

Technical Centre for Agricultural and Rural Cooperation (CTA)

Who owns land in Africa?

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SPORE



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Who owns land in Africa?

There are three systems of land tenure operating in Africa today: common law, state law based on colonial law and, in some areas, the law of Islam. None of these could be said to be dominant either regionally or nationally. Today, because of the growth in population, the considerable investment in development and the exploitation of the land's potential to the full, land is being seen more than ever before as a valuable resource. There has to be some sort of rationalization of all these land tenure systems in order to identify the most workable and the most appropriate system.

Firstly, there is the problem of who owns the land, whether it belongs to one or to several individuals, to the state, to the clan or to no-one in particular. Until recently the question was not even asked in these terms. There was more than enough land for everyone in Africa's vast expanses. Common law scrupulously controlled the acquisition of land but since there was little competition for it the application of the law was generally undisputed and did not result in conflict.

The growth in population, the continual droughts in some parts of the continent, and the exhaustion of the soil have all combined to give land a new status, as something precious, since it is increasingly rare and threatened. Large sums of money have been spent on exploiting the bush, where once it was sufficient just to gather in what nature in her bounty provided.

Who, for example owns the irrigated areas bordering the great rivers of Africa? Is it the man whose ancestors lived on them or the man who farms them or the man who has

*In Africa, traditionally,
the land belongs to the community
and not to an individual*

spent a fortune on developing them? In the Sahel, who owns the maize fields where crops and cattle live in a symbiotically profitable relationship? Is it the man who raises the crops or the man whose animals make the soil fertile?

In the western countries a single legal system can be applied to arbitrate in cases of dispute. African countries have to contend with several legal codes, the product of a chequered history: ancestral common law; modern law imposed by the colonial powers and, in certain cases, Islamic law. In some countries each region, even each village, has its own set of land tenure laws, often a mixture of past systems, in a jumbled juridical jigsaw. It is not hard to imagine the difficulty in trying to apply traditional common law land rights within the legalities of a barely understood European land tenure system.

Private ownership an anathema

It is the old, old story: the colonial settlers wanted to extract the maximum profit from their newly acquired lands, but had no intention of getting embroiled in the tangled web of common law. The French, for example, were quite clear on their policy: "French intentions were to force the natives to adopt the concept of private ownership and land registration. This was initiated by Faidherbe



PHOTO MARY CHERRY / SUNSET

in Senegal in 1865, who stipulated that only official title deeds would be accepted. The French Civil Code does not recognize the existence of common law," explains the academic Catherine Coquery-Vidrovitch.

African farmers, however, continue to use the common law system. Even today, when there is a dispute over land tenure, the conflict between the French concept of private property and the African tradition of land and the individual becomes apparent. At a conference on this subject one researcher put it this way: "We thought we could move smoothly into the 20th century without dealing with the problem of persisting common laws on land tenure. The last 30 years have proved that you cannot get rid of history quite so easily." Right from the beginning the dice were loaded against the colonial powers. "Land belongs first and foremost to the community before it belongs to an individual," explains the researcher Raymond Verdier. "Individuals do not exist in isolation because they are part of different groups, family relationships, marriage, locality or neighbourhood."

In Mauritania, for example, and in many other West African countries, land belongs to those sharing the same lineage. The 'elders' share out the land between different families according to their needs, such as when children are born or leave the district

*"The land belongs
to whoever cultivates it".
This belief condemns
many African forests
to death.*

or when couples form. This is very different from the deed or private ownership which states that the title to land shall be "absolute, exclusive, and in perpetuity" (article 544 of the Civil Code).

What makes it even harder for the lawyers is that in Africa land is not conceptualized as something purely material. A CNRS researcher, Véronique Jacob, explains: "This is one of the foundations of religious and social life in Africa. The land is the home of their ancestors, through whose intermediary the living have a relationship with the dead. The land has a whole system of beliefs tied in with it. It is venerated and votive offerings are made to it. It is holy, inalienable, and often has no financial value attached to it, as with the Baoulé people in Côte d'Ivoire." Here when the Kossou dam was being built, the surveyors who came to mark out the land, which was to be used to settle those who had to be moved off their own homelands, were welcomed by machetes. President Houphouët-Boigny has bitter memories of 1963 when lawyers were

APREFA

The Association pour la promotion des recherches et études foncières en Afrique (Association for the advancement of land tenure research and studies in Africa) (APREFA) is an international group of research workers who are bringing a cross-disciplinary approach to matters of land tenure.

APREFA started as an informal Euro-African network with the purpose of organizing international meetings and publishing the work done at these, but in 1987 decided to extend its operations. Its aim is to urge an immediate reconsideration of the whole question of land tenure in francophone West Africa, adopting a more pragmatic approach than that which characterized the colonial period.

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PHOTO MARY CHERRY / SUNSET

**Regional conference on the problems
of land tenure and decentralization**
Praia Cape Verde, March 1994

A regional conference on land tenure problems related to government and decentralization policies will take place in Praia, Cape Verde, from 21-25 March, 1994. The conference is being organized by the Club du Sahel and the Permanent Interstate Committee for Drought Control in the Sahel (CILSS), and will discuss all aspects of the problem of land tenure and decentralization. The term 'land tenure' (le foncier) will be taken in its widest sense to include all natural resources and not just the land itself.

Club du Sahel, Thijs Bienflet, 2 rue André Pascal, 75755 Paris Cedex 16, FRANCE

drawing up estate law. Any unoccupied lands, deemed to be the favoured home of deities, were henceforth to be taken over by the state. As soon as this law became public knowledge the whole country went up in flames, a village technique for marking the acquisition of land.

***The law goes
unheeded***

No one solution to this problem of land tenure seems wholly appropriate, neither control by the state, state monopoly, nor private ownership. This situation is bringing disastrous consequences for African agriculture and, in particular, for the environment.

In Côte d'Ivoire the famous principle that "the land belongs to whoever cultivates it" has meant that coffee-cocoa fields have taken over the forest. The planters have demonstrated that "might is right" and taken over large tracts of land at the expense of small farmers.

The tropical forests, even those which are in theory protected, are being eroded by the advance of crop-growing and are dying out. In 1991 some 42sq km, one-third of the Khelcom Forest, was cleared by a project

*Island soils are
particular precious*

initiated by the powerful Mouride Associates and established as an extension of the Senegal groundnut basin. The pastoralists found they had suddenly lost huge areas of pasture to groundnut growing. Mamadou Sy, a journalist with the Senegalese daily *Waj Fadjri*, wrote at the time: "From now on in Khelcom the 6,000 pastoralists will have to limit all their herd movements to 28,000ha per 100,000 head of cattle, where once they had an area of 78,000ha to move round in."

***The crops vs.
stock conflict***

Of all contemporary problems of land tenure law, that of users' right over pastoralists' land is one of the most difficult.

"After the herds pass through our fields we just want to lie down and die. The animals leave complete devastation in their wake, and there is just nothing left, especially if the

crop is maize, yams, sorghum or millet. It is absolutely heartbreaking, two months' work wiped out in minutes," a farmer from Niger told a newspaper during the last winter transhumance. So much for the symbiotic relationship, that happy coexistence of Haoussa farmers and Peul pastoralists spoken of by the sociologist André Marty. The pastoralists on the one hand must have the forage provided by the farmland in order to feed their herds, and on the other the farmers need the natural fertilizer provided by the animals.

Formerly the herds had to winter in the northern pasturelands and farming took precedence during those months, and if the herds came down early there were always the fallow fields and the poor land to provide their fodder. But fallow is a thing of the past and even the poor land is now used for out-of-season crops. The age-old division of time and space will no longer work. Since common law does not make allowance for new ways of life, what legislative process will take over from it?

The answer to that question in today's Africa is: the law of the gun. A veterinary inspector in Togo reports that "the itinerant pastoralists have firearms and threaten the peasant farmers, even though the carrying of weapons is illegal. Furthermore, they light fires whenever they camp without taking precautions and allow their herds to trample through the fields." In Benin from 1986-89 the tally of incidents was horrendous: 15 dead, 13 seriously injured and three missing in the Zou province, and four dead in the Mono. The terrible slaughter

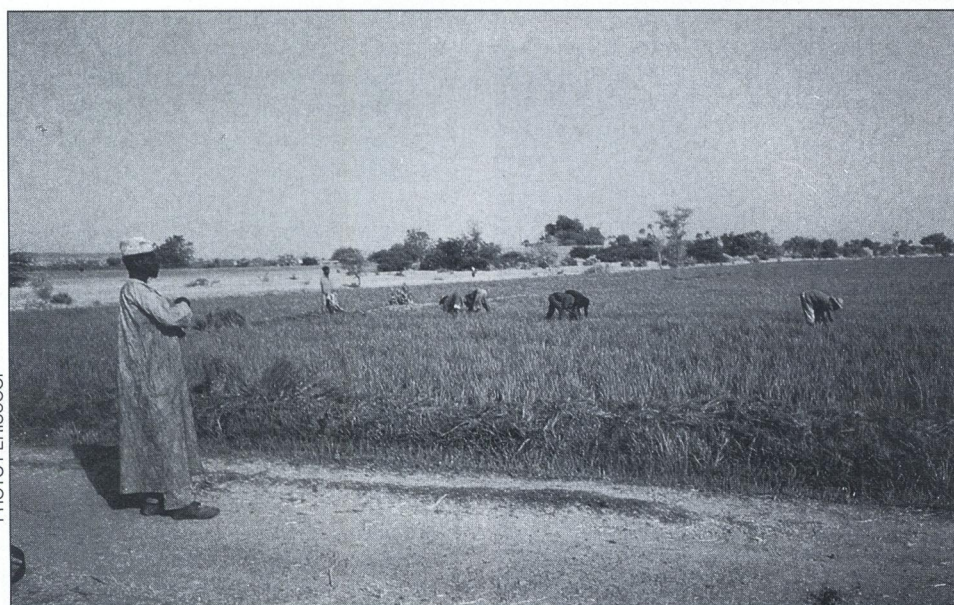


PHOTO PERISCOOP

The setting-up of irrigated areas along the river takes into account traditional land tenure customs

which took place at Toda, Niger, left a total of 300 dead, the majority of whom were women and children.

— A land registry — is crucial

Not surprisingly, development agents are making a priority of the land tenure question in order to avoid such horrifying tragedies. But Erik Orsenna asked in one of his books, "Without a proper land registry, that is if property is not clearly marked, how can we ever make progress?" Since land rights are constantly changing is it reasonable to talk in terms of a land tenure survey which in any case would require constant updating, a task beyond the means of most countries?

Etienne Le Roy of the Sorbonne believes that there is no point in setting up a system for the sake of it: "We have to try and draw up a consensus which is appropriate to the circumstances, but I feel it is far more relevant and useful to societies in Africa to try to find solutions to their everyday problems (production, urban survival, education, management of the environment) than to be preoccupied by codes which have come from a consensus negotiated elsewhere and which is alien to them."

To those who know Africa, it is apparent that African ways of thinking and behav-

our are changing. Once upon a time, for example, the bush belonged to everyone. Now in some villages the chiefs are keen to extract payment from woodcutters working on their lands. The straw which once belonged to the gleaners is now claimed by the owner of the field.

Could these ideas not be integrated into the framework of the national legislation, since common law alone cannot cope with the complexity of the population, changes in land use and the various ways of allocating land?

The large aid organizations are also aware of these changes. In Niger the European Development Fund (EDF) Project takes ethnic and land tenure customs into account when setting up irrigated areas along the river. Rather than keep the land improvements which belong to the state, and the land itself (which belongs to those who have traditional rights to it) as two separate things, the developed land is sold off. The size and shape of these plots coincide with the existing land divisions, and will be

governed by local customary laws rather than by a national water or rural code, which does not exist in this country.

"It is not man who owns the land: it is the land which owns the man." The old proverb could just be right. ■

(*)From *L'appropriation de la terre en Afrique noire*

"The French expression 'le foncier' means a particular set of social relationships which have land and territory as their basis. The factors which determine these social relationships are mainly economic (the original accumulation of capital: making a living, or legal procedures for land acquisition or adjudicating disputes), and they are also shaped by the processes which both confer objective reality on them and define them as distinctive systems*."

English-speaking countries: a different picture

Unlike their French counterparts, English colonialists did not seek to impose the concept of private ownership, and adopted a policy of each individual holding the land where he was. Thus the land was divided between the natives and the colonialists, with both seeking to get the most out of the land they had, and with little regard to the legal system in force. Catherine Coquery-Vidrovitch emphasizes: "...the custom was codified by the great chiefs and the headmen who were on the spot. Despite the fact that they were influenced by their own interests as the ruling class favoured by the colonial status quo, and that their decisions had to be approved by the British governor, they nonetheless had the authority to modify customary usage and thus to give it legal status."



PHOTO PERISCOOP

In British colonies, therefore, improved agricultural techniques were much more likely to promote a modernization of the economy than to undermine the social fabric. In Tanganyika the colonial powers were able to declare that "the introduction of draft power, the intensification of mixed farming and the improvement of the livestock population would stand a much higher chance of success within the common law system making use of the traditional tribal territories."

Although this policy brought about fewer and less acute difficulties in land tenure than in francophone countries, it was not entirely problem-free.

In Kenya large areas of pastureland were granted to white settlers. The creation of national parks and the spread of agricultural land have eaten away at the space used by the pastoralists and this is now only half what it was at the beginning of the century. When the authorities tried to establish rights of pasture on Maasai lands the result was disastrous. The herdsmen had to sell the property deeds to private farmers because they were left with so little space they could no longer practice the ancestral pasturage customs which allowed the land to regenerate.



PHOTO PERISCOOP

Owner or cultivator - who has priority rights to the land?