to those which it has provided in Eastern Europe or in Asia. Rather, the legal tools which are in use both in socialist and in non-socialist African countries were already present in pre-independence days.

This is a case study which is particularly concerned with the Somali legal system. Somalia has, right after the Revolution of 1969, closely followed a "scientific" socialist option. Since the eighties nonetheless, official ideology has shown a major shift. These changes and their impact on the legal system seemed to me particularly useful in testing my assumption.

African land law is characterized by a high degree of complexity. This complexity is mainly due to a phenomenon of legal stratification. Stratification is the product of legal transplants and, broadly speaking, is by no means a peculiarity of African law. Nonetheless, it seems to me that
African legal stratification may be considered to some extent unique. First because the different legal systems which play their role one after the other are very heterogeneous from the cultural, economic and political point of view and therefore scarcely mesh. Secondly because each system may still be alive even in those African contexts in which an attempt of imposing a single legal order has been made. These phenomena of heterogeneity and liveliness complicate any legal problem because of the deep divergencies of the solutions offered within each stratum.1

These basic complexities are sensibly augmented when the object of study is the law of property. Property law in fact on one hand reflects much more than other fields of the law all economic, political and cultural changes, as the allocation of goods is a key problem for any human organization. On the other hand, property is the domain of both the conscious and of the unconscious patterns of resistance against any change.

It is moreover very questionable to speak about "African property law". Within Africa there are so many radically different legal systems that to speak about them as a single entity would be of very dubious merit.

But even if we were to give up the task of a general description of African laws of property, the complexities we are talking about would not be much reduced. The description of Somali property law, in fact, is made difficult both by reasons related to the Somali legal system in general and by reasons related to land organization.2

From the first point of view, even on the African landscape, the State of Somalia has had a complex historical development and, therefore, has a complex legal system. In fact, even if the departure point was privileged in a minor ethnical division, in the subsequent stratification

1. An in depth discussion and a large bibliography on "stratification" is provided by M. Guadagni, Il diritto dei paesi Africani nella letteratura contemporanea, Trieste 1984, 27 ff.
2. For a general survey of the legal system of Somalia see R. Sacco, Le grandi linee del sistema giuridico somalo, Milan 1984. This work has been reviewed by A. Allott, 35 International and Comparative Law Quarterly 1986 and Rivista di Diritto Civile 1 1987, 305.